Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Department/Agency: Australian Securities and Investment Commission
Question: BET 285 - 293
Topic: Payday Lending
Reference: written - 15 June 2015
Senator: Dastyari, Sam

Question:

In October last year, Maurice Blackburn launched a class action which alleges Cash Converters 'illegally exploited thousands of financially struggling Australians by imposing charges that far exceed the legal interest limits'. Peter Kell has advised a number of Payday lenders are being closely monitored by ASIC.

285. Are payday lenders still exploiting financially struggling Australians by imposing charges that far exceed the legal interest limits?
286. How many people does ASIC estimate are being ripped off by Payday lenders?
287. What are the legal interest limits?
288. How much interest (or 'up to' how much interest) can people end up accruing?
289. What are the primary concerns with this industry?
290. What is ASIC doing to address these concerns?
291. Minister, what is the government doing to address these concerns?
292. Is this an emerging problem?
293. Or why has it only recently come to the attention of the regulator?

Answer:

285. Small amount or payday loans were identified by the Commonwealth Government as a product that held specific risks of financial detriment or harm to vulnerable consumers. In 2013, the small amount lending provisions of the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* commenced. These provisions are designed to address particular risks associated with small amount lending, including the risk to consumers of falling into a debt spiral through the repeated or continued use of high-cost small amount credit contracts. The small amount lending provisions introduced additional obligations for small amount loans, including a cap on fees and charges.

ASIC recently published Report 426: *Payday lenders and the new small amount lending provisions* (REP 426). REP 426 contains the findings of an ASIC review into the payday lending industry and its compliance with the additional protections contained in the small amount lending provisions

ASIC found that while the payday lenders in our review appeared to be complying with some of the new rules for small amount loans (including the cap on costs), there remain concerns about compliance with the responsible lending obligations. In particular, ASIC has concerns about how the payday lending industry seeks to rebut the statutory presumptions that a loan is unsuitable where the consumer has multiple other payday loans or is already in default under a payday loan. ASIC also remains concerned about payday lenders seeking to avoid the requirements of the law, unfair fees and misleading advertising. ASIC has also found systemic weaknesses in documentation and record keeping.

ASIC is currently examining the operations of several payday lenders. ASIC will maintain a strong focus on the payday lending sector as its customers include some of the most financially vulnerable members of the community (see for example ASIC 15-168MR in relation to Money 3).

The class action undertaken by Maurice Blackburn against Cash Converters relates to breaches of the NSW State interest cap which applied up to July 2013 when the Commonwealth small amount lending provisions took effect.

286. We do not have an estimate of the number of consumers who are being provided with loans by payday lenders in a manner that does not comply with the law.

287 - 288. Since the amendments to the law in 2013, the providers of small amount credit contracts (loans of up to $2000 repayable in the period from 16 days to 12 months) may charge:

a) an establishment fee of up to 20 per cent of the credit amount;
b) a monthly fee of up to 4 per cent of the credit amount;
c) a fee or charge that is payable upon default (there are limits on the total amount of debt that can accrue);
d) in certain circumstances a direct debit fee; and
e) government fees, charges and duties.

No interest or other fees and charges may be charged in small amount credit contracts.

If a consumer falls into default under a small amount credit contract, they cannot accrue a total debt that would exceed 200 per cent of the original credit amount.

289. see answer to question 285.

290. ASIC is currently investigating or examining the operations of several payday lenders. ASIC will maintain a strong focus on the payday lending sector as its customers include some of the most financially vulnerable members of the community.

Prior to REP 426, ASIC has taken series of enforcement actions against payday lenders, including the recent Cash Store decision which saw penalties of almost $19 million handed down by the Federal Court for irresponsible lending and unconscionable conduct.

ASIC has indicated that unless practices improve, further action by ASIC will be inevitable.

291. The National Credit Act provides that the 2013 small amount credit reforms will be independently reviewed as soon as practicable after 1 July 2015. ASIC will provide information to the review of the payday lending industry and the relevant legislative provisions as required. In the meantime, ASIC will continue its focus on enforcing the current provisions and changing industry culture.

292-293. ASIC has focussed on small amount lending since becoming the national credit regulator in 2010 in recognition of the financially vulnerable consumers who take out these loans. ASIC was heavily involved in the development of the payday lending reforms of 2013, including providing advice to then Minister Shorten. ASIC's payday lending work has focused on three areas of misconduct:

- irresponsible lending;
- avoidance through business models that attempt to circumvent the law; and
- unfair fees and misleading advertising.

Since 2010, ASIC enforcement action against payday lenders has resulted in almost $2.1 million in refunds to more than 10,400 consumers who have been overcharged when taking out a payday loan. Payday lenders have also been issued with 13 infringement notices totalling approximately $120,000 in response to ASIC concerns about their compliance with the credit laws.

In February 2015, following ASIC action, The Federal Court awarded record penalties of nearly $19 million against The Cash Store (TCS) and loan funder Assistive Finance Australia (AFA) for failing to comply with its responsible lending obligations and unconscionably selling credit insurance to Centrelink recipients. TCS operated as a payday lender with all loans being financed by AFA. It was large, having approximately 80 stores throughout Australia and writing approximately 10,000 loans per month. The penalty is the largest civil penalty obtained by ASIC and the Court’s decision to impose such large penalties demonstrates the seriousness of these contraventions and the Court’s strong disapproval of this predatory conduct.

ASIC has also worked with Allianz Australia Insurance Ltd (Allianz), CGU Insurance and Accident and Health International (AHI) to obtain refunds for TCS consumers who took out Consumer Credit Insurance (CCI). The total amount of refunds agreed to by Allianz, CGU and AHI is almost $2.5 million. The insurers have also appointed independent experts to review their practices.

ASIC’s payday lending outcomes include:

Breaches of responsible lending requirements

- The Cash Store and Assistive Finance Australia (refer: **15-032MR**)
- Abaz (refer: **14-313MR**)

Avoidance models/unlicensed conduct

- Fast Easy Loans (refer: **14-328MR**)
- Cash Loan Money Centres and Sunshine Loans (refer: **14-278MR**)
- PAID International (formerly First Stop Money) (refer: **14-272MR**)
- Teleloans and Finance & Loans Direct (refer: **14-150MR**)
- Cash Stop Financial Services (refer: **14-035MR**)
- Fast Access Finance (refer: **13-205MR**)
- Cashpal (refer: **12-127MR**)

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Misleading advertising

- PAID International (refer **14-065MR**)
- Cash in a hurry (**13-284MR**)
- Fair Loans (refer: **13-190MR**)
- Nimble (refer: **13-112MR**)
- Fair Finance (refer: **13-088MR**
- Cash Today (refer: **12-197MR**)
- Money3 (refer: **12-136MR**)

General misconduct

- Money 3 (15-168MR)
- Same Day Money (refer: **13-045MR**)
- Key Credit (**12-267MR**)

ASIC has also undertaken industry reviews, with the findings of the first review released in a public report Report 264: *Review of micro lenders' responsible lending conduct and disclosure obligations* in November 2011. ASIC recently undertook further review of the payday lending industry after additional protections were introduced in 2013 for consumers taking out a payday loan. REP 426 was issued in March this year outlining our findings.

ASIC will continue to focus on this industry to ensure cultural change and to ensure financially vulnerable consumers are not being exploited.