



Tasmania

OUR REF: LE3059  
YOUR REF: N70435

14 November 2005

Mr Gavin Jones  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
**DICKSON ACT 2600**

Dear Mr Jones

**Re: Third Line forcing notification N70435 lodged by Cash Converters Pty Ltd.**

I refer to your correspondence of 25 October 2005 seeking submissions in relation to a notification lodged by Cash Converters Pty Ltd for exemption for proposed activities from the Trade Practices Act third line forcing provisions.

In particular, I note that Cash Converters seeks immunity from legal action by the ACCC for potential breaches of the exclusive dealing provisions of the Act arguing that the conduct is in the public interest. Cash Converters requires the following with respect to franchise offerings outside of South Australia and the Northern Territory that: *'...all new franchises who join the Cash Converters system must offer pay day lending and must use the Mon-e system ...'*. Cash Converters is also requiring similar provisions with respect to franchise offerings with SA and the NT, but substituting software developed by Quickdraw Financial Solutions P/L with respect to pay day lending.

I would like to comment specifically in relation to the practice of pay day lending and whether this form of lending is in the public interest.

Payday lending has grown at a rapid rate in Australia and has replaced pawnbroking as a primary means of obtaining short-term cash. Credit cards are in many ways a comparable product to pay day loans offered by mainstream lenders. Once a consumer has a credit card, the card also offers the consumer the opportunity to access short-term cash at the consumer's convenience, which is the main feature pay day lenders promote about their product.

DEPARTMENT of JUSTICE  
CONSUMER AFFAIRS AND FAIR TRADING

FILE No.
DOC:
MARS/PRISM

**AUST. COMPETITION &  
CONSUMER COMMISSION  
CANBERRA**  
18 NOV 2005

A 2000 Queensland Office of Fair Trading report<sup>1</sup> on pay day lenders found that pay day lending appeals most to those in need of urgent cash and those who are unable to access mainstream credit. While pay day lending, meets a need within the community, it is usually the case that there is a greater potential for detriment than is likely to occur through mainstream lending. A reasonable proportion of pay day borrowers would appear to be 'vulnerable'

There has already been one raft of amendments designed to close a loophole that allowed pay day lenders to operate outside of the scope of the Consumer Credit Code. These amendments<sup>2</sup> extended coverage of the Code to include most short term lending and addressed a number of issues with fringe credit lending, including pay day lending, by for example:

- requiring contracts to be in writing;
- requiring the disclosure of fees and charges; and
- providing borrowers with the legal capacity to challenge unjust and unconscionable contracts.

These amendments also addressed truth in lending, over-commitment and unconscionability issues identified by the Queensland Office of Fair Trading.

It was acknowledged, at the time of making these amendments, that further reform might be needed to address additional areas of concern. Amendments to the Code to address concerns about fringe credit providers, including pay day lenders, continues to be one of the Ministerial Council on Consumer Affairs' strategic priorities.

A Regulatory Impact Statement has recently been prepared and approved by the Commonwealth Office of Regulatory Review that recommends a second 'wave' of amendments to the Code to tighten up provisions covering fringe lending. Approval of the RIS is now being sought from the Standing Committee of Officials on Consumer Affairs and MCCA. The RIS will be released for public comment together with draft amendments later this year or early in 2006.

This Office notes that that the practice of pay day lending is now a part of the credit landscape within Australia and meets a demand within a particular segment of the community. However, the high potential for detriment, particularly given the particular consumers involved, should be noted by the ACCC in considering whether to allow Cash Converters an exemption from the

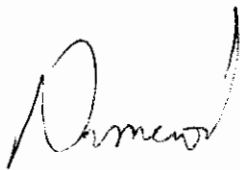
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<sup>1</sup> Pay Day Lending -A Report to the Minister for Fair Trading August, 2000

<sup>2</sup> *Consumer Credit (Queensland) Amendment Act 2001.*

Trade Practices Act third line forcing provisions on the basis of being in the public interest.

I suggest that, if you have not already done so, you contact Mr Ian Clyde, Chair of the Uniform Consumer Credit Code Management Committee for UCCCMC's view with respect to the potential for detriment caused by pay day lending and for details of the RIS. Mr Clyde can be contacted on 03 9627 6090 email : [ian.clyde@justice.vic.gov.au](mailto:ian.clyde@justice.vic.gov.au)..



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