Chapter 3

Payday loans and consumer leases

3.1 ASIC notes that payday loans and consumer leases are functionally similar, but that they operate very differently.[1]

3.2 Payday loans are loans of up to $2,000 for a period of 16 days to 12 months. There are legislated caps on the fees that can be charged by payday lenders an establishment fee of 20 per cent of the amount borrowed and a monthly fee of 4 per cent of the amount borrowed.[2]

3.3 Regulated consumer leases are contracts for goods (hired wholly or predominantly for personal, domestic or household purposes) for longer than 4 months where the consumer does not have a right or obligation to purchase the goods; and the total amount payable exceeds the cash price.[3]

Payday loans

3.4 Payday lenders prefer to have their product distinguished from consumer leases, although the two are often conflated. Payday loans are more closely regulated than consumer leases.[4]

3.5 Most payday loans are small amount credit contracts (SACCs). SACCs are loans to consumers, where the credit provider is not an Authorised Deposit-taking Institution, of up to $2,000 where the term of the contract is between 16 days and 12 months. This is set out in section 5 of the *National Consumer Credit Protection Act 2009* (the National Credit Act). The National Credit Act does not apply to any loans (including SACCs) to businesses. Loans for a term of 15 days or less are prohibited.

3.6 Research for the National Credit Providers Association (NCPA) finds that the market for SACCs is dominated by Cash Converters, Money3 and Nimble, who make up an estimated 70 per cent of the industry's revenue.

3.7 NCPA notes that the number of SACC loans approved has fallen since *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (the Enhancements Act), the provisions of which were summarised in the previous chapter, was passed in 2012. In 2016–17, 1.4 million applications for SACCs were received by payday lenders of which 39 per cent were approved. This compares with nearly 2 million applications with a 67 per cent approval rate in 2014–15. However, the fall of 57 per cent in the number of loans approved was not matched by the fall in the

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1 ASIC, *Submission 21*, p. 8.

2 Consumer Action Law Centre, *Submission 37*, p. 6.

3 The Treasury, *Review of the Small Amount Credit Contract Laws*, March 2016, fn 2, p. 1, https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf (accessed 5 February 2019).

4 National Credit Providers Association, *Submission 51*, p. 4.

amount lent. In 2014–15 it was $667 million, and in 2016–17 it was $538.5 million, a fall of less than 20 per cent.[5] Thus the average loan size rose from $502 to $948.

3.8 It is difficult to interpret these figures. It is possible that the presumption, included in the Enhancement Act, of unsuitability if a consumer has had two or more SACCs in the previous 90 days led to fewer, bigger loans.

3.9 NCPA's figures show that 81 per cent of SACC consumers were employed, up from 64 per cent in 2014–15. They had an average of 1.66 loans each. The proportion of repayments met was also 81 per cent.

3.10 At least one witness thought there was no definitive data:

> One of the key issues we've had in entering this market and working with this is that there is a lack of transparency in data to actually understand the performance. There are also incredibly creative accounting treatments for how you do defaults, arrears and all the rest. There's no consistency.[6]

3.11 The Finance Industry Delegation observes:

> Banks and other larger financial institutions (ADIs) ceased offering SACCs over a decade ago and no other credible and lawful third party source has emerged as an alternative to the current SACC lenders, as a real borrowing alternative.[7]

3.12 One submitter suggested that the sector is now so tightly regulated that it is impossible to function profitably:

> We say we [Moneybox Loans Pty Ltd] were a lender because we no longer operate as a lender and have surrendered our credit licence…as we simply could not make a profit trading under the overwhelming compliance regime and draconian pricing restrictions. The death knell for us was when ASIC removed its class order which exempted direct debit fees from the SACC pricing caps – we simply could no longer operate and make a profit.[8]

3.13 The industry figures quoted above do not include operators in this commercial space who are not SACC lenders. The National Credit Code applies where;

- the lender is in the business of providing credit;
- a charge is made for providing the credit;
- the debtor is a natural person or strata corporation; and
- the credit is provided:
    - for personal, domestic or household purposes, or

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5 National Credit Providers Association, *Submission 51*, p. 15.

6 Ms Corinne Proske, General Manager, Retail and Online, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2019, pp. 40–41.

7 Finance Industry Delegation, *Submission 41*, p. 3.

8 Moneybox Loans Pty Ltd, *Submission 27*, p. 1.

- to purchase, renovate or improve residential property for investment purposes, or to refinance credit previously provided for this purpose.

3.14 Credit with a term of less than 62 days is not covered by the National Credit Code.[9]

3.15 The Consumer Action Law Centre expressed concern about other firms that are not covered by the National Credit Act, usually because, technically, they do not charge interest. Importantly, this means that they are not subject to responsible lending obligations, and they do not have to provide hardship arrangements.

3.16 There are several ways such arrangements can work. In deferred bill payment business models, customers provide copies of their bills which are paid by the company. Customers then pay back the money in four instalments. Other 'emergency cash' businesses are elaborately structured to fall within the short-term credit exemption. Pawnbrokers are subject to state based regulation, and so do not have to be members of the Australian Financial Complaints Authority (AFCA). In Victoria there are no caps on pawnbrokers' fees.[10]

3.17 A representative of ASIC also suggested that:

> …there are…firms within the sector that try and avoid complying with the obligation by structuring their business models in a way that would seek to exploit potential loopholes in the legislation.[11]

3.18 ASIC describes the 'book up' system used in many indigenous communities for purchasing day to day necessities. It often involves the customer leaving their debit card at the store, and the store using the debit card and PIN to reduce the debt as funds become available. While the system can function to everyone's advantage, it is open to abuse, and in particular, because of the lack of documentation, to the ratcheting up of debt.[12]

3.19 One company that appears to have structured its operations specifically to avoid regulation is Cigno, which is mentioned in several submissions. The National Credit Providers Association describe Cigno Loans' business model as follows:

> Cigno Loans (previously Teleloans Pty Ltd) specialise in emergency cash lending. Due to some of the characteristics of these loans such as their size and term, people label them as SACC’s, however Cigno’s product is very different.
>
> Gold Silver Standard Finance Pty Ltd is the lender whilst Cigno is the service provider that ‘manages’ the account. Therefore, there are two lots of

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9 ASIC, *National Credit Code*, https://asic.gov.au/regulatory-resources/credit/credit-general-conduct-obligations/national-credit-code/ (accessed 4 February 2019).

10 Consumer Action Law Centre, *Submission 37*, pp. 15–19.

11 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 24 January 2019, p. 12.

12 ASIC, *Submission 21*, pp. 25–26.

> fees from both the lender and the service provider. This means that Cigno can charge their customers fees that well exceed the legal fee cap on SACC products…
>
> …examples show consumers paying back almost 3 times the amount borrowed.[13]

3.20 Financial Counselling Hunter Valley Project Inc also expressed concern:

> Some payday loans are not covered by the National Consumer Credit Code this means they are not members of an External Dispute Resolution Scheme i.e. Cigna Loans.[14]

3.21 Cigno was invited to attend a committee hearing as a witness but did not respond to the committee's attempts to make contact with them.

Consumer leases

3.22 According to the Treasury review of the Small Amount Credit Contract laws, regulated consumer leases are comparable to SACCs.[15]

3.23 AFCA expressed concern about regulation of consumer leases:

> In relation to consumer leases: unlike lenders, the provisions of consumer leases are not subject to any restrictions or controls on prices, and that does mean that they can often charge much more than would ever be permitted under a loan to buy the goods. That's notwithstanding the functional similarity between the products. This is a concern to us.[16]

3.24 The industry association, the Consumer Household Equipment Rental Providers Association (CHERPA), was formed '…in response to the unscrupulous practices we witnessed from some in the consumer leasing industry.' It represents 40 per cent of the industry, and its members subscribe to a code of conduct.[17]

3.25 The Australian Finance Industry Association represents a further 'major component' of the consumer leasing market: Thorn Group (Radio Rentals), Flexigroup and Walker Stores.[18]

3.26 The value of the leasing industry for electronic goods and household appliances in Australia was estimated in 2014 to be $570 million.[19]

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13 National Credit Providers Association, *Submission 51*, p. 19.

14 Financial Counselling Hunter Valley Project Inc, *Submission 2*, [p. 2].

15 The Treasury, *Review of the Small Amount Credit Contract Laws*, March 2016, fn 2, p. 1, https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf (accessed 5 February 2019).

16 Mr David Locke, Chief Ombudsman and Chief Executive Officer, Australian Financial Complaints Authority, *Committee* Hansard, 24 January 2019, p. 2.

17 Consumer Household Equipment Rental Providers Association, *Submission 25*, p. 2.

18 Australian Finance Industry Association, *Submission 8*, [p. 1].

3.27 The logic of leasing major household consumer items is plausible:

> Consumer leasing…provides a manner for consumers to acquire household appliances in a way that is affordable and flexible…
>
> Many items of household equipment are not affordable to purchase up-front for a large number of consumers. Washing machines large enough to wash clothes and linen for a family, and home computers for study and household management, amongst other items, can be too expensive for an initial outlay…Consumer leasing provides Australians the option to acquire goods without an upfront outlay or a debt falling due all at once – regular monthly payments of affordable amounts can work better with household budgets.
>
> Consumer leasing also ensures that households do not take on the risk of goods breaking down…with the risk being absorbed by the lessor. It also gives the customer the option to update, upgrade, or purchase equipment during and at the end of the lease. Further, delivery, installation, and maintenance services are included in leases, meaning consumer leasing is hassle free.[20]

3.28 A witness emphasised the services offered with leasing:

> Consumer leases have a major role to play within the retail market. Many people who can't otherwise access household goods can do so through our service. Consumer leases give benefits to consumers, such as delivery, installation, demonstration, repair, service, upgrade and replacement. We support our customers when goods are broken, stolen or damaged. This is an important difference compared to a credit contract, which is simply a financial arrangement with no ongoing obligation for the credit provider to continue to support the customer.[21]

3.29 Consumer leases are subject to responsible lending obligations: the provider must assess whether the consumer can afford the payments, and the product must meet the consumer's requirements and objectives. However, there is no cap on the maximum cost of a consumer lease. Normally, the consumer will eventually pay more than the cash value of the goods.[22] Concern was also expressed that because the product is not a loan, it is not subject to provisions restricting repeated loans; and it may not be included in insolvency arrangements, so that collection activity can continue even after a customer files for bankruptcy.[23]

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19 ASIC, *Report 447: Cost of consumer leases for household goods*, September 2015, p. 11, https://download.asic.gov.au/media/3350956/rep-447-published-11-september-2015.pdf (accessed 11 February 2019).

20 Consumer Household Equipment Rental Providers Association, *Submission 25*, p. 2.

21 Mr Tim Luce, Chief Executive Officer, Thorn Group Limited, *Committee Hansard*, 22 January 2019, p. 41.

22 ASIC, *Report 447: Cost of consumer leases for household goods*, p. 11.

23 Mr Benjamin Paris, Personal Insolvency Professionals Association, *Committee Hansard*, 12 December 2018, p. 47.

3.30 ASIC's submission notes that many low-income consumers make their lease payments through Centrepay, a service by which payments are directly deducted from the consumer's Centrelink payment. Unlike SACCs, consumer leases are not subject to controls on prices and charges.[24]

3.31 Consumer Credit Legal Service (WA) Inc observes that:

> Consumer leases tend to attract a similar demographic to payday loans – low-income earners from low socio-economic backgrounds who are usually the recipients of Centrelink benefits.[25]

3.32 Perhaps because they have to date been regulated differently from payday loans, consumer leases attracted a lot of comment in submissions to this inquiry.

Impact on consumers

3.33 An attachment to the NCPA submission, written by an academic with experience in financial counselling, lists the reasons consumers seek payday loans:

- Mainstream lenders no longer provide small amount, short term loans;
- Customers often experience financial exclusion from other forms of credit (e.g. credit cards);
- A SACC loan provides customers with the credit they require in a relatively quick timeframe;
- Clear repayment dates (often short term, meaning the customer is freed from debt quicker than other forms of credit); and,
- A reluctance of customers to seek assistance from charitable organisations.[26]

3.34 However, Financial Counselling Australia noted that:

> Like all credit, the whole purpose of any credit contract has got to be to leave you in a better financial position, and we just see the opposite too often…Our experience in the financial counselling sector would be that the majority lead to more financial hardship rather than alleviate it…I have not seen an instance where a payday loan has been helpful to a client.[27]

3.35 A Legal Aid lawyer expressed a similar view:

> Typically, we see those clients end up in a financially worse and, often, legally worse position as a result of taking up any one of these products.[28]

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24 ASIC, *Submission 21*, p. 8.

25 Consumer Credit Legal Service (WA) Inc, *Submission 20*, p. 7.

26 National Credit Providers Association, *Submission 51*, attachment 2, p. 2.

27 Ms Fiona Guthrie, Chief Executive Officer, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, p. 5.

28 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 25.

3.36 Submitters from the community sector suggest that payday loans are too easy to access. For example:

> Our casework experience indicates that pay day loans and consumer leases are far too easy to access (digital access has grown rapidly) with few barriers to qualify. They put people already in hardship into worse positions. People take them out as they are easy to obtain and view them as a way to deal with a financial issue immediately.[29]

3.37 They say that loans are often over short periods with unaffordably high repayments, which means consumers may seek another loan to meet the repayments and thus get into a debt cycle.[30] A witness enlarged on this idea:

> The industry often claims that the loans are necessary because people get hit with one-off emergencies—they need to replace whitegoods; they need to move urgently; they might even experience domestic violence, and therefore those loans are absolutely essential to meet those purposes. When we look at our clients' actual experiences, in the vast majority of cases they're not the things they're paying for—they're actually just meeting a cash shortfall, so they can't pay their rent, they can't buy their food or they can't pay their electricity bills. Quite often, that shortfall is fuelled by loans they're already paying, so they will then go and get another loan to meet the next lot of essential expenses and partially to pay off that first loan.[31]

3.38 Many submissions and witnesses spoke of the personal impacts of indebtedness. Mr Tony Devlin, of the Salvation Army's Moneycare Program, said:

> He was talking about suiciding. I don't know the numbers, but, sadly, a reasonably high proportion of the people we work with have suicidal ideation. A large number of people have very serious mental health issues. Financial hardship causes great stress, anxiety and sometimes suicidality for people. I think it's the number one reason for relationship breakdown in Australia.[32]

3.39 Consumer and community groups were, if anything, even more critical of consumer leases than of payday loans. They asserted that consumer leases resulted in consumers paying many times the value of the goods but they did not in the end own the goods[33]—which some consumers did not understand at the outset.[34] There are few

29 Salvation Army, *Submission 9*, p. 8.

30 Good Shepherd Microfinance, *Submission 50*, [p. 2].

31 Ms Karen Cox, Chief Executive Officer, Financial Rights Legal Centre, *Committee Hansard*, 12 December 2018, p. 31.

32 Mr Tony Devlin, National Manager, Moneycare Program, Salvation Army Australia, *Committee Hansard*, 22 January 2019, p. 22.

33 Legal Aid Queensland, *Submission 3*, p. 4.

34 Care Inc, *Submission 11*, p. 3; Legal Aid Queensland, *Submission 3*, p. 4.

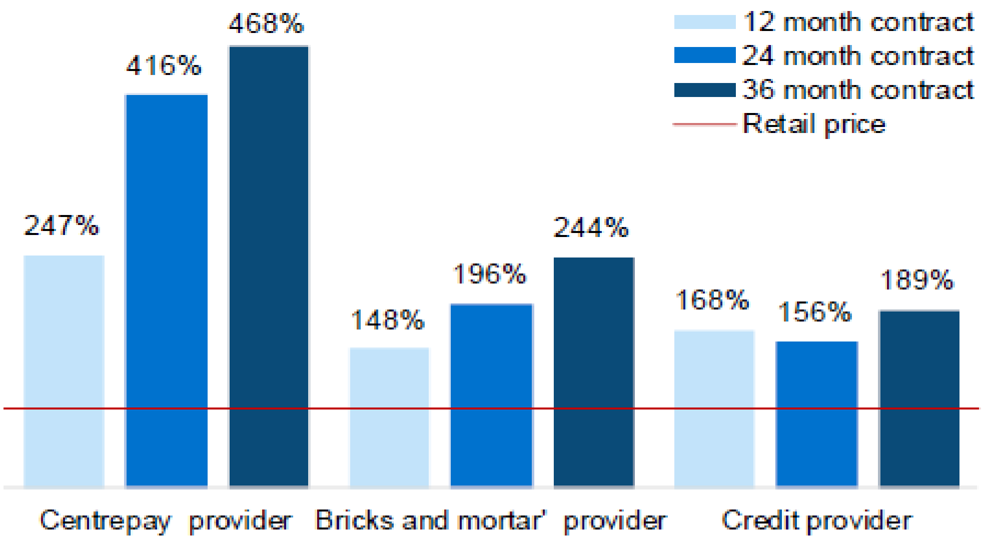
limitations on cost or contract length, and companies use aggressive marketing tactics and a lack of transparency.[35]

3.40 The Mentone Community Assistance and Information Bureau Inc found that:

> The prime elements of such rental contracts that concern those who are or have been in [them] are essentially the following:
>
>> The exorbitant amounts that some clients can eventually pay for items that retail at prices multiple times below the eventual cost; and
>>
>> The ongoing deductions from Centrelink accounts…[36]

3.41 ASIC reports that competition does not seem to drive down prices in the sector. Different providers charged significantly different amounts for the same goods, and the same lessor would charge significantly different amounts for the same goods for different customer segments. In both instances, the consumers that are more likely to pay the higher amounts are Centrelink recipients:[37]

Figure 1: Total cost paid by consumers as a percentage of the retail price of the acquired goods



Source: ASIC, *Submission 21*, p. 10

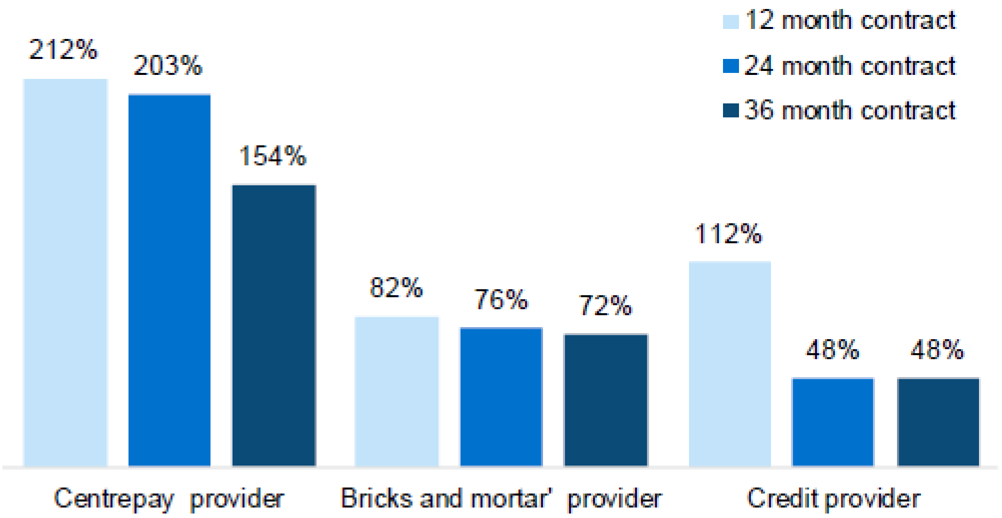
35 Good Shepherd Microfinance, *Submission 50*, [p. 3].

36 Mentone Community Assistance and Information Bureau Inc, *Submission 35*, p. 2.

37 ASIC, *Submission 21*, p. 9.

3.42 ASIC also found that over the term of a consumer lease, the consumer will pay significantly more than the retail price of the goods and be charged more than a lender is permitted to charge under a small amount credit contract:[38]

Figure 2: Cost of finance to consumers as an interest rate



Source: ASIC, *Submission 21*, p. 10

3.43 The impacts of indebtedness are increasingly being felt by younger people. The average age of customers of Good Shepherd Microfinance is 32.[39] Mr Devlin of the Salvation Army noted:

> In the payday lender area we did some recent research on our Moneycare database—over the last 10 years up till the end of the last financial year—and we found that the 15- to 20-year-old group made up 20 per cent of the people using those products or was the biggest group of any group using them. Over that same time the number of clients we had who accessed them moved from six per cent to 13 per cent—more than doubled over that period—and the amount of debt that was outstanding tripled over that same period…[40]

38 ASIC, *Submission 21*, p. 9; see also ASIC, *Cost of consumer leases for household goods*, September 2015, p. 4.

39 Mr Richard Wood, Credit Manager, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 40.

40 Mr Tony Devlin, National Manager, Moneycare Program, Salvation Army Australia, *Committee Hansard*, 22 January 2019, p. 21.

Conduct of providers

3.44 NCPA notes that there is a high level of compliance in the industry, with a very small number of sanctions issued by ASIC.[41] There were 110 complaints that went to external dispute resolution, which was 0.02 per cent of the loans involved.[42]

Marketing and consumer behaviour

3.45 Several contributors to the inquiry gave evidence as to the vulnerability of people who are financially excluded. The Salvation Army put it thus:

> Behavioral science tells us that people in crisis experience cognitive overload, which impacts their decision making and focus. Their focus is on meeting their pressing need and their decisions in times of crisis can and often does put them in a worse financial position in the longer term… when people are in crisis they will do whatever they need to do to survive. People need to find a way to pay the rent so they don't get evicted. They need to find a way to pay the car loan to stop repossession. They need to find a way to pay the bigger than expected electricity bill to keep the lights on. They need to find a way to repair the car to get to work. They will access whatever finance they can to get through that week.[43]

3.46 Mr Paul Holmes of Legal Aid Queensland framed the issue in economic terms:

> What we have is buyers who feel that they have no choice but to take up the [credit] product. So what you end up with is almost a very flat type of demand curve, in the traditional economic sense. In a lot of these areas, what you see on the supply side is that there's almost no price competition that would be indicative of a functioning market.
>
> Typically, what we also see is that there's a large power imbalance.[44]

3.47 The actual price of the credit may not be the highest priority:

> What we find, particularly with payday loans and with consumer leases as well, is that the cost of the product is very low regard; it is about obtaining the funds to do whatever is needed… [45]

3.48 Mr Holmes agreed with this, when asked if price was a factor for clients making their decisions about financial products:

> I would say almost never, and the reality of why I say 'almost never' is because, with the type of client we typically see, it's about finding a way of paying a bill that's due in two days.[46]

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41 National Credit Providers Association, *Submission 51*, p. 5.

42 National Credit Providers Association, *Submission 51*, p. 15.

43 The Salvation Army Australia, *Submission 9*, p. 8.

44 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection) Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 25.

45 Mr Tony Devlin, National Manager, Moneycare Program, The Salvation Army Australia, *Committee Hansard*, 22 January 2019, p. 21.

3.49 Dr Paul Harrison of Deakin University discussed the issues in detail in a hearing for the inquiry. His assumption is that:

> …businesses aren't necessarily in the business of consumer wellbeing; they're in the business of making profit and selling their product.

3.50 He emphasised 'decision making asymmetry', a psychological power imbalance between the credit provider and the consumer:

> This is because the provider has significant data analytic capacity, they are able to adapt their offer as it virtually follows and tests consumer responses and, through technology such as neural networking, is able to anticipate consumer responses and intervene to lead the consumer to make choices that suit business.

3.51 He noted that once a consumer had decided to buy something, it was in the seller's interest to make achieving that 'goal' as fast as possible. Online shopping enabled products to be 'clumped' with finance, so the process of acquiring a desirable object was bundled with getting the credit to buy it. There was little reflection by the consumer:

> …the critical issue is the speed with which consumers move through the online environment as opposed to, perhaps, a bricks-and-mortar or traditional face-to-face context…[47]

3.52 Online marketing also enables closer targeting, and it also means that it is harder for the consumer to ignore the advertising:

> …digital marketing means that there is a substantial amount of funds being spent on targeting customers. I think it becomes very difficult to put a lot of the onus back on the borrower, because the information is coming up in their feed, whether it's Facebook or wherever, at the point in time when they're potentially vulnerable.[48]

3.53 In particular, marketing targets the young:

> …It's the younger generation, if you look at their advertising. They're always down at the beach, they're relaxing, they're having a drink and stuff like that. It's very much targeted towards the younger generation…[49]

3.54 Payday loans are aggressively marketed, so that people use them instead of more suitable alternatives such as financial counselling or low interest loan schemes.[50]

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46 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection) Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 25.

47 Dr Paul Harrison, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, pp. 1–5.

48 Ms Corinne Proske, General Manager, Retail and Online, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 39.

49 Mr Richard Wood, Credit Manager, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 40.

50 Consumer Action Law Centre, *Submission 37*, p. 7.

ASIC noted that lenders invite consumers to take out new loans when they detect fluctuations in their income or when an existing loan is due to be repaid.[51] Ms Karen Cox, of the Financial Rights Legal Centre, suggested that payday lenders will on-sell the details of people whom they have rejected for loans.[52]

3.55 The Queensland Council of Social Service noted that payday loans and consumer lease businesses were concentrated in areas of higher unemployment, large proportions of single-parent families, and low gross income. The companies targeted areas of social and economic disadvantage.[53]

Practices of lenders

3.56 Many submissions gave concrete examples and case studies of poor conduct by lenders. For example, the Tasmanian Council of Social Service asserts that Cigno provided a loan to a person assessed as having gambling issues.[54] An individual submitter, 'Ian', says:

> My Son Jesse was approved 3 loans for 200.00 [by Cigno] while on Centrelink payments and suffering Schizophrenia and in a residential drug rehab program. His entire Centrelink money was assigned to the rehab. He has no employment history, or assets…They say they charge no interest. Instead the charge large admin, and loan origination fees. And the default fees are unreasonably high.[55]

3.57 Even when lenders are regulated, compliance with responsible lending obligations is lacking.[56] In particular, lenders do not inquire thoroughly as to the circumstances of the customer, they do not check the accuracy of income and expense figures provided to them, and even where they obtain three months bank statements as required by law they do not analyse them properly.[57]

3.58 The Consumer Credit Legal Service (WA) Inc gave an example:

> Trish obtained multiple payday loans, ranging from $250 to $1,300, comprising 24 separate advances from one lender between March 2010 and July 2016. She had also obtained a home loan, a personal loan and other bank loans that she was unable to service. Our review and assessment of Trish's various loan applications reveals that Trish's need for payday loans was fuelled by her inability to service other unsuitable debt.

51 ASIC, *Submission 21*, p. 17.

52 Ms Karen Cox, Chief Executive Officer, Financial Rights Legal Centre, *Committee Hansard*, 12 December 2018, p. 28.

53 Ms Rose McGrath, Senior Policy Officer, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, pp. 30–31.

54 Tasmanian Council of Social Service, *Submission 5*, p. 4.

55 *Submission 46*, p. 1.

56 Good Shepherd Microfinance, *Submission 50*, [p. 2].

57 Legal Aid Queensland, *Submission 3*, p. 2.

> …Trish's bank loans were unsuitable, no sensible assessment could have determined that the eight payday loans she obtained subsequent to the home loan were suitable, given that they post-dated and helped to service those unsuitable bank loans.[58]

3.59 Financial Counselling Australia also cited specific cases:

> I see loans issued where there's clearly no capacity to repay that loan. A lady I met last month had 30 Cash Converters loans in the last four years. Three of those loans were issued after a Cash Converters loan had been defaulted and not repaid, and 17 of those loans had been issued when she had two or more loans in the previous 90 days, and that would indicate that she has an incapacity to meet that loan, particularly when you look at her bank statements that show several overdrafts…[59]

3.60 Legal Aid Queensland pointed to unacceptable practices such as securing a loan against an asset such as a car that is worth less than the value of the loan but is essential for the borrower to have. This creates a way of ensuring that the repayments get top priority:

> …I call it 'coercive': the pressure's on them to continue to pay it, because without it they don't get to work and they don't keep their job.[60]

3.61 Lenders also use direct debits that apply immediately after Centrelink payments are placed in the consumer's account.[61]

3.62 Good Shepherd Microfinance had seen instances where lenders pushed applicants to ask for a loan over $2000, because the conditions on SACCs are tighter than those on medium amount credit contracts.[62] They also engaged in other practices not conducive to consumer welfare:

> It's about trying to get as many loans in as possible. The establishment fee is much higher than the monthly fee…also…a lot of the market is making its money on people falling into arrears and hardship, because it's the penalty fees where you actually make all the money. So, to try and push people into contracts that are very tough to service but that they don't fall over on is actually an optimal business model.[63]

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58 Ms Roberta Grealish, Senior Solicitor, Consumer Credit Legal Service (WA) Inc, *Committee Hansard*, 12 December 2018, p. 22.

59 Mrs Sandra Blake, Financial Counsellor, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, p .3.

60 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 26.

61 Legal Aid Queensland, *Submission 3,* pp. 3–4.

62 Mr Richard Wood, Credit Manager, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 40.

63 Ms Corinne Proske, General Manager, Retail and Online, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 40.

3.63 The consumer leasing industry recognises that there is bad behaviour in the industry:

> It is beyond contention that there are some rogue operators in the consumer leasing industry. These unscrupulous businesses have preyed on vulnerable consumers, causing financial hardship for lower socioeconomic Australians and bringing the industry into disrepute.[64]

3.64 During the hearing, Mr Steven King, the President of CHERPA elaborated:

> We have found that with some of our clients suppliers have supplied them with goods to the amount of seven or eight times the value of the goods, which disturbs us greatly. We've found that some people have been loaded up well over what our code of conduct ensures is 20 per cent…[65]

3.65 Submissions used case studies to illustrate poor behaviour on the part of consumer leasing companies, including bullying and invasive practices.[66] They (along with payday lenders) have been accused of targeting indigenous communities.[67] ASIC's finding that they regularly charge Centrelink customers more suggests that they are taking advantage of their vulnerability.[68]

3.66 ASIC has also noted that consumers in remote communities throughout Australia, who are particularly vulnerable because they have few options when buying household goods, limited understanding and experience with credit and consumer lease products, and often limited English comprehension, have been targeted, especially by consumer lease providers:

> ASIC has publicly reported on instances of consumer lessors entering remote communities and engaging in poor practices such as offering inducements to a senior or respected community member to obtain introductions to individuals in the community so that they can make as many sales as possible. In our submission, ASIC provided examples of exploitative behaviours seen on Palm Island, and by operators such as Zaam Rentals and Local Appliance Rentals.[69]

3.67 Several contributors to the inquiry pointed to the lack of transparency in consumer leasing contracts, and noted that consumers responded only to the

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64 Consumer Household Equipment Rental Providers Association, *Submission 25*, p. 5.

65 Mr Steven King, President , Consumer Household Equipment Rental Providers Association, *Committee Hansard*, 12 December 2018, p. 15.

66 For example, Salvation Army, *Submission 9*, p. 9.

67 Consumer Action Law Centre, *Submission 37*, p. 9.

68 ASIC, *Submission 21*, p. 12.

69 ASIC, answer to question on notice no. 4, 1 February 2019.

affordability of fortnightly payments.[70] The Mentone Community Assistance and Information Bureau expressed concern about:

> The ongoing deductions from Centrelink accounts when items should nominally have been paid for and the deductions ceased. It would seem that unless these deductions are formally ceased, they continue ad infinitum. The terms and conditions that allow the above to occur are not readily apparent to those signing up for such arrangements.[71]

3.68 A witness suggested that the tactics of lenders are sometimes aimed at ensuring that borrowers cannot seek help:

> …once the financial counsellor got involved, the lender then contacted the person in quite an intimidatory way…
>
> …And what happens then is that really the clients have some remedies. They can take that dispute around that intimidation to an external dispute resolution scheme and possibly get compensation. But they can be so intimidated and worried that they won't pursue their rights so it can be quite an effective strategy…[72]

3.69 Industry witnesses insisted that the honest players in the industry were cautious in their lending and respectful of their customers. One pointed out:

> Our customers are the lifeblood of our business and, if reputable providers such as Cash Converters do not provide these services, we question who will.[73]

3.70 Another pointed out that many of the horror stories are not from the regulated SACC sector, detailing examples from submissions to the inquiry. He said later, 'Particularly in the regulatory environment, there are very few real stories that I've seen in the submissions from the SACC industry…'[74]

3.71 His colleague added:

> CoreData, an independent research firm, collates factual information on the industry each year, and their stats suggest that contacts with lenders from organisations such as Financial Counsellors Australia run at about four in 10,000 loans…

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70 For example, Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 24 January 2019, p. 13.

71 Mentone Community Assistance and Information Bureau Incorporated, *Submission 35*, p. 2.

72 Ms Fiona Guthrie, Chief Executive Officer, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, pp.3–4.

73 Mr Sam Budiselik, Interim Chief Executive Officer, Cash Converters International Ltd, *Committee Hansard*, 12 December 2018, p. 7.

74 Mr Robert Bryant, Chairman, National Credit Providers Association, *Committee Hansard*, 12 December 2018, p. 15, p. 18.

…the SACC approval rates for 2016 and 2017 were only 39 per cent so, as you can see, 61 per cent of consumers were deemed to be ineligible and were, in essence, turned away from a SACC loan.[75]

3.72 Similarly, the consumer lease industry association asserted that its members operated conscientiously:

> Could I just say that anyone who can't afford our products doesn't get our products. It's that simple with responsible lending. Only one in four clients get through the process. It's a rigorous process for people to get through the system and be able to lease a product.[76]

3.73 Representatives of Thorn Group detailed the company's methods for credit assessment, and also for checking that an item is appropriate for the customer.[77]

3.74 But when asked directly if there were any consumer lease organisations that provided a genuine and valuable service, a representative of the Queensland Council of Social Service responded bluntly: 'Not that we've come across'.[78]

Centrepay

3.75 Perhaps the greatest concern in the community group submissions was that consumer lease companies had access to Centrepay, a government bill paying service for Centrelink recipients.[79] As one submission observed:

> Centrepay's original purpose was to ensure that essential costs such as rent, electricity and water were paid and not to provide a payment collection service for non-essential, profit driven goods and services.[80]

3.76 Similarly, AFCA voiced its reservations:

> The team who work in financial hardship do raise concerns…[about]…the issue of direct payments going from Centrelink through to these providers, which actually does take priority over other debts which actually may be more important in terms of the livelihood and wellbeing of the family.[81]

3.77 The Department of Human Services, which administers Centrepay, explained that anyone on a Centrelink payment can use Centrepay. There is a strict framework

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75 Mr Michael Rudd, Director, National Credit Providers Association, *Committee Hansard*, 12 December 2018, p. 18.

76 Mr Steven King, President, CHERPA, *Committee Hansard*, 12 December 2018, p.17.

77 Mr Tim Luce, Chief Executive Officer, and Mr Peter Forsberg, Chief Financial Officer, Thorn Group, *Committee Hansard*, 22 January 2019, p. 44.

78 Ms Carly Hyde, Policy Lead, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, p. 32.

79 Salvation Army, *Submission 9*, p. 9; Care Inc, *Submission 11*, p. 3; Consumer Action Law Centre, *Submission 37*, pp. 10–11; see also ASIC, *Submission 21*, p. 8.

80 Financial Counsellors Association of NSW Inc, *Submission 13*, p. 4; Consumer Action Law Centre, *Submission 37*, pp. 10–11.

81 Mr David Locke, Chief Ombudsman and Chief Executive Officer, Australian Financial Complaints Authority, *Committee* Hansard, 24 January 2019, p. 2.

around which merchants can access Centrepay, including legal and professional, utilities, rent or other accommodation, household (which includes most consumer leases), education, some limited financial products, health costs, travel, transport and some social and recreational things. Each merchant is approved individually.

> All up, we have around 14,600 merchants approved for Centrepay nationally. As at the end of December, around 638,718 of our customers use Centrepay, with around 26 million transactions and deductions a year. The total value through Centrepay was $6.2 billion in 2018.[82]

3.78 There is no limit on the proportion of income that can be paid out through Centrepay, because a person could be using the service to pay a large proportion of their household expenses. Payday lending and buy now pay later products are not part of Centrepay. Approximately 10 per cent of payments made through Centrepay were for consumer leases.[83]

3.79 Mr Tim Luce of Thorn Group noted that 52 per cent of Thorn Group's consumer leasing customers paid via Centrepay. He said that, while Centrepay did reduce default and administration costs for the company, the overall default rates for Centrepay customers were about the same as those not on Centrepay.[84] His colleague pointed out that if customers used direct debit, they would be charged fees in the case of late payment, whereas they were not with Centrepay.[85]

3.80 The Department of Human Services does not itself police providers under Centrepay, relying on the regulation of consumer leases to protect its clients:

> In terms of the more regulatory aspect of it, I think the debate about whether prices are fair et cetera essentially falls back on the regulatory environment that exists for the provider.[86]

3.81 It is a condition of access to Centrepay that providers are part of the appropriate regulatory framework, so if ASIC has taken away a company's financial licence it will be excluded—and, apparently, only then:

> ASIC obviously will make a range of decisions. They may remove licences but they may not. So it may be that they find some behaviour in the organisation, the organisation remediates that behaviour and ASIC don't find any further behaviour. Then we wouldn't necessarily remove them from Centrepay for that, because there is action underway from the

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82 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 21.

83 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, pp. 20–21.

84 Mr Tim Luce, Chief Executive Officer, Thorn Group, *Committee Hansard*, 22 January 2019, p. 43.

85 Mr Peter Forsberg, Chief Financial Officer, Thorn Group, *Committee Hansard*, 22 January 2019, p. 43.

86 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 21.

> regulator to ensure that the business is complying. But if the business is not licensed and ASIC has taken that action then, yes, we would remove them from Centrepay.[87]

3.82 If the Department of Human Services does become aware of abuse, it relies to a great extent on ASIC's regulatory enforcement:

> Our staff will have contact with the various legal aid centres and financial counsellors, and if we have particular concerns about a provider then absolutely we will launch our compliance activity against that provider. If the nature of those is around, say, responsible lending and those types of matters, then either the financial counsellor would refer it to ASIC or we would, so it would be somewhere between us and ASIC that would then investigate depending on the nature of the allegation.[88]

3.83 The Department does compliance audits to check that the customer is giving informed consent, but does not otherwise scrutinise their financial situation, and in particular their level of indebtedness.[89]

3.84 A witness told the December hearing:

> In relation to Centrepay why not use direct debit?...The fact that Centrepay becomes the preferred method tells you something about the way this industry [consumer leasing] is operating…There's an ASIC report into this industry from a couple of years ago that shows interest rates up to 884 per cent.[90]

3.85 ASIC noted that although Centrepay lowered the risk of default on rental payments, the companies still charged Centrepay customers more.[91] Because Centrepay customers are on lower incomes, the terms of their loans are longer, which also increases the final cost.[92]

3.86 There was concern about the lack of visibility of Centrepay payments:

> There is a high degree of inertia, therefore, because it's not a meaningful amount of money once you sign up to these contracts. In circumstances where some consumer leases have indefinite terms or essentially operate indefinitely, that creates a real problem because lack of visibility, inertia

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87 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 23.

88 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 23.

89 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 22.

90 Ms Fiona Guthrie, Chief Executive Officer, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, p. 5.

91 ASIC, *Submission 21*, p. 12.

92 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 24 January 2019, p. 13.

> and indefinite terms mean that people keep on paying and paying and paying when they should not be.[93]

3.87 However, a representative of CHERPA protested that customers are not helpless:

> Centrepay is a bill-paying service for the client, run by the client…We don't put clients into financial stress. If we do responsible lending, they can afford all the other things that they're supposed to have at the same time. Yes, it is a benefit to us to receive that payment before anyone else. We don't deny that for one minute, but we're not in control of it.[94]

3.88 Similarly, Mr Luce of Thorn Group noted that customers kept control:

> I would first like to address the misconceptions about Centrepay as a payment mechanism. Lessors do not have access to a customer's Centrepay account. That remains within the total control of the customer. Importantly, Centrepay deductions are not a payment guarantee, as customers can, and often do, choose to stop Centrepay deductions.[95]

3.89 The Salvation Army agreed with the general aims of Centrepay but did not like the outcomes it produced:

> I definitely think companies are abusing that system. Centrepay we set up under really good principles to be a money management tool to help people put aside funds for real essentials like rent and utilities so they can have those covered by choice and live on the remainder but over the years we've seen all sorts of other things go on like consumer leases so people don't have that discretion so much…[96]

Nature and adequacy of current regulatory arrangements

Current regulation

3.90 The current regulatory arrangements (which are described in Chapter 2 above) rely on a responsible lending framework.

3.91 The National Credit Act and the National Credit Code provide a number of protections for consumers who borrow money for personal, domestic or household needs. Credit providers must hold an Australian credit licence and have policies and procedures as to how they comply with the law. They must also have no-cost dispute

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93 Ms Miranda Nagy, Principal Lawyer, Maurice Blackburn Lawyers, *Committee Hansard,* 12 December 2018, p. 36.

94 Mr Steven King, President, Consumer Household Equipment Rental Providers Association, *Committee Hansard*, 12 December 2018, p. 20.

95 Mr Tim Luce, Chief Executive Officer, Thorn Group, *Committee Hansard*, 22 January 2019, p. 41.

96 Mr Tony Devlin, National Manager, Moneycare Program, The Salvation Army Australia, *Committee Hansard*, 22 January 2019, p. 22.

resolution schemes, both in-house and external, the latter requirement in effect meaning membership of the Australian Financial Complaints Authority.[97]

3.92 The Enhancements Act specifically addressed payday loans. Among other provisions, it created a presumption of unsuitability, if the consumer is already in default on another small loan, or has had two or more small loans in the last 90 days; capped fees and charges; and required lenders to consider the borrower's account statements for the last 90 days.

Changes included in current draft legislation

3.93 It is not controversial that further regulation of the sector is needed. The circulation of the exposure draft of the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 (the SACC Bill), the Government's response to the SACC Review, is evidence that the Government once believed that action was necessary.

3.94 Many of the perceived shortcomings in current regulation would be addressed by the SACC Bill, in conjunction with the Treasury Laws Amendment (Design and Distribution and Product Intervention Powers) Bill 2018 which is currently before the Parliament.

3.95 With regard to SACCs, the SACC Bill would:

- remove the rebuttable presumption that a SACC is unsuitable if the consumer entered into two or more SACCs in the last 90 days, or is in default under a SACC;
- require SACCs to have equal repayments spread over equal intervals;
- prevent SACC providers from charging monthly fees in respect of the residual term of the contract where the contract has been paid out in full early by the consumer; and
- prevent SACC providers from making unsolicited credit invitations and offers to current and previous SACC consumers.[98]

3.96 With regard to consumer leases, the SACC Bill would:

- impose a cap on lease payments that applies to all consumer leases (referred to as the 'cap on costs');
- improve affordability of consumer leases by:
- introduce obligations for lessors of household goods to obtain and consider 90 days of bank statements before entering into a lease with a consumer; and

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97 ASIC, *Payday lenders and the new small amount lending provisions*, Report 426, March 2015, pp. 4–5, https://www.asic.gov.au/media/3038267/rep-426-published-17-march-2015.pdf (accessed 12 February 2019).

98 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 Exposure Draft Explanatory Materials, p. 9.

- prohibit lessors of household goods from entering into leases that do not meet certain requirements prescribed by the Credit Regulations (referred to as the 'protected earnings amount');
- prohibit door-to-door selling of consumer leases for household goods; and
- require lessors of household goods to disclose the base price of the goods and the difference between the total payments and the base price.[99]

3.97 For both categories of credit products, the SACC Bill would:

- place restrictions on the use or disclosure of account statements that are received in connection with a SACC or consumer lease;
- require providers to document their assessment that a SACC or consumer lease for household goods is not unsuitable for a consumer;
- require lessors to provide consumers with a warning statement to assist them in making a decision whether to enter into a consumer lease for household goods; and
- explicitly identify family violence as a reasonable cause of financial hardship.[100]

3.98 The SACC Bill would also introduce broad anti-avoidance measures:

- a prohibition on business model avoidance schemes that are designed to prevent a contract being a SACC or consumer lease regulated under the Credit Act;
- a prohibition on internal avoidance schemes that are designed to avoid the application of a provision of the Credit Act that applies only to a SACC or consumer lease; and
- the regulation of indefinite-term consumer leases under the Credit Act.[101]

3.99 Separately, the Credit Regulations would be amended:

> The existing protected earnings amount for SACCs will be extended to cover all consumers and the portion of income that can be devoted to SACC repayments will be 10 per cent of a consumer's net income. Currently the SACC protected earnings amount only applies to persons who receive 50 per cent or more of their income from Centrelink and the portion of income is 20 per cent of gross income.
>
> A new protected earnings amount will be introduced for consumer leases for household goods, whereby lessors cannot enter into a contract that

99 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 Exposure Draft Explanatory Materials, p. 25.

100 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 Exposure Draft Explanatory Materials, p. 41.

101 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 Exposure Draft Explanatory Materials, p. 49.

> would require a consumer to pay more than 10 per cent of their income in rental payments under consumer leases for household goods. Under the protected earnings amount, the total rental payments (including under the proposed lease) cannot exceed 10 per cent of net income in each payment period.[102]

Other proposed changes

3.100 In the case of unlicensed products ASIC notes that it can take action against providers only for breaches of the ASIC Act, that is, for misleading or deceptive or unconscionable conduct. It recommends that the product intervention power contained in the legislation currently before the Parliament[103] be extended to all products regulated by the ASIC Act. This would include the buy now, pay later products, debt management products, and 'book-up' arrangements.[104] The government has already announced its intention to extend the new product intervention power to short term credit by regulation.[105]

3.101 More generally, ASIC noted:

> We also see a need for further powers to address more complex and emerging areas of concern and for ASIC to have a flexible toolkit to address the selling and marketing of unsuitable financial products and services to consumers.[106]

3.102 AFCA argued that the legislation should include a general obligation to treat customers fairly. It declared:

> Instead of providing for separate functional activities, we believe conduct regulation should be more clearly based on the fair treatment of consumers at all stages of what is an increasingly integrated product design, origination and distribution system…
>
> AFCA considers that threating consumers fairly should be made a standalone and enforceable standard for financial services entities and individuals working for them.[107]

3.103 The Australian Financial Security Authority endorsed AFCA's view.[108]

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102 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 Exposure Draft Explanatory Materials, p. 7.

103 The Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018.

104 ASIC, *Submission 21*, pp. 20–21, p. 26, p. 30.

105 ASIC, *Submission 21*, p. 23.

106 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 24 January 2019, p. 12.

107 AFCA, *Submission 58*, p. 4.

108 AFSA, *Committee Hansard*, 24 January 2019, p. 4.

3.104 The Consumer Action Law Centre called for the extension of the National Credit Act to cover buy now, pay later providers, short term credit providers and pawnbrokers.[109]

3.105 Dr Paul Harrison called for a slowing down of the process of obtaining credit for a purchase 'through something akin to a double opt-in process'. He also wanted to force credit providers to conduct due diligence on their products in relation to consumer detriment prior to release and require them to release their findings for scrutiny (which might be met by the Design and Distribution Obligation).

3.106 Dr Harrison also recommended making it practically and psychologically easier to withdraw from debt agreements if they can show they did not understand the terms and conditions of the agreement prior to signing.[110]

Views on proposed changes

3.107 Many submissions called for the SACC Bill to be passed, with several noting that a long time had passed since its drafting, and in particular since the ASIC reports detailing problems with the industry (see Chapter 2).[111]

3.108 The Australian Finance Industry Association supported it, with relatively minor reservations.[112] CHERPA also supported it, but suggested a change in the cap on costs and argued that the case had not been made for the Protected Earnings Amount of 10 per cent of net income, and that the present 20 per cent cap is working.[113]

3.109 Mr Robert Bryant, the Chairman of NCPA, who had argued that many of the poor outcomes attributed to his sector were actually to do with non-SACC products, applauded extension of the SACC regime to consumer leases: 'That will solve our problems'.[114]

3.110 The NCPA argued that extending the Protected Earnings Amount to all borrowers (rather than the present scope, those who receive 50 per cent or more of their gross income from social security) would cause working Australians, who are responsible for 81 per cent of small loans, to be financially excluded. NCPA also

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109 Consumer Action Law Centre, *Submission 37*, p. 5.

110 Dr Paul Harrison, , *Committee Hansard*, 22 January 2019, p. 1.

111 For example, Anglicare Tasmania, *Submission 7*, p. 6; Salvation Army, *Submission 9*, p. 5; Care Inc, *Submission 11*, pp. 2–3; Financial Counsellors Association of NSW Inc, *Submission 13*, p. 2, p. 4; ASIC, *Submission 21*, p. 4; Queensland Council of Social Service, *Submission 15*, p. 14; Consumer Action Law Centre, *Submission 37*, p. 5; Legal Aid Queensland, *Submission 3*, p. 13; UnitingCare Australia, *Submission 49*, p. 6.

112 The Australian Finance Industry Association, *Submission 8*, p. 3-4.

113 CHERPA, *Submission 251*. pp. 4–6.

114 Mr Robert Bryant, Chairman, National Credit Providers Association, *Committee Hansard*, 12 December 2018, p. 17.

argued against reducing the cap to 10 per cent. It was concerned that the ban on unsolicited offers would give an advantage to unregulated lenders.[115]

Compliance with, and enforcement of, current regulation

3.111 Regulation is only as good as compliance with it and enforcement of it. Improved legislation will not improve outcomes if it is not complied with.

3.112 Lenders claim that they operate within the responsible lending requirements of the National Credit Act and the Enhancements Act. These require them to inspect bank statements and make reasonable inquiries to check that the loan is suitable, that the borrower is able to meet the repayments, and that total credit repayments will not exceed 20 per cent of the borrower's income.[116] But if that were the case, it is unlikely that many of the problems reported above would have occurred.

3.113 ASIC points to a good deal of enforcement activity. In particular, it noted that the performance of two firms which had operated under enforceable undertakings, Thorn and Flexigroup, had improved their practices and met their undertakings.[117] On the other hand, Cash Converters, which had restructured its business model partly as a result of legal action, was still accused of recalcitrance:

> Just last month we sent a group complaint to ASIC alleging breaches of the National Credit Act by Cash Converters, all of which involve loans over the last 18 months… In one example, our client told us they had 20 payday loans for Cash Converters in a 12-month period, including eight at once.[118]

3.114 Ms Miranda Nagy of Maurice Blackburn Lawyers was not convinced that enforcement was effective, because regulators preferred negotiation, and did not litigate:

> Firstly, regulators charged with enforcing protective laws, such as the national consumer credit legislation, have too often preferred negotiating outcomes rather than taking action to vindicate breaches…
>
> If regulators don't have the resources to litigate and are unlikely to litigate, then credit and consumer lease providers are entitled to see the regulator as not carrying a big stick but, rather, a party to sit down and do a deal with…[119]

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115 National Credit Providers Association, *Submission 51*, pp. 16–19; see also evidence of Mr Michael Rudd, Director, National Credit Providers Association, *Committee Hansard*, 12 December 2018, pp.19–20.

116 See, for example, the evidence of Mr Sam Budiselik, Interim Chief Executive Officer, Cash Converters International Ltd, *Committee Hansard*, 12 December 2018, pp. 7–10.

117 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 24 January 2019, p. 13.

118 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 12 December 2018, p. 23.

119 Ms Miranda Nagy, Principal Lawyer, Maurice Blackburn Lawyers, *Committee Hansard*, 12 December 2018, p. 33.