Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

6th October 2022

RE: Financial Sector Reform Bill 2022

Thank you for the opportunity to provide comment on the *Financial Sector Reform Bill 2022* ("The FSR Bill 2022").

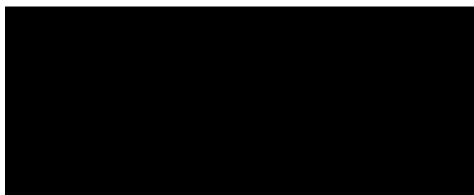
As a credit provider of Small Amount Credit Contracts ("SACC"), Semvia Finance Pty Ltd is well versed on the current regulatory and legislative framework governing consumer credit in Australia.

We are at all times, proponents of legislation that genuinely protects and supports consumers. It is however our view that Item 12 Subsection 133CC(1) of Schedule 4 of The FSR Bill 2022, namely the creation of a Protected Earnings Amount ("PEA") of 10% (of net income) for all consumers will not provide consumers with the intended protections but rather cause far reaching, negative consequences on the very parties it purports to protect. Enacting this PEA will impact significantly upon financially excluded Australians who require access to credit.

We hope our comments offer some balanced, pertinent and factual points for the Committee's consideration.

If the Senate Standing Committee would like to discuss these matters further, I encourage and welcome such dialogue and can be contacted via email at sebastian@semvia.com.au.

Yours sincerely,



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1. **The recommendations of the 'Review of Small Amount Credit Contract Laws' is now over 6 years old, and is based on antiquated data that is no longer relevant to the current consumer credit market.**

- Item 12 is predicated on outdated data, collated at a time when the consumer credit market was significantly different from that which exists today:
  - For example, the use of 'Buy Now Pay Later' (BNPL) products such as *AfterPay* was in its infancy in 2016 and Wage advance credit products such as *MyPayNow* were not in existence.
- It is imperative that current and accurate data regarding the implantation of a PEA is collated and reviewed so as to ensure that any legislative changes, will meet their purpose.

2. **The introduction of a PEA is by no means novel, with other countries having previously introduced near identical restrictions, that resulted in negative outcomes for consumers.**

- We cite the following precedent set by a similar jurisdiction where a PEA was also mandated and look at the consequences of passing such legislation:
  - The State of Colorado, in the United States of America in 2010 enacted a near identical PEA, with a review of the data in 2014 concluding that "*Limiting the payment-to-income ratio would benefit fewer than 1% of borrowers by reducing the incidence of loans that are not paid off, but it would impose costs on 86% of current borrowers, who could not be offered the same credit on the same terms that they now obtain*" [1].
  - The review concluded, "*regulation that prohibits lending based on simple affordability criteria risks substantial reductions in credit availability to a population that often has few available alternatives*" [2].
- In the event Item 12 is passed and a PEA mandated, there is no reason to believe the result will be any different than that experienced in Colorado.

3. **Reforms to the NCCP Act introduced in 2013 specifically to SACCs have worked.**

- Item 12 seeks to resolve a perceived issue, that is no longer in existence. SACC usage and consumer complaints specific to SACC are not increasing but conversely reducing as evidence by:
  - The amount of SACC approvals has significantly reduced, with funded loan amounts just over half in the FY 20-21, the total dollar amount of loans funded was just over half of FY14-15 [3].
  - The extremely low level of consumer complaints about SACCs that the Australian Financial Complaints Authority (AFCA) receive. In 2019-2020, SACCs made up less than 0.7% of the total

[1] Beales, Howard & Goel, Anand. (2015). Small-Dollar Installment Loans: An Empirical Analysis. SSRN Electronic Journal.
[2] Beales, Howard & Goel, Anand. (2015). Small-Dollar Installment Loans: An Empirical Analysis. SSRN Electronic Journal.
[3] Core Data - NCPA - SURVEY RESULTS with BNPL and CCC JULY 2022

80,546 complaints to the AFCA. By contrast, mortgages, credit cards and business finance accounted for 30% of complaints [4]

- These statistics reflect the fact that the reforms introduced to the NCCP Act in 2013 have had the desired effect and there are no systemic issues with the provision of the SACC credit product.

4. **Item 12 mandates a dollar amount that all consumers can attribute toward debt repayments, thus restricting the choices of all Australians as to how to spend their money.**

- To mandate a PEA that applies equally to all consumers, regardless of where they derive their income from is an overreach of legislation. Different consumers have differing financial requirements. Consider for example, the hypothetical scenario of the obviously different financial situations for two consumers:
  - Consumer one – Is not employed, and has a net income of $20,000 per annum derived via Government Benefits.
  - Consumer two – Is employed, and has a net income of $120,000 per annum derived via a PAYE position.
- The financial situation of consumer one and consumer two are by no means the same, yet both consumers are equally subject to the PEA restrictions and subsequent removal of choices, not just those consumers who may be considered 'vulnerable'.
- The Government has previously highlighted this obvious difference between different consumers, when in the recommendations of the 2016 SACC review the Government stated that "*it is unusual to have such prescriptive requirements regarding the amount that a consumer can devote to a particular form of finance; however, the panel's report highlighted the vulnerable customer base of SACCs.*" [5]

5. **SACCs are a tightly regulated credit product, that if restricted further will inevitably result in increased usage of unregulated, more expensive credit products.**

- SACCs are highly regulated and subject to 'responsible lending' obligations, additionally conferring many protections for consumers including Financial Hardship assistance, and free access to dispute resolution via AFCA. SACCs are the most regulated credit product that exists in the Australian credit space.
- Restricting access to SACCs will not reduce the consumer demand for credit, the consumer will simply turn to less regulated (or unregulated) short term credit products which may lack the consumer protections attached to SACCs.
- Schedule 4 fails to address those credit products provided by companies who are not credit licencees and operate under an exception within the National Consumer Credit Protection Act. These credit products are

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[4] https://mycreditmychoice.com.au/wp-content/uploads/2021/02/CASH005-Short-Term-Lending-Factsheet.pdf
[5] Bills Digest, Financial Sector Reform Bill - No 20, 2022-23, Page 26, 28th September 2022
https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/8801161/upload_binary/8801161.pdf

objectively more expensive than SACC's, totally unregulated, and do not provide assistance to consumers who experience financial hardship nor have free access to dispute resolution.

- These unregulated products continue unabated and unrestricted and Schedule 4 in no way addresses them.

6. SACCs will become more expensive for consumers if a PEA is enacted.

- The enacting of a 10% PEA will cause the term of a typical SACC to be extended in order to reduce the repayments below the amount of the PEA. The extension of the repayment term will directly increase the cost of the SACC to the consumer.
- Consider the example $400 SACC loan for a consumer who is earning $500 per week (net) with a disposable income of $80 per week.

	Repayments	**Total repayment**	**Loan Fees**
Current Legislation	8 repayments of $64.00	$512.00	$112.00
Application of 10% PEA	12 repayments of $44.00	$528.00	$128.00

- The extension of the loan term from 8 to 12 repayments will result in an increased cost in total fees payable of over 14%. This represents an additional expense to the consumer which is a direct consequence of the application of the PEA.