



7 October 2022

Committee Secretary
Senate Economics Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Financial Sector Reform Bill 2022

Introduction

To the members of the Senate Economics Legislation Committee.

Cash Converters welcomes the opportunity to comment on the Financial Sector Reform Bill 2022.

The response addresses the proposed new laws to consumer credit reforms to Small Amount Credit Contracts ("SACC") contained within Schedule 4 of the Financial Sector Reform Bill 2022 only, as Cash Converters is not engaged in the consumer lease market.

Background

Established in 1984, Cash Converters International Limited ("Cash Converters") 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 154 stores nationally, including 76 corporate stores, 78 franchise stores and collectively employing more than 2,500 people.

Cash Converters is the largest SACC lender in 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. In many instances our customers cannot obtain finance from the major banks and we provide a solution that enables access to regulated credit products for this otherwise excluded segment.

Accordingly, we facilitate financial inclusion for a significant customer base, and we do this in a socially inclusive, regulated, 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 Credit 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 safeguards imposed throughout the assessing process.

Cash Converters fully endorses these measures.

Furthermore, in 2017 as a part of an undertaking made to ASIC, Cash Converters 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.

It should be noted that Cash Converters fully supports the actions taken by ASIC to remove from the market any consumer credit product that causes consumer harm, including the continuing credit contract product provided by Cigno (which is not going to be captured under any SACC regulation but arguably causes significant harm).

Comment on new laws - Small Amount Credit Contracts

Cash Converters plays an important role in the economy and fills a gap that neither the major banks nor Government currently fill.



Cash Converters initiated a customer engagement programme in which the impact of the proposed changes to the protected earnings amount were explained. Over 20,000 customers were opposed to changes to the protected earnings amount which would ultimately restrict the availability of credit to many vulnerable Australians who have limited options or may struggle to qualify for other types of finance. The current legislation provides an option to customers in a safe, regulated way with capped pricing and strict responsible lending obligations applying to all loans assessed.

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.

Cash Converters supports responsible lending practices and agrees with many of the proposed amendments that relate to SACC lending, with the exceptions set out in the Schedule below. We confirm that Cash Converters has not, for the purposes of this submission, commented on all aspects of the new laws, as several items remain subject to the preparation and implementation of a legislative instrument. Without sufficient visibility over these proposed changes, Cash Converters is unable to formulate a position or provide further comment at this time.

In addition to the proposed amendments listed in the Schedule, Cash Converters does not support the timing of the amendments. The Bill currently states that the consumer protection framework for consumers of SACCs are expected to commence on the day after the end of the period of six months beginning on the day the Bill receives Royal Assent. The amendments are substantial and necessitate numerous operational and procedural changes to be implemented by licensees within a short time frame. Cash Converters opposes the proposed commencement date in the Bill and considers that, due to the substantial nature of the amendments and the sanctions to be placed on licensees in the event of non-compliance, a commencement day of at least 12 months beginning on the day the Bill receives Royal Assent is considered more commercially viable.

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.

This is evidenced by the new Australian Financial Complaints Authority (AFCA) publication of complaints where they note a very low level of complaints for the SACC sector.¹

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.

¹ <https://data.afca.org.au/banking-and-finance><https://data.afca.org.au/banking-and-finance>



The current legislation and regulations for the protected earnings amount (PEA) are working as intended and some of the proposed changes contained in the Bill will further disadvantage financially excluded Australians and increase the cost of a small loan for consumers who are already experiencing financial pressure.

Schedule

The following comments from Cash Converters relate to new laws which we do not support:

New Law I Protected Earnings Amount (PEA)	
New laws	Licenses must not enter into a small amount credit contract with a consumer if the repayments under the contract would not meet the requirements prescribed in the regulations
	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.
	Repeal and amendment to the Credit Act - section 133CC
Comments	Cash Converters does not support this amendment.
	<p>To apply a PEA cap to an employed customer's 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.</p> <p>Furthermore, the proposed changes to the PEA will have a severe impact on the segment of the market that requires access to credit the most. By introducing the changes, the Bill ignores a number of factors which include:</p> <ol style="list-style-type: none"> 1) the basic characteristics of SACC loans, which are short term in nature and cannot exceed 12 months; 2) a SACC lender cannot collect more than 100% of the principal from consumers, which contrasts with other loan products which do not impose limits; and 3) consumers are capable of making rational choices. <p>The ability of consumers to make rationale choices was determined in Australian Securities and Investments Commission v <i>Westpac Banking Corporation</i> [2020] FCAFC 111. In that case the Court noted that a consumer can make rationale choices to pay a larger portion of their income in the short term on order to, for instance, pay for repairs to a motor vehicle which, if left unattended, will either cost substantially more in the long term OR leave them without the means of earning an income at all.</p>



New law I Preventing unsolicited invitations	
New law	Licenses are prohibited from making unsolicited communications to a consumer that contain an offer or invitation to enter into or apply for a small amount credit contract in certain circumstances.
	Addition to the Credit Act - section 133CF
Comments	Cash Converters does not support this amendment.
	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.

New law I Referrals to other SACC providers	
New law	Small amount credit contract providers are prohibited from making referrals in certain circumstances
	Addition to the Credit Act - section 160G
Comments	Cash Converters does not support this amendment.
	A licensee or provider should not be prevented from offering products which are not unlawful to a consumer particularly where the National Credit Code provides carve outs for products to which the Code does not apply. For example, the offering of pawn loans which are not regulated by the National Credit Code, but rather separate State legislation, should not be prohibited.