



**Response to the  
Public Exposure of**

**NATIONAL CONSUMER CREDIT  
PROTECTION BILL 2009**

**May 2009**

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# 1.0 Introduction

Cash Converters is the industry leader in the provision of small amount short term loans in Australia, and over many years has worked collaboratively with State and Federal governments on plans to regulate the industry.

As a national company Cash Converters supports the move toward nationally uniform legislation and the introduction of regulations to eliminate unscrupulous lenders from the market.

Throughout the work with Government, Cash Converters has consistently maintained that any moves to regulate the industry must ensure the retention of small amount short term loans as a viable credit option for the benefit of communities.

This submission is intended to once again, put on record Cash Converters support for sensible credit reform and provide for your consideration our response to the Exposure Draft of the *National Consumer Credit Protection Bill 2009*.

## 1.1 Cash Converters Small Amount Short Term Loan Business

Some ten years ago Cash Converters identified a need in the small amount short-term loans sector and saw an opportunity to provide, via our franchised network, a service to borrowers who had been isolated by the withdrawal of credit services by the mainstream credit market.

Our short term loan product, *Cash Advance*, is a one-month loan attracting a flat fee that covers all costs of establishment and administration. To provide an overview of the product, it is:

- **short term** — loan period is one-month;
- **fixed cost** — one set fee of \$35 in the \$100, not rolled over, no compounding of fees and charges;
- **small amount** – average loan is \$280;
- **widely used** — 250,000 users nationally; and
- **used responsibly** — 97% of loans are repaid in full.

Cash Converters also offer unsecured loans between \$1,000 and \$2,000, generally over a seven month term, and secured loans (against a motor car) between \$3,000 and \$5,000. These loans are a relatively small part of the total loan business, are all fully compliant with the *Uniform Consumer Credit Code* (UCCC) and are an important and valued service to our customers.

We have found over the years that there is a very real need for short term credit in the community, particularly in economically challenging times. Further, many of our customers prefer short term loans to other forms of credit. Research commissioned by Cash Converters last year supports these findings and is available on request<sup>1</sup>.

As a company with franchise outlets in all States and Territories, we want to offer our short term loan product to all Australians under uniform terms and conditions and have found this to be increasingly difficult.

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<sup>1</sup> To provide context and data to the debate of regulation of the short term loan industry, Cash Converters commissioned [Policis](#), in conjunction with [Synovate Australia](#), to produce consumer research on the habits and use of credit by low income Australians. *The dynamics of low income credit use* and *The impact of interest rate ceilings (The evidence from international experience and the implications for regulation and consumer protection in the credit market in Australia)* are summary reports of this research.

## 2.0 Review of the Exposure Draft Legislation

Cash Converters congratulates the Federal Government on the consultative approach they have used in the development of this draft legislation. From our perspective, Phase One of the proposed legislation:

- recognises the obvious need in the community for short term loans;
- offers protection to consumers by requiring all credit providers to be licensed with ASIC and comply with responsible lending conduct provisions; and
- provides a degree of certainty to industry.

### 2.1 “National” Legislation

Our first concern is that during Phase One of the legislation there will be no movement towards developing a uniform system in the short term credit market because several states are electing to retain interest rate caps in parallel with Federal legislation.

Cash Converters believes there must be a uniform set of laws across all jurisdictions on credit provision for all credit types including short term loans. We appreciate that the Government chose to regulate ‘all credit’ in the first phase of the review rather than mortgages only. Cash Converters supports this position and understands that this approach imposed significant additional complexity and time and resource pressures on Government.

Over the past decade, the States have developed different approaches to this issue.

**Table 2a: Review of State-based Legislation to Regulate the Short Term Loan Industry**

#### **Queensland**

Legislation introduced by the Queensland Government in 2008 imposes an annualised 48% cap on interest rates, fees and charges. Further, moves were being pursued to outlaw the application of a brokerage fee (currently operating in NSW), thereby threatening the viability of the short term loan industry. Informal comment from Government is that these are on hold.

#### **NSW and the Australian Capital Territory (ACT)**

The NSW and ACT Governments have introduced an annualised 48% cap [inclusive of all fees and charges] and are often cited as examples of how effectively the system has worked. In NSW there are over 200 micro lenders offering loans of less than one year and none of these businesses operates under this cap. They survive by imposing an additional fee in their costs, generally a brokerage fee as is currently being used in Queensland, which is needed to cover overheads and achieve a reasonable return.

#### **Victoria**

The Victorian Government rejected the NSW model of incorporating fees with interest under a cap, observing that if all the loop holes could be shut, fringe lenders would be driven out of the market denying people access to this form of credit.

#### **South Australia**

Whilst no draft regulation has been tabled in South Australia, a community education campaign has been launched and the Minister has publicly supported a regime of an interest rate, fees and charges cap. More recently, concern has been expressed from a number of Government Members of Parliament about the consequences of capping, and the need to ensure the community retains access to this widely used form of credit.

#### **Western Australia**

The Western Australian Government does not support capping and has adopted a stringent licensing regime, allowing them to exclude rogue traders from participating through a process of regular review. They understand that annualised capping distorts the market for short term loans and will drive traders from the industry denying consumers’ choice.

#### **Tasmania**

A capping regime is not in place in Tasmania, and the State Government is not supportive of introducing one.

We are pleased that all States recognise that the current approach, with each State having its own unique approach to credit control, is not sustainable and have agreed that a National approach is required and will bring uniformity to credit laws.

We are concerned that:

- Phase One does not fully reflect a “National” model as the new credit laws covering short term loans are not uniform across all States. That is, States and Territories are not prepared to “abolish” their existing state-based regulation, concerning the application of an annualised capping regime, in lieu of new Commonwealth legislation.
- At the end of Phase One, dissimilar situations in each state will make a review of the effectiveness of licensing, and a comparison of capping very difficult to analyse, and in the meantime such differences will lead to increased operational costs that may have to be passed on to consumers.

During an interview last month, Senator Nick Sherry, Minister for Superannuation and Corporate law said:

*“Those states that don't have a 48 per cent cap, we're going to ask them not to impose a 48 per cent cap, and then we will assess the outcomes; we'll look at what has happened in the states that have a 48 per cent cap and those that don't, with a responsible lending provision that has come into force, and we'll look at what the outcomes are and determine whether it is appropriate to maintain that 48 per cent cap.”<sup>2</sup>*

As Minister Sherry has indicated, the status quo will be retained for a period of about 18 months, with each jurisdiction continuing to apply a different set of rules for the industry and consumers.

What this will mean is the maintenance of the current system in operation in each State with the additional requirement of the new regulations.

Cash Converters planned for initial set up costs and expected ongoing costs of compliance associated with:

- overhauling software packages and documentation to ensure legislative compliance,
- the training and development of staff to prepare them and ensure their ongoing legislative compliance, and
- insurance provisions that may need to be arranged.

However a lack of uniformity across states such as that presented by interest rate and fee capping in Queensland and NSW simply creates parallel systems with an increase in compliance costs and the underlying cost of doing business.

While Cash Converters understands the argument that this will allow a comparison between those jurisdictions that ‘cap’ and those that don’t, as stated previously, we believe the argument does not take into account the complexity that arises from different types of ‘caps’ being applied in the states using this approach and how this complicates objective comparison.

We also suggest that in a situation with a range of variables in operation and an uncertain manner in which to measure effectiveness, that at the end of Phase One it is likely that each State will still be arguing the value of nationally adopting its own system in accordance with local populist notions as opposed to easily measured outcomes from a common model, that deliver the national good.

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<sup>2</sup> Transcript - Joint Press Conference with Tony D'aloisio, ASIC Chairman (27 April 2009)  
<http://minscl.treasurer.gov.au/DisplayDocs.aspx?doc=transcripts/2009/021.htm&pageID=004&min=njs&Year=&DocType=>

## 2.2 Annualised Capping

The second core issue for Cash Converters is the imposition of annualised caps on interest rates that, as outlined above, will be allowed to be charged on short term loans.

Cash Converters does not favour interest rate capping as an effective means of regulating the short term loan industry. Rather, we see this as creating market distortion and leading to unfavourable consequences for the industry and the consumer.

The complex formula currently applied in some States means the maximum a lender can charge for a one month short term loan is slightly less than 4% of the amount loaned.

**Figure 2a: Example of the Application of a 48% Annualised Cap on an Average Short-Term (one-month) Loan**

Amount Borrowed	\$250.00
Loan Period	1 month
Total Interest Rate Cap	48%pa
Monthly Interest Rate Cap	4%
Total Interest and Fees Charged	\$10.00
<b>TOTAL LOAN COST</b>	<b>\$260.00</b>
<b>RETURN ON LOAN</b>	<b>\$10.00</b>

Experience has shown that a 4% return does not cover the underlying cost of a loan, thereby making the service unviable. These costs include the administration costs associated with setting up a short term loan, interviews, documentation, account keeping, collection costs, evaluation of application, and maintenance of loans.

As Cash Converters have pointed out in their submissions to Government, 'caps' and in particular 'annualised caps' do not deal with the issues they intend to address. In the absence of substantial state funded community loan schemes, the demand for a short term loan service from the community forces lenders to look for alternative ways to continue to deliver their products.

The greater concern for Cash Converters is that interest rate caps do not offer consumers any additional protection. When fully implemented, annualised capping regimes harm the very people they intend to protect, leading needy people into the hands of disreputable lenders operating illegally and thereby increasing consumer risk.

State Governments are yet to experience the "hidden" social costs of a cap on interest, fees and charges. The social consequence stemming from the inability of thousands of people across Australia to access small sum credit, will lead to a dramatic rise in requests from social welfare.

Existing no interest and low interest loan schemes, commonly known as NILS and LILS, are put in place by some Governments to specifically aid families experiencing crisis situations. These schemes go nowhere near meeting the demands of the wider Australian public for short term loans.

### 2.3 Community Need and Shortage of Alternative Options from Mainstream Lenders

National Australia Bank (NAB) small loan pilot program, in partnership with Money Fast, was launched last year seeking “to discover the true underlying cost of lending small amounts for short periods<sup>3</sup>”. From the third quarterly report the following is reported. Of the 3252 loan applications received, only 8% (248) were approved, an approved percentage that hardly touches the demand for short term credit in the market.

We note from recent media reports that while recognising the need in the community for short term loans, NAB has been confronted with the very real costs and marketing difficulties involved with providing short term finance. Having been involved in this sector of the credit industry for many years, Cash Converters is familiar with this experience and the difficulties associated with providing short term loans as is being experienced by NAB. No other major lender offers a comparable product to ours or has instigated a pilot program on a similar basis.

Cash Converters cautions against making direct comparisons between the NAB Pilot and some of the loan products provided by the short term loan industry:

- NAB’s smallest loan is \$1000 and has a pay back period of one year.
- Cash Converters Cash Advance product has an average loan size of \$280, and a pay back period of one month.

As stated, the smallest loan that is offered by NAB in the pilot is \$1000, a greater debt for the consumer than the amounts most often offered by Cash Converters (\$280). After the first nine months of the pilot, the break-even interest rate was found to be 28%, or 15.76% of the original amount without taking into account underlying loan administration fees and charges. This is significantly greater than the 4% lenders are eligible to charge under an annualised capping regime.

Micro lenders such as Cash Converters are required to incorporate all costs (fees and charges) associated with a loan in any annualised interest rate or a comparison rate calculation. If we use the complex formulae associated with both Queensland and New South Wales capping legislation, the NAB loans issued as part of the pilot program have an annual interest rate which exceeds 48% p.a. and would not be allowed for a micro-lender. In these two states the loans are only allowable because ADI's are not obliged to incorporate fees and charges in the calculation of annualised interest rates.

Also, NAB identified an underlying cost of \$299 for the administration of loans. Although Cash Converters loans are much smaller than the NAB loans in the pilot, and only run for a period of one month, there are still underlying costs, as experienced by NAB, for administration that does not reduce significantly for smaller amount loans and not in the same proportion as the reductions in the size of the loan.

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<sup>3</sup> Article – *Venture reveals goon-free truth about fringe dwellers*, The Australian, 11 March 2009.

## 2.4 Responsible Lending Conduct

Cash Converters welcomes the principle of the Exposure Draft legislation, particularly a formal entrenchment of the *Uniform Consumer Credit Code*, which we have always adhered to.

Cash Converters has always been a responsible lender with strict operational guidelines in place. This National Credit Legislation will help eliminate unconscionable lending practices within the industry, thereby improving the reputation of all short term loan providers and affording borrowers greater protection.

Strict operational guidelines have long been in place across the Cash Converters store network ensuring that a person cannot borrow more than they can comfortably afford to repay. For example, a first time user of the Cash Converters *Cash Advance* product cannot borrow more than 15% of their net monthly income.

Cash Converters supports the need for all lenders to act responsibly and in the best interests of each borrower. However in all instances we are reliant on our customers to fully disclose their financial circumstances and therefore their suitability for a loan.

We are also working toward implementing further initiatives that support the intention of the Government's legislation, including the development of a number of social programs to increase our community participation and help some of our customers back on the road to financial independence.

The Cash Converters Community Program aims to provide assistance to those who need it most by aiming to achieve the very specific goal of:  
*"Helping financially disadvantaged people get on with their lives, through enabling greater financial skills and independence - giving people dignity through financial independence."*

The program will:

1. Provide financial literacy information for those who lack the financial literacy skills to adequately manage their financial situation, including
  - Financial literacy training services
  - Financial literacy information booklets.
2. Provide a path to develop practical work related skills for those who need assistance to better themselves, by offering
  - Job and employment assistance – referral service.
  - Education & training by third parties.

Cash Converters is also in the planning phase of determining how else we can assist people who require our services but due to our strict lending policies are unable to borrow the money they need. Such a "Social Lending" model is difficult and expensive, however the business is committed to the well being of community members who require urgent assistance.

## 3.0 Conclusion

Uniform national regulation as outlined in the draft legislation offers the potential to:

- reduce the duplication of resources, effort and costs by Government and industry in consultation within each State;
- avoid compromising industry efficiency;
- allow streamlined regulations and approaches to compliance;
- allow consumers workable protection wherever they reside in Australia, and
- provide efficiencies that could lead to an improved service being made available to consumers.

The proposed reforms will bring relief to our customers as they acknowledge the very real need in the community for access to short term credit.

Cash Converters remains concerned about future introduction of capping as a principal tool to address unconscionable lending practices. We believe it will fail to meet its objective and will eliminate the availability of short term loans to the community, adversely affecting the very people it intends to protect and thereby creating:

- an unviable industry, scooping up all responsible lenders in the proposed “solution” to the problem and encouraging the growth of an illegal lending industry; and
- create a credit vacuum to the detriment of a large number of Australians.

Cash Converters supports the principal of Responsible Lending but its practical application is limited by the level of disclosure provided by the borrower and the availability of third party information that may be limited by Privacy Legislation.

We will continue to work collaboratively with State and Federal governments on development and improvements for the short term loan industry.