cashconverters

February 2020

INQUIRY INTO THE NATIONAL CONSUMER CREDIT PROTECTION AMENDMENT (SMALL AMOUNT CREDIT CONTRACT AND CONSUMER LEASE REFORMS) BILL 2019 (NO. 2)

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Inquiry into the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)

Introduction

To the members of the Senate Economic Legislation Committee.

The following response provides feedback on Bill No.2 and the proposed amendments contained in the Explanatory Memorandum and the recommendations of the Independent Review of the Small Amount Credit Contract Laws ("the Review") released on 23 October 2017.

The response addresses the reforms proposed for Small Amount Credit Contracts ("SACC") only as Cash Converters is not engaged in the consumer lease market.

Background

Established in 1984, Cash Converters International Limited ("the Company") has been listed on the Australian stock exchange for the past 21 years. With an international presence in the second-hand retail, pawnbroking and personal finance sectors, we are headquartered in Perth, Western Australia, operating over 150 stores nationally, including 71 corporate stores, 81 franchise stores and collectively employing more than 2,500 people.

Cash Converters is the largest SACC lender in the Australia.

With a loyal customer base, we recognise the importance of the role we play in the community. Our core purpose is built on the belief that all Australians have the right to assistance when in financial need and we consider the needs and wellbeing of our customers in everything that we do.

The importance of providing services to ensure our customers have access to credit should not be underestimated. Our customers cannot obtain finance from the major banks and we provide a solution that enables access to credit for this otherwise excluded segment.

Accordingly, we facilitate financial inclusion for a significant customer base, and we do this in a socially inclusive, responsible and transparent way. We have invested heavily in a robust risk and compliance framework and formed strong and collaborative working relationships with the industry regulator (ASIC).

As the leading industry participant in the SACC sector we welcome the opportunity to make a submission.

Background on Small Amount Credit Contracts

Cash Converters is of the view that the National Consumer Protection Act 2009 is working as intended.

The SACC market in Australia has changed significantly since the introduction of national consumer credit laws in 2009. Further reforms introduced in July 2013 saw responsible lending obligations provide even greater protections for consumers including legislative caps on fees charged, a Protected Earnings Amount (PEA) for Centrelink customers, cost-of-credit caps ensuring fees and charges could never exceed the principal borrowed and presumption of unsuitability safe guards imposed throughout the assessing process.

The Company fully endorses these measures.

Furthermore, in 2017 as a part of an undertaking made to ASIC, the Company implemented further measures to meet its responsible lending obligations including introducing a variety of lending hard-stops where the consumer may be experiencing hardship (e.g. receiving Centrelink Emergency funds or bank dishonour fees).

The aim of the regulations introduced in 2013 were to:

- **Decrease the number of loans per customer, per year**
- **Decrease the total number of loans taken by a customer, per year**
- **Continue to offer viable, safe loans for financially excluded customers**

The SACC market is not growing and the number of loans per customer, per year is declining. The National Credit Providers Association (NCPA), of which Cash Converters is a member, commissioned an independent research firm, CoreData[1], to collect consumer credit data from Australia's largest SAAC providers since the 2013/14 financial years. That research is attached to this submission with a key finding that the number of loans has decreased from 1.3 million loans in 2013/14 to 839,036 in 2017/18. Loan frequency has remained stable at 1.3 loans per year.

Comment on Recommendations – Small Amount Credit Contracts (SACCs)

Cash Converters plays an important role in the economy and fills a gap that neither the major banks nor Government currently fill. According to Good Shepherd Microfinance[2], *"Seventeen per cent of adults in Australia experience financial exclusion. That's 3 million people unable to access a small amount of credit, a transaction account or general insurance. This places them and their families at risk of poverty and poor social, emotional and health outcomes".*

[1] https://www.coredata.com.au
[2] http://goodshepherdmicrofinance.org.au/about-us/

Most of Cash Converters' loans are for one-off expenditure and our customers need for credit often relates to the criticality of a medical emergency, a car repair that enables them to get to work or a family emergency. Lending responsibly and respectfully to our customers is an intrinsic component of the Cash Converters culture and will remain an ongoing focus.

The Company supports the Review recommendations, with a few exceptions. For clarity, a comment from Cash Converters on each recommendation follows:

<table>
<tr><th colspan="2">Recommendation | Protected Earnings Amount (PEA)</th></tr>
<tr><td rowspan="2">Recommendation detail</td><td>Extend the protected earnings amount regulation to cover SACCs provided to all consumers.</td></tr>
<tr><td>Reduce the cap on the total amount of all SACC repayments (including under the proposed SACC) from 20 per cent of the consumer's gross income to 10 per cent of the consumer's net (that is, after tax) income.</td></tr>
<tr><td rowspan="3">Comment</td><td>Cash Converters does not support this recommendation.</td></tr>
<tr><td>To apply a PEA cap to an employed customers income is a very considerable overreach by Government in a consumer's right to personal choice. The consumer is already protected by the very significant responsible lending obligations imposed on the lender by the Credit Act and this restriction is totally unnecessary.</td></tr>
<tr><td>A PEA cap that is unreasonably low will have several unintended consequences illustrated through the following scenarios:
• If the customer needs to borrow an amount that exceeds the 10% cap, extending the loan term is the only option to reduce repayments. This will make the loan more expensive despite the customers' affordability test demonstrating they could afford to repay the loan sooner.
• If the customer needs a small loan to cover an unexpected expense (e.g. $200 for car maintenance) she may not be able to access credit as there is one final repayment left on an existing loan, putting her over the 10% PEA cap despite the customers' affordability test demonstrating she can afford the loan.</td></tr>
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Recommendation | Removing the rebuttable presumptions in relation to suitability	
Recommendation detail	Remove the rebuttable presumption that a loan is presumed to be unsuitable if either the consumer is in default under another SACC, or in the 90-day period before the assessment, the consumer has had two or more other SACCs.
	This recommendation is made on the condition that it is implemented together with Recommendation 1.
Comment	Cash Converters fully **supports** this recommendation.
	This provision was designed to reduce loan frequency which was prevalent prior to the implementation of the Act in 2013. This is now not the case as the responsible lending obligations of the current legislation is working as intended and the average frequency of a loan is 1.7 loans per year.

Recommendation | Short-term credit contracts	
Recommendation detail	Maintain the existing ban on credit contracts with terms less than 15 days.
Comment	Cash Converters fully **supports** this recommendation.

Recommendation | Direct debit fees	
Recommendation detail	Direct debit fees should be incorporated into the existing SACC fee cap.
Comment	Cash Converters **does not support** this recommendation.
	Third party fees – such as direct debit fees – do not add to SACC lenders' profit. Furthermore, the profit margin on SACC lending is already so low due to capping regulations that SACC lenders cannot afford to absorb further third-party costs.
	Cash Converters' major competitor – Credit Corp – exiting the industry is indicative of the how unsustainable such a legislative structure can be.

Recommendation | Equal repayments and repayment intervals	
Recommendation detail	In order to meet the definition of a SACC, the credit contract must have equal repayments over the life of the loan (noting that there may need to be limited exceptions to this rule).
	Where a contract does not meet this requirement the credit provider cannot charge more than an annual percent rate (APR) of 48 per cent.
Comment	Cash Converters fully **supports** this recommendation.
	Cash converters' loans meet this requirement.

Recommendation | SACC database	
Recommendation detail	A national database of SACCs should not be introduced at this stage. The major banks should be encouraged to participate in the comprehensive credit reporting regime at the earliest date.
Comment	Cash Converters fully **supports** this recommendation.

Recommendation | Prohibition on fees where balance paid early	
Recommendation detail	No 4 per cent monthly fee can be charged for one month after the SACC is discharged by early repayment. If a consumer repays early, the creditor can't charge a monthly fee on any outstanding months of the original term after the consumer has repaid the outstanding balance and those amounts should be deducted from the outstanding balance at the time it is paid.
Comment	Cash Converters fully **supports** this recommendation
	Cash Converters does not charge an early repayment fee. As the Panel points out, the lack of 'interest' reduction is because this is a fee cap regime and not an interest rate regime. It is the Total Cost of Credit that is required to be repaid for the lender to make enough profit to continue lending in a viable industry. Interest rates are not used for SACC lending.

Recommendation | Preventing unsolicited invitations	
Recommendation detail	SACC providers should be prevented from making unsolicited SACC offers to current or previous consumers.
Comment	Cash Converters **does not support** this recommendation.
	It is unnecessary to limit marketing in circumstances where only customers who have consented to marketing contact will receive SACC related marketing anyway.
	The Responsible Lending Obligations prevent unsuitable loans, whether they are the result of unsolicited marketing or not.
	The proposal should only restrict invitations for a pre-approved loan.

Recommendation | Referrals to other SACC providers	
Recommendation detail	SACC providers should not receive a payment or any other benefit for a referral made to another SACC provider.
Comment	Cash Converters **supports** this recommendation.

Recommendation | Default fees	
Recommendation detail	SACC providers should only be permitted to charge a default fee that represents their actual costs arising from a consumer defaulting on a SACC up to a maximum of $10 per week.
	The existing limitation of the amount recoverable in the event of default to twice the adjusted credit amount should be retained.
Comment	Cash Converters provides **qualified support** for this recommendation.

	Debt recovery is an inherently costly exercise and recovery of these costs is a part of everyday business. This is acknowledged by the National Consumer Credit Protection Act (2009) (NCCPA) specifically providing for the passing on of these kinds of fees and charges. However, Cash Converters does fully support a maximum default fee cap of a maximum $40 per month. By specifying a monthly maximum rather than weekly, issues between weekly / fortnightly / monthly repayments are avoided. For example, a weekly repayments customer who defaults over a monthly period shouldn't receive additional/reduced default fees because of their repayment method within that month. $40 over an entire month, regardless of the number of defaults, is reasonable and reflects some of the business time required to manage customers.

Comment on recommendations – Combined recommendations

Recommendation | Bank statements	
Recommendation detail	Retain the obligation for SACC providers to obtain and consider 90 days of bank statements before providing a SACC and introduce an equivalent obligation for lessors of household goods.
	Introduce a prohibition on using information obtained from bank statements for purposes other than compliance with responsible lending obligations.
	ASIC should continue its discussions with software providers, banking institutions and SACC providers with a view to ensuring that ePayment Code protections are retained where consumers provide their bank account log-in details in order for a SACC provider to comply with their obligation to obtain 90 days of bank statements, for responsible lending purposes.
Comment	Cash Converters fully **supports** this recommendation.

Recommendation | Documenting suitability assessments	
Recommendation detail	Introduce a requirement that SACC providers and lessors under a consumer lease are required at the time the assessment is made to document in writing their assessment that a proposed contract or lease is suitable.
Comment	Cash Converters fully **supports** this recommendation.

Recommendation | Warning statements	
Recommendation detail	Introduce a requirement for lessors under consumer leases of household goods to provide consumers with a warning statement, designed to assist consumers to make better decisions as to whether to enter into a consumer lease, including by informing consumers of the availability of alternatives to these leases.
	In relation to both the proposed warning statement for consumer leases of household goods and the current warning statement in respect of SACCs, provide ASIC with the power to modify the requirements for the statement (including the content and when the warning statement has to be provided) to maximise the impact on consumers.
Comment	Cash Converters **does not support** this recommendation.
	There are numerous existing materials containing credit product warnings for customers. Simplifying them, rather than adding to them, is likely to clarify the customers understanding. Further warnings will add to the complexity and distract customers from the key features of the loan that they should take note of – i.e. fees, charges and repayment terms.

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Recommendation | Disclosure	
Recommendation detail	Require SACC providers and lessors under a consumer lease of household goods to disclose the cost of their products as an APR.
	Introduce a requirement that lessors under a consumer lease of household goods be required to disclose the Base Price of the goods being leased, and the difference between the Base Price and the total payments under the lease.
Comment	Cash Converters **does not support** this recommendation.
	An APR disclosure requirement is not relevant, given that fee caps regulate SACCs. Interest rates are not used for SACC loans. A SACC contract is for a fixed term and the charges would never equal the calculated APR. For example, an APR calculated from a one-month loan assumes 12 establishment fees, which is illegal.

Recommendation | Consequence for breaches	
Recommendation detail	Encourage a rigorous approach to strict compliance by extending the application of the existing civil penalty regime in Part 6 of the National Credit Code to consumer leases of household goods and to SACCs, and, in relation to contraventions of certain specific obligations by SACC providers and lessors, provide for automatic loss of the right to their charges under the contract.
Comment	Cash Converters fully **supports** this recommendation.

Recommendation | Anti-Avoidance measures	
Recommendation detail	The Government should amend the Credit Act to regulate indefinite term leases, address avoidance through entities using business models that are not regulated by the Credit Act, and address conduct by licensees adopting practices to avoid the restrictions on the maximum amount that can be charged under a consumer lease of household goods or a SACC, or any of

	the conduct obligations that only apply to a consumer lease of household goods or a SACC.
Comment	Cash Converters **does not support** this recommendation.
	A general anti-avoidance provision would make it impossible to comply with the legislation, as any lending done in a way which is not *anticipated* by the regulator but otherwise entirely legal, will be deemed to be avoidance. When all compliance can be cast as 'avoidance', there is little ability to comply.
	An anti-avoidance provision will enable retrospective attacks on otherwise legal conduct and may force industry participants to leave the industry entirely, reducing financial inclusion and consumer choice.

Summary

The National Credit Act and SACC legislation, overseen by ASIC, is working.

Cash Converters believes that reform to the existing legislation should introduce greater consumer protections for all providers of small credit and prevent a continuation of the bad behaviour of those operators that do not comply with responsible lending obligations and not regulated by the NCCP Act.

In February 2018, Cash Converters successfully completed all commitments made to ASIC as part of its Enforceable Undertaking (EU) relating to concerns over historic lending assessment practices. This was achieved by rebuilding our loan assessing platform, removing any reference to benchmarks and loading bank statement transactions to ensure accurate assessment of affordability for all applicants.

With the approval of ASIC, an independent expert (Deloitte) was engaged to conduct a thorough review of Cash Converters' current responsible lending practices and its obligations under its Australian Credit License. This assessment did not identify any deficiencies or result in recommended actions for Cash Converters to achieve compliance. The current legislation and oversight by ASIC is working.

Cash Converters will continue to support sensible legislation that provides meaningful protection for its customers, but it will not support legislation that has arbitrary caps (10% PEA) applied that have the unintended consequences of making credit longer term and as a result more expensive, can create financial exclusion and impinges on the personal choices of employed Australians.

The current legislation and regulations for the protected earnings amount (PEA) are working as intended and some of the proposed changes contained in Bill No.2 will further disadvantage financially excluded Australians and increase the cost of a small loan for consumers who are already experiencing financial pressure.