National Credit Providers Association

NCPA

Inquiry into credit and financial services targeted at Australians at risk of financial hardship

Senate Economic References Committee
November 2018

CONTENTS

OPENING COMMENTS

The National Credit Providers Association (NCPA) welcomes this inquiry and is pleased to make a submission to the Senate Economic References Committee inquiry into financial services for Australians at risk of financial hardship. The NCPA welcomes the opportunity to provide factual & current information to the Committee in an effort to address and counter the continued inaccurate stories about payday lenders as reported in the media.

We also note the Government has released an Exposure Draft Bill proposing reforms to small amount credit contracts and consumer leases. Our hope is that this Inquiry will be an opportunity to provide up-to-date industry & consumer data to the Committee and evidentiary facts on the state of the small loans sector some 8 years after the introduction of the national uniform consumer credit protection laws. The NCPA supports the clear majority of the proposed reforms except for any change to the Protected Earnings Amount (PEA) as this can be proven to be more harmful to consumers by increasing the cost of credit and creating further financial exclusion.

This submission offers information and consumer data on the small loans sector including;

- specific information about small amount credit contracts
- the current legislative and regulatory requirements for small loans providers;
- the impact of the proposed reforms in the government's Exposure Draft Bill;
- up-to-date consumer data from 2014/15 to 2016/17; and,
- other issues impacting the small loans sector.

The NCPA shares the view there are consumers who do not access credit from a main stream financial institution such as a bank or a credit union. The NCPA acknowledges the government does have a role to play to ensure the regulatory settings for all Australians are fair and equitable, and do not favour some at the expense of others.

According to Good Shepherd Microfinance[1], *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.*

Since the National Consumer Credit Protection (NCCP) Act came into effect in July 2010 and in July 2013, the caps on fees allowable, total amount repayable on default, the percentage of a customer's income allowed for payments and responsible lending obligations were introduced to the Small Amount Credit sector with the intention of protecting vulnerable consumers while still providing a credit option where few exist. The aim of the regulations introduced in 2013 were to:

- increase the length of the loan

[1] http://goodshepherdmicrofinance.org.au/about-us/

- increase the size of the loan
- decrease the number of loans per customer per year
- decrease the total number of loans per year
- continue to offer viable safer loans for the financially excluded

The total number of loans has decreased from 1.3m in 2013/14 to 567,910 in 2016/17. Whilst the number of payday loans approved has dropped significantly, the demand for small loans remains strong but they are more difficult to obtain following the tighter regulatory framework that commenced with the NCCP Act.

The SACC industry has performed as the regulations intended. Unfortunately, this observation has been blurred as a result of including consumer leases in the SACC review and subsequent recommendations.

Outrageous and inaccurate headlines such as “payday lenders charging 800% interest” creates a perception that is not possible for payday loans. They may however more appropriately apply to a consumer lease. The conflation of the regulated SACC industry and yet to be regulated Consumer Lease industry practices has created mischief and it is now to be set straight with facts.

The NCPA strongly supports the stringent regulation and responsible lending criteria applied to the small loans sector to be applied to consumer leases and other credit options in this submission.

CUSTOMER REVIEW

I have been with City Finance a long time and they are the most professional people, who actually try to help you. They are designed for the everyday people like me, I highly recommend City Finance to everyone. January 12, 2018

Customer name supplied and redacted for privacy reasons.

KEY MESSAGES for the SENATE COMMITTEE

The introduction of commonwealth legislation in 2010 regulating the small loans sector under the National Consumer Credit Protection Act has seen positive outcomes for consumers of small loans.

Further regulation in 2012 that came into effect in July 2013, saw the introduction of caps on the cost of loans under the small amount lending provisions of the *Consumer Credit Legislation Amendment (Enhancements) Act 2012.* This has also seen a very noticeable and positive outcome for consumers by way of pricing caps and very stringent responsible lending obligations and protections.

Since then, there has been a significant reduction in the number of approved SACC loans.

The sector continues to be highly compliant. During the 2017/18 financial year, there was one ASIC compliance audit pertaining to SACCs and/or MACCs. There was also one ASIC licence condition without enforceable undertaking and one ASIC agreement without enforceable undertaking.

According to a Good Shepherd Microfinance media statement[2], in 2017, the microfinance organisation granted nearly 27,000 NILS loans nationally – a 15% increase on the previous year. As a percentage of the total number of approved SACC loans in 2016/17 (567,910) according to the latest CoreData research, this represents approximately 5%.

Another way of paraphrasing this is to note that NILS approved loans to the 3 million financially excluded Australians represents less than one percent of this cohort benefitting from the scheme.

Contrary to media reports of seven and eight hundred percent interest rates on payday loans, such interest rates are simply not possible under the NCCP Act which regulates the small loans sector.

What a small loans provider can charge is a loan establishment fee of up to twenty percent of the value of the loan and a four percent fee per month. A consumer who takes out a payday loan can never pay back more than twice the total of the loan should it fall in arrears.

In 2017, the average size of a small loan is $948 and the average term of a loan is just 161 days. By way of example, this means the establishment fee would be $189.60 plus a $37.92 fee per month over approximately five months. The total repayable on this loan would be $1327.20.

This is NOT the typical payday lending story you hear in the media!

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[2] https://www.canstar.com.au/personal-loans/calls-legislation-consumers-turn-no-interest-loan-scheme/

If the Parliament lowers the PEA in legislation the end result will be that it is more difficult for financially excluded Australians to get access to finance, at a time when demand is increasing and the SACC product offered by the not-for-profit sector such as Good Shepherd Microfinance are not even close to being adequate due to the eligibility criteria placed on applicants – (To be eligible for a Speckle loan, NAB supported Good Shepherd SACC, you need a minimum annual income of $30,000 (excluding government benefits) before tax to apply. Also, no more than 50% of your total income can come from government benefits).

As identified in the latest CoreData research, some 81% of Australians approved for SACC loans in 2016/17 were working Australians.

A valid question the sector is asking is; what is the problem the government is trying to fix by lowering the PEA. If it is as suspected, repeat borrowing, this is not a problem. Remember, SACCs are designed to be small loans available when needed, often to those Australians who are unable or choose not to access credit from a bank. This is what they are designed for so by reducing the PEA will only create a problem that does not presently exist – making it harder and more expensive for these Australians to access credit when they need it most.

It seems banks have more control than the Government

The issue of the de-banking of small loans providers threatens the viability of the sector unless it is resolved in the very near future. Australian banks are withdrawing transactional banking services that small loans providers require to run their businesses. In particular, the four major Australian banks, Westpac, the Commonwealth Bank, the National Australia Bank and the ANZ. These actions taken by the banks is difficult to comprehend or justify. Importantly, these small businesses provide a range of financial services and products other than small amount loans including Medium Amount Credit Contracts (MACCs), Vehicle Finance and Unsecured Business Lending.

The reasons provided for the withdrawal of banking services vary however there has been a consistent thread in the language used by banks. They invariably claim that there is a list of "professions" that they are not prepared to support and these include prostitutes, bikie gangs and payday lenders.

This makes it extremely difficult for these fully licensed and highly regulated small businesses to continue to operate and provide lending services to consumers. The NCPA see the actions by the banks as a consequence of them getting into the SACC lending space (the NAB partnership with Good Shepherd Microfinance) and going into competition with SACC providers. NCPA considers the behaviour by the banks is anti-competitive and raises significant fair trading concerns and a business's capacity to conduct business without a transactional bank account.

ABOUT THE NATIONAL CREDIT PROVIDERS ASSOCIATION

The National Credit Providers Association (NCPA) is the peak national industry body representing the Small Amount Consumer Lending Industry in Australia. NCPA represents companies that provide Small Amount Credit Contracts (often called SACCs, or Small Amount Loans) and Medium Amount Credit Contracts (called MACCs, or Medium Amount Loans). Our members are all ASIC-licensed credit providers, who operate from retail locations across Australia and via dedicated online platforms.

NCPA takes very seriously its role of driving self-regulation of the industry, by assisting and guiding lenders in the provision of fair and safe credit under the National Consumer Credit Protection Act 2009. Most importantly, NCPA strives to promote and protect the rights of customers by ensuring lenders are applying responsible lending practices. NCPA represents more than 75% of the industry made up of organisations that apply responsible lending obligations under their Australian Credit Licence (ACL) and operate within the federal government's strict legislation and regulations in the SACC industry.

NCPA is committed to sustaining a fair and regulated industry for both consumers and lenders. NCPA is also committed to advising members of the Australian Government and educating the media and public about small loans, and the critical role they play in fulfilling a big need in our society. Since its inception, NCPA has provided a strong, united voice in the small loans national arena and has been instrumental in bringing about significant changes in legislation which provides more protection to consumers than ever before under the National Consumer Credit Protection Act 2009 and ASIC credit licensing requirements.

ABOUT THE SMALL LOANS SECTOR

An estimated 3 million Australians or 17% of the adult population do not have access to traditional credit from banks, including credit cards, personal loans, car loans and mortgages. This is usually due to their level of income, poor credit rating, low savings or past defaults. With household budgets that are already stretched, an unexpected expense – like a medical bill, car repairs, or household expenses – can often leave these individuals and families feeling anxious about meeting their obligations and with nowhere to turn. That's why the Small Amount Consumer Lending industry exists: to provide those consumers who can afford a loan, yet can't or choose not to access credit from typical avenues the opportunity to obtain funds to use as a stop-gap for unexpected living expenses. This highly regulated service means that Australians in need can apply for a loan with terms that are clear and easy to understand and they know the exact amount of their repayments, the time it will take to repay the loan, the costs involved, and any possible default fees.

What is a Small Amount Credit Contract (SACC)

A Small Amount Credit Contract (SACC) or 'payday loan' is an unsecured small loan of up to $2000 for a period from 16 days to a maximum period of 12 months. A loan for less than 16 days called a short-term credit contract (STCC), formerly a payday loan, is illegal under the current law.

What are the Fees and Charges for a SACC

SACC providers can charge a maximum establishment fee of 20 per cent of the value of the loan and a maximum monthly credit fee of 4 per cent of the value of the loan.

Protection Mechanisms Against Overextending Consumers

In 2012, the NCPA proposed that consumers who earned more than 50% of their income from Centrelink under the Social Security Act 1991 (Social Security Act) must not be contracted to repay more than 20% of their gross income.

Another safeguard is the prohibition on charging an establishment fee if any of the credit is to refinance another small amount loan. SACCs do NOT charge interest rates. A SACC charges fees – an establishment fee and a monthly credit fee.

What is the maximum a consumer can pay back on a SACC

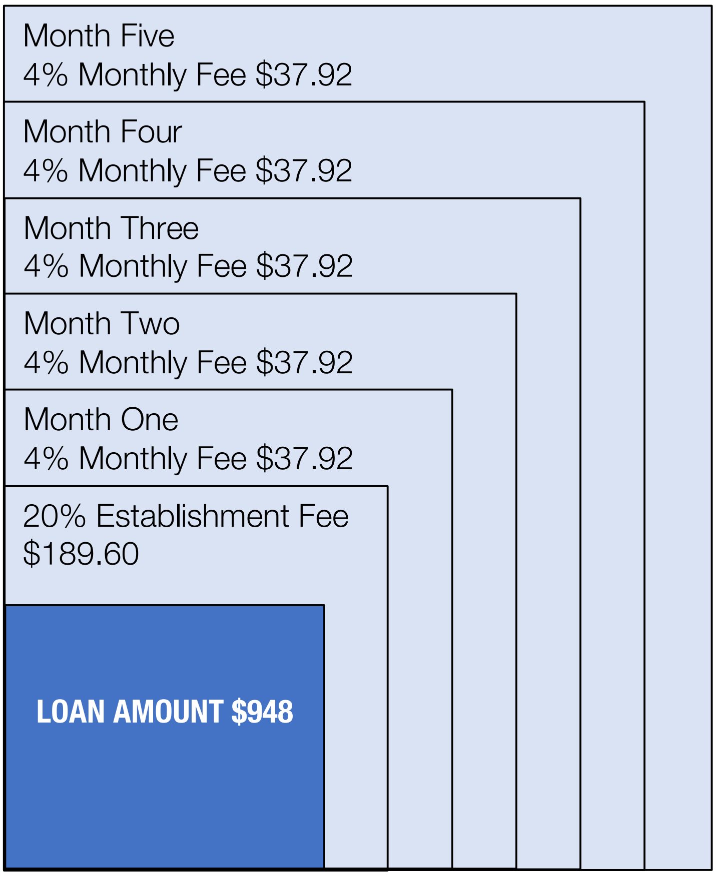
The maximum a consumer can ever pay back for a small amount credit contract is the value of the loan plus 100 per cent. For example, if a consumer took out a $100 loan and had difficulty paying it back, the most that could be charged is $200 including principle, fees and charges.

How are SACCs regulated

Small amount loans are regulated by the National Consumer Credit Protection Act 2009 which commenced in July 2010 and further amendments including the abovementioned were introduced in 2013 under the credit enhancement bill. All small loans businesses must hold an Australian Credit Licence (ACL) and operate in the most regulated sector in financial services.

CASE STUDY 1 - A consumer borrows $100. Under the legislation, the SACC provider can charge an establishment fee of up to 20 per cent ($20) plus a four per cent monthly credit fee ($4/month). If the loan is repaid over two months the total amount payable is $128. In real life terms, and based on 2016/17 CoreData consumer information, the average size of a SACC loan was $948 paid back over approximately 5 months. This equates to;

Loan Amount	$948.00
20% Establishment Fee	$189.60
4% Monthly Credit Fee	$37.92 x 5 months
Total Amount Payable	$1,327.20



SACCs do not target the vulnerable

Like any business, SACC businesses are located in areas of high demand and do NOT target Australians at risk of financial hardship, with many SACC products being available online.

Repeat Borrowing and Debt Spiral 'Myth'

The 2016/17 CoreData consumer information identified the average number of SACCs per year per consumer was 1.66. This indicates repeat borrowing is not an issue for the sector. This myth is designed to create confusion and hysteria regarding vulnerable Australians getting into debt spirals of which they can never escape. In purely commercial terms it would make no sense, given SACC loans are unsecured loans to lend money to a consumer if the lender didn't believe the loan could be repaid. SACC loans cannot be refinanced with another SACC loan so there is no possibility of "rolling" loans into another. Consumer advocate research relies upon an omnibus survey data and questionnaires rather than actual data from lenders.

The examples below demonstrate the myth of repeat borrowing indicating a consumer is actually better off with multiple small loans as opposed to one larger loan.

Single $1,200 SACC Loan for 12 Months is **183% MORE EXPENSIVE**				Repeat $100 SACC Loans over 12 Months is **$10.15 CHEAPER per Week**			
Month	Credit Advanced	Establishment Fee (20%)	Monthly Fee (4%)	Month	Credit Advanced	Establishment Fee (20%)	Monthly Fee (4%)
1	$1,200	$240	$48	1	$100	$20	$4
2			$48	2	$100	$20	$4
3			$48	3	$100	$20	$4
4			$48	4	$100	$20	$4
5			$48	5	$100	$20	$4
6			$48	6	$100	$20	$4
7			$48	7	$100	$20	$4
8			$48	8	$100	$20	$4
9			$48	9	$100	$20	$4
10			$48	10	$100	$20	$4
11			$48	11	$100	$20	$4
12			$48	12	$100	$20	$4
Credit Advanced $1,200				Credit Advanced $1,200			
Total Fees Payable $816				**Total Fees Payable $288**			
Total Amount Repayable $2,016				Total Amount Repayable $1,488			
Weekly Repayments $38.77				**Weekly Repayments $28.62**			

What is a Consumer Lease

A consumer lease is a contract to hire goods for a specified time at a specified rental, usually inclusive of delivery and future service fees, with no right or obligation to purchase the goods. A SACC is a cash loan. A consumer lease is for goods such as a fridge or typical household furniture.

Conflating the two distinct industries has caused confusion and we encourage that consumer leases become regulated and the SACC industry be considered separately with five years of data now available following its regulation.

Why are SACCs regularly confused with a Consumer Lease

You may have heard cited by media reports and some stakeholders that they have been told about a consumer who has taken out a payday loan and have paid an interest rate of 800% on the loan and fell into a debt spiral.

As stated previously, this is not possible under the law regulating SACCs. As noted earlier, the maximum a consumer can pay back for a SACC is the value of the loan plus 100%. A consumer lease of goods has no caps on fees or end date of contract and therefore fees can continue to mount up over several years to be many times greater than the original loan amount. More information can be found in ASIC Report 447, Cost of Consumer Leases for Household Goods[3].

Why APRs don't work on SACCs

An Annual Percentage Rate (or APR) is a unit of measurement for the rate charged on credit, generally expressed as a percentage. In relation to interest rates, it is representative of the yearly costs of funds over the term of a loan. So why does APR not work for Small Amount Credit Contracts (SACCs) or small loans? Especially when a borrower wants to understand how much their small loan will cost them?

An Annual Percentage Rate (APR) does not become meaningful until more than 12 months as it is calculated annually. For simplicity to explain why APR is not meaningful we put forward the following example. A $100 loan repaying $1 fee for one day interest ($101) repaid after one day would have an APR of 365%.

Small Amount Credit Contracts (SACCs) are payable between 16 days and 12 months – therefore there is no meaningful annual percentage rate. APR values are distorted for SACC loans, which are all contracted to repay under 12 months.

CoreData research identifies the average term of a SACC in 2016/17 was just 161 days. Therefore, APR calculations don't work for SACCs or small loans less than 12 months.

Do other industries use annual rates for their products and services?

If you compare annual rates in other industries, you'll get the picture. The hotel and parking sectors don't advertise an annual rate for their services. Imagine if consumers

[3] https://download.asic.gov.au/media/3350956/rep-447-published-11-september-2015.pdf

were quoted annual rates when paying for HOTEL ROOMS? Instead of $195 per night it would be $71,175 per annum. What if consumers were quoted annual rates when paying for PARKING? Instead of $13 per hour it would be $113,880 per annum.

What borrowers WANT TO KNOW and what WILL WORK for consumers of SACCs or small loans is being told:

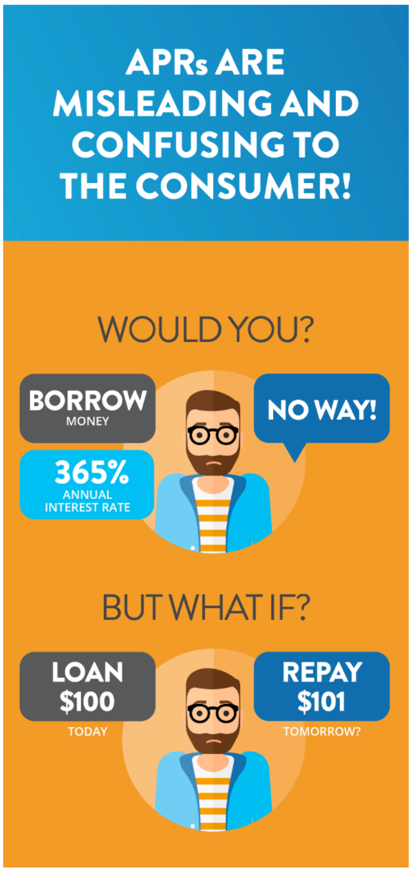
- How much the loan will COST them (the cost is the fees and charges)
- What the weekly/fortnightly/monthly repayment amount will be
- How many repayments will be needed
- How much they will have to repay in total (the original loan amount plus the fees and charges)

When lenders tell their borrowers in a clear and understandable language, a consumer can fully understand what they need to pay and when, so they can successfully repay their loan.

Do other industries use annual rates for their products and services?

If you compare annual rates in other industries, you'll get the picture. The hotel and parking sectors don't advertise an annual rate for their services. Imagine if consumers were quoted annual rates when paying for HOTEL ROOMS? Instead of $195 per night it would be $71,175 per annum. What if consumers were quoted annual rates when paying for PARKING? Instead of $13 per hour it would be $113,880 per annum.

APR is a meaningless measurement in these industries as well as for SACCs or small loans. That's why NCPA is calling for the government to ban APRs being quoted for loans under 12 months.



Independent Review of Small Loans Sector - Recommendation 22, Disclosure

One of the recommendations from the SACC review was to introduce a requirement that SACC providers and lessors under a consumer lease of household goods be required to disclose the cost of their products as an APR. The Government responded by saying;

The Government does not consider it appropriate to require disclosure of an APR for SACCs. While the APR does accurately reflect their high cost nature, this is partly a reflection of the short-term nature of SACCs.

Government Response to the Five-Year Review of SACCS

In 2015, the Government commissioned a five-year review of the small amount credit contract laws and consumer leases. The Government's response to the Review was presented in 2016 noting full or partial support for the vast majority of recommendations.

For the relevant recommendations that refer to SACCs, the NCPA supports the vast majority of these recommendations, however does not support the implementation of recommendation 1, Affordability and 8, Unsolicited Offers.

Small Loans Big Need

The CoreData research over the last four years clearly shows that demand for credit remains whilst the availability of finance to financially excluded Australians is becoming more difficult. In addition, the Good Shepherd Microfinance website media statement of the 7th June 2018, states;

Australian financial services organisation Good Shepherd Microfinance has seen increased demand in the past 12 months for individuals and families looking for "safe, fair and affordable credit"[4]. In 2017, the microfinance organisation granted nearly 27,000 NILS loans nationally – a 15% increase on the previous year.

An obvious conclusion from sector data is that at a time when more Australians are financially excluded and the number of approved small loans continues to decline, this is not an appropriate time to introduce significantly tighter regulations that will have the effect of further restricting the availability of credit to these already financially excluded Australians.

Making it more difficult to access credit will not assist Australians in need of emergency cash – the opposite will occur as people will still need access to credit. This will simply force people to source credit from unregulated providers. Tighter regulations will not make demand disappear.

[4] https://www.canstar.com.au/personal-loans/calls-legislation-consumers-turn-no-interest-loan-scheme/

AUSTRALIAN RESEARCH COUNCIL FUNDED REPORT

In 2012, Dr Marcus Banks, a Researcher from the School of Economics, Finance and Marketing at RMIT, published a report on the small loans sector entitled: Caught Short, an Australian Research Council funded report. This research was conducted prior to regulations that abolished payday loans in 2013. However, the key findings demonstrate the need that exists for a product aimed at those consumers who are not eligible to receive credit from banks – a gap that has been filled since 2013 by responsible lenders offering Small Amount Credit Contracts. In March 2015, Dr Marcus Banks also published an article in the Overland Journal referencing his report and ongoing media interest in small loans.

He said: "The report's finding that most people get caught up in an expensive cycle of repeat borrowing has led to calls by the media and consumer advocates to further regulate the sector and even close it down. A financial counsellor interviewed for the study summed up what is wrong with this argument: 'It's very easy for a bunch of middle class advocates, financial counsellors, whatever, to say this shouldn't be happening – but walk a mile in the shoes of the people who have no other access. I think our entire premise should sit around that Centrelink payments are inadequate for people to live with dignity in this community.'

"There is a knee jerk reaction by media and consumer advocates to frame small loans simply as a market problem that can be addressed by greater regulation and smaller fees. The short answer is: no, it won't. It is expensive to be poor, and the higher risks associated with lending to those on a low income means that any tighter regulation will abolish this now-established market and send it underground. "Secondly, ignoring the wider societal issues that drive casual and low-waged workers to online lenders and welfare recipients to street front lenders leaves the status quo unchallenged. "People borrowing these loans are portrayed in the media as passive, easy prey and financially illiterate. However, as the Caught Short report and other studies suggest, a person taking out a small loan is often making a highly rational choice to manage their credit and debt in small amounts over short periods of time rather than putting themselves at greater risk of being overwhelmed by a ballooning credit card debt.

"Narrowly moralising against one financial symptom of current society lets the Australian government off the hook, airbrushes away the real financial struggles of low income earners, and offers no viable strategy to resolve their financial problems."

CoreData - Independent Consumer Research

Methodology - the NCPA engaged independent research firm CoreData to undertake research into the small loans sector. Data from the 2014/15, 2015/16 and the 2016/17 financial years was collected and submitted through a dedicated email inbox managed by CoreData. For the latest data collected, there were a total of seven submissions from Australia's major providers of consumer credit, including Cash Converters, Money3 and Nimble, which together make up an estimated 70% of the industry's total gross revenue. Data was collected on Small Amount Credit Contracts (SACCs) and Medium Amount Credit Contracts (MACCs), which make up more than 95% of all loans provided by providers of consumer credit and pertain to the 2016/17 financial year. This data set collected over 3 years forms a rich longitudinal picture of the consumer credit industry and is the single largest research project into the small amount credit contracts sector since legislation came into effect in 2010.

Key Findings at a Glance

	FY 14-15	FY 15-16	FY 16-17
Number of SACC Applications	1,990,882	1,753,501	1,438,013
Number of SACC Applications Approved	1,328,881	619,549	567,910
SACC Approval Rates	67%	35%	39%
Cash Out from SACCs	$667.4M	$476.8M	$538.5M
Average SACC Loan Size	$502	$770	$948
% of SACC Consumers Who Are Employed	64%	74%	81%
Average Number of SACCs per Consumer	1.35	1.35	1.66
Proportion of SACC Repayments Met		84%	81%
Number of EDR Complaints	106	119	110
Average Length of SACC Loans (Days)	117 days	134 days	162 days
EDR Complaints as a % of SACC Loans	0.01%	0.02%	0.02%

KEY ISSUES

Lowering the Protected Earnings Amount (PEA) and Applying it to all Australians

The PEA is the amount of a consumer's income that can be used for loan repayments. Currently, the PEA applies to a class of consumers who receive at least 50 per cent of their gross income from social security payments. The cap is set at 20 per cent of the consumer's gross income in a 'payment cycle period', that is, the period over which the consumer receives the predominant amount of his or her social security payments.

The government's Draft Bill and associated changes to regulations will extend the PEA to all consumers, including working Australians. Further, the Bill will reduce the income cap from 20% to 10% of a consumer's net income thus causing harmful unintended consequences for and creating less options for consumers who need access to credit.

As identified in consumer data, in 2016/17, eighty one percent of consumers with a small amount loan were employed Australians. Extending the PEA cap to all Australians whilst lowering the cap will have the perverse effect of making it harder for financially exclude Australians to get access to finance. Case Study 2 shows that under the current PEA at 20% the consumer can access a small loan when finance is sought for emergency car repairs. By contrast, this also shows that under the government's proposed changes to the PEA, the consumer is declined for a loan. There is no change to the consumer's income verses expenses, but rather a change to legislation that prevent this consumer in not being able to access finance in an emergency. Importantly, this consumer also does not qualify for a NILS loan as they are not in receipt of a government benefit and are employed.

CASE STUDY 2 - EMPLOYED CONSUMER

This case study is for a typical employed consumer. The consumer profile shows they have a net income of $723 per week with expenses of $450 per week leaving $273 per week in surplus income. They currently have a small loan of $950 over a term of 5 months. Under the law, the total amount payable on the loan is $1330. The balance of the loan owing is $280 and they have four weekly repayments of $70 remaining. The consumer experiences an unexpected emergency that requires $400 be spent on their car to get to work.

They apply for a new loan of $400 with a term of 3 months. The new total amount payable is $528 with new loan payments 0f $44 per week. This means the total of all loan repayments is $70 plus $44 or $114 combined. This leaves a surplus after all loan repayments of $159 per week. Under the current PEA, the customer can get the loan and their car repaired.

The outcome for this consumer if the government extends the application of the PEA to employed Australians and lowers the cap to 10% of consumers net income is as follows;

The new PEA cap is 10% of net income which is $72.30 per week. Current loan payments are $70 per week which means the outcome is the consumer will be declined for the new loan to access finance for car repairs.

Case study 3 demonstrates that accessing finance with a PEA of 10% of net income will significantly increase the cost of a small loan as well as the term of the loan.

CASE STUDY 3 - LOW INCOME CONSUMER

This example is for a typical consumer whose main source of income is from government benefits. The consumer profile shows they have a net income of $450 per week with expenses of $305 per week leaving $145 per week in surplus income. They currently have no existing loans. The consumer experiences an unexpected emergency that requires them to attend a family funeral interstate at a cost of $950.

Under the current regulations, they have a maximum of $90 per week (20%) available for a loan repayment. They apply for a new loan of $950 with a term of 4 months. The total amount payable is $1,292 with total loan repayments of $80.75 per week. The outcome is the total loan is repaid in four months with total fees of $342.

The outcome for this consumer if the government lowers the PEA to 10% of net income for all Australians is as follows;

The new PEA cap is 10% of net income which is $45 per week. The total loan amount is $950 with the term of loan extended out to nine months with the total amount repaid to be $1,482 with loan repayments of $41.17 per week.

What case study 3 demonstrates is that with a lower PEA, a consumer needs to extend the loan term by an additional five months with total fees payable being $532 meaning the cost of the loan has increased by an extra $190.

In summary, the working Australians loan application is declined and a consumer on a government benefit now takes longer to pay their loan and pays more for the loan.

This is a perverse effect of the proposed reforms that does not help Australians who are financially excluded to access credit.

Existing Law, Proposed Law

Specifically, the sections of the Exposure Draft Bill that require change are;

- Section 133 CC of the National Consumer Credit Protection Act 2009 should be retained as is and not amended.

What does the current law say; Section 133CC of the Credit Act prevents a SACC provider from offering to enter into a credit contract, or entering into a credit contract, if the consumer who the contract would be with is included in a class of consumers prescribed in the Credit Regulations and the repayments under the contract breaches the requirements prescribed in the regulations. Section 133CC is supported by regulation 28S of the Credit Regulations, which caps the total amount of SACC repayments for the class of consumers who receive at least 50 per cent of their gross income from social security payments. The cap is set at 20 per cent of the consumer's gross income in a 'payment cycle period', that is, the period over which the consumer receives the predominant amount of his or her social security payments.

What does the new proposed law say; Subsection 133CC(1) is repealed and replaced with a general prohibition on a SACC provider entering, or offering to enter, into a SACC with a consumer where the repayments breach the requirements prescribed in the Credit Regulations. This amendment enables the Credit Regulations to set a protected earnings amount on SACC repayments for all consumers, not just specified classes of consumers. *[Schedule 1, item 19, subsection 133CC(1)]*

What does this mean; It is intended that amendments will be made to the Credit Regulations implementing the Review's recommendation that the protected earnings amount be reduced from 20 per cent of a consumer's gross income to 10 per cent of a consumer's net income. In summary, this means under the new laws government will legislate so that the protected earnings amount will no longer apply to a class of consumers, but rather, to all consumers, including working Australians and further, the pea will be lowered from 20% to 10%.
Ideally, Regulation 28 S should form part of 133 CC, so that any future Government cannot by the stroke of a pen change the regulation to say 10% across the board for all classes of customers as a PEA.

The NCPA is seeking no change to Section 133CC of the NCCP Act 2009.

Unsolicited Offers

Existing Law; There is currently no restriction on SACC providers making unsolicited invitations to apply for a SACC or SACC offers to current or previous consumers.

Proposed Law; SECTION 133CF; A provider is prohibited from making an unsolicited SACC invitation. *[Schedule 1, item 22, subsection 133CF(1)].* A credit provider makes an unsolicited SACC invitation if:

- it makes a communication in any form;
- the communication is made to a person who is a current customer of the provider, or who entered into a SACC with the provider in the previous two years, or who the provider knows has a SACC with another provider or had a SACC with another provider in the past two years; and
- the communication makes an offer to apply for or enter into a SACC, or is about a current SACC and a reasonable person would conclude has as a purpose (even if not the only purpose) of encouraging a SACC application.

[Schedule 1, item 22, subsection 133CF(5)]
This prohibition is not intended to capture communication that is directed towards consumers at large, such as general advertising of the availability of SACCs or SACC features. As a SACC has a maximum term of 12 months, the two-year time limit in relation to invitations directed at past SACC consumers is intended to reflect an appropriate period after which a consumer is less likely to be vulnerable to these types of communications.

What does this mean; This practical impact of the proposed amendment will in effect make it very difficult for a small loans provider to contact a customer. Another important issue is that providers such as Credit Corp, Cigno and others that don't offer SACC's and who are not captured by the same rules will make offers to our customers. The whole issue of unsolicited offers raises a significant number of issues and warrants much closer scrutiny before the law is changed because as it is written now the law is unworkable. The NCPA would welcome the opportunity to work with government to address this issue.

Other Credit Products

The NCPA worked with the Government to help create the Small Amount Credit Contract so consumers were protected from predatory and deceptive behaviour from lenders. However, despite that work some appalling behaviour remains rampant in the industry from some of the biggest players including publicly listed companies. The examples below are from lenders that are not members of the NCPA and we do not condone these lending practices that create financial hardship for consumers.

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 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.

For example, please see the redacted statements in the Appendix 1, 2 and 3 that shows a customer's accumulation of fees and charges, one of which exceeds $1491 over a 19-month period whilst the original loan amount was only $250.00. This customer still had a balance of $693.05 remaining at this point in time.

Other examples show consumers paying back almost 3 times the amount borrowed. ASIC failed in its bid to successfully prosecute the companies involved. Teleloans have changed their name to Cigno.

Credit Corp businesses Clear Cash and Wallet Wizard advertise "*ongoing fast access to your available credit, so as you pay off your outstanding balance you can top up your cash quickly and easily*".

This product is a continuing line of credit contract or more simply a credit card. The card has an interest rate of 47.8%. The recently published report by Checkmate Research forced the ASX to halt trading on Credit Corp shares as Credit Corp promptly issued public statements denying they were payday lenders simply because they didn't offer a SACC**.**

Instead, they offer a line of credit at 47.8% to customers who may come from their debt collecting business who purchase parcels of default loans from the likes of Telstra, Optus and Certegy Ezi-Pay.

The media article referred to the predatory behaviour of the Credit Corp Group however they avoid the focus of ASIC and others because they don't provide SACC's whilst they continue to market their brands as Payday lenders. Of note is the continuing credit contracts offer far less protections and require far less assessments checks when approving loans due to not being classified as a SACC loan. It could be argued that "revolving" lines of credit with no specific end date are the real "debt spiral" traps for consumers.

https://www.clearcash.com.au/costs/

Buy Now Pay Later

The introduction of 'buy now, pay later' services such as Afterpay, Zippay and Oxipay allow consumers to make retail purchases and pay them back, interest free, over four fortnightly repayments. These companies do not have any form of application process, do not perform credit checks or review bank statements for customer's income and expenditure. Consumers can therefore, make multiple retail purchase above their means without any regulation whatsoever.

For example, Afterpay requires their customers to be above 18 years of age, have an active email address and mobile number and have access to an Australian payment method. Recently, a City Finance client applicant was declined for her low affordability as a result of the number of active Afterpay's she had on her Bank Statement.

This client only received an average weekly wage of $494, however her Afterpay transactions for one week added up to $736.00. The only reason why this client was able to repay her Afterpay's successfully was her reliance on cash transfers from her mother and a recent $2000 loan deposit from Credit Corp's Clear Cash Finance.

The outcome is a young lady with a 47.8% credit card with a $2000 limit earning $494 dollars a week and a debt to her mother, that can only be a journey into debt spiral. Refer to the Appendix 4 Afterpay.

The NCPA brings these issues to the attention of the Senate Committee in order to highlight the unresolved issues that requires either regulation or greater oversight by the regulator ASIC. Consumers must be better protected from these unregulated credit products. The NCPA supports responsible lending practices and brings to the attention of the Committee the recent feedback from ASIC who advised that since the tabling of the ASIC Compliance Report to the PJC Corporations and Financial Services in July 2017, there have been no further public statements from ASIC of breaches of compliance by SACC lenders. The NCPA knows the sector is highly compliant in large part due to the significant regulatory framework SACC providers operate within.

However, what remains unresolved by the regulator and the Parliament is the above examples provided of Other Credit Products. The NCPA urges the Committee to consider ways that the products offered by these operators can be improved, properly regulated or, removed from the sector.

CUSTOMER REVIEW

I am very satisfied with City Finance for providing me a personal loan recently looking forward to the prospect of future obligation.
February 19, 2018
Customer name supplied and redacted for privacy reasons.