Inquiry into the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)

February 2020

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To members of the Senate Economic Legislation Committee

The National Credit Providers Association (NCPA) welcomes the inquiry and is pleased to make a submission. The NCPA is the peak body representing Australian Credit Licence holders in the small and medium loans Sector, referred to in this submission as SACCs or small amount credit contracts, and regularly incorrectly reported as payday loans.

The submission uses up-to-date information based on empirical data research obtained by CoreData Research[1] from actual small amount credit contract customers since 2014, this being one year after the introduction of the protected earnings amount (PEA) and caps on all fees and charges following the introduction of amendments to the National Consumer Credit Protection Act that commenced in July in 2013. The 2018 CoreData SACC Research Report is provided as an attachment to this submission.

This submission provides feedback on the Bill No. 2 and proposed amendments contained in the original Explanatory Memorandum associated with the Draft Bill of 2017 and highlights what is missing from the Bill No. 2 that would prevent the continued supply of financial products that cause consumer harm. The NCPA is strong in its belief that any reforms to the existing Legislation should be to introduce greater consumer protections for all providers of small credit and to prevent a continuation of the bad behavior of those operators that do not comply with responsible lending obligations and who are not

[1] https://www.coredata.com.au

regulated by the NCCP Act. This should be obvious however, as the Bill No. 2 is currently framed, this outcome will not be achieved.

Further, the submission will provide clear examples of why the both the Original Draft Bill and Bill No. 2 does not address several gaps in regulation of small credit and make recommendations on how this could be achieved.

Finally, the submission will explain in detail that the current legislation and regulations for the protected earnings amount (PEA) are working as intended and some of the proposed changes contained in the Draft Bill will further disadvantage financially excluded Australians and drive up the cost of a small loan for those consumers that will still have a need to access small loans.

Please don't hesitate to contact me if you have any questions or require further information on 0401 695 030 or email me at m.rudd@money3branches.com.au

Yours sincerely

Michael Rudd
Chairman

The NCPA

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 or payday loans) and Medium Amount Credit Contracts (called MACCs, or Medium Amount Loans). NCPA members are all ASIC-licensed credit providers, who operate from retail locations across Australia and via dedicated online platforms, representing more than 80% of the industry.

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 consumers by ensuring lenders are applying responsible lending practices. Since its inception, NCPA has provided a strong, united voice in the small loans sector and has been instrumental in bringing about significant changes in legislation that provides more protection to consumers than ever before under the National Consumer Credit Protection Act 2009 and ASIC credit licensing requirements.

Industry Snapshot

There are 237 SACC lenders across Australia who provide SACC loans through either a traditional street front business or an online service. The largest SACC providers are Cash Converters, Money3 and Nimble with the majority of operators being small businesses. In 2018;

- the average size SACC was $635
- was paid back in 114 days
- 64% of SACC customers were employed Australians
- Average number of SACCs per customer per year was 1.3
- there was 1.36M SACC applications with 839,036 approved SACC loans
- total SACC funds provided was $532.6M

A SACC loan at a glance

Typical Loan Amount	$300 - $2000
Terms	Up to 12 months
Costs	A 20% upfront establishment fee + a 4% monthly fee
Example	Loan Amount of $1,000 over 6 months repayable weekly (25 weekly repayments). $1,000 (Principal Amount) + $200 (20% Establishment Fee) + $240 (fees based on 4% per month over 25 weeks) = $1,440 total repayable in 25 weekly instalments of $57.60

SACCs are Small Amount Credit Contracts

A Small Amount Credit Contract (SACC), often incorrectly referred to as a ‘payday loan’ is an unsecured small loan up to $2,000 for no more than 12 months. Actual payday loans of less than 16 days credit were banned with the introduction of the National Consumer Credit Protection Act 2009 (NCCP Act). A SACC, a Payday loan or a Consumer Lease are not the same thing and are regulated differently.

Fees, Charges and Interest Rates

SACC loans cannot and do not charge interest rates - ever. SACC providers can only charge a government regulated maximum establishment fee of 20 per cent of the loan amount and a maximum government regulated monthly credit fee of 4 per cent of the loan amount. Claims of so called “payday loans” charging 400%, 800% or 900% are false.

The Real Cost of an Average SACC

The 2018 CoreData Research Report identified the average SACC loan amount was $635 and paid back in 114 days. So, the real costs for a SACC loan are as follows:

- Loan amount = $635
- Term of loan period (avg) = 5 months
- Establishment fee 20% of loan amount = $127
- Loan credit fee 4% of loan amount = $25.40 per month
- Repayments per month = $177.80
- Total repayments including all fees =$889 over 5-months

The SACC loan is repaid in full and no further fees or charges are accrued, and no annual interest rate is applicable. Sensationalist claims made by consumer activists that so called “loan sharks” (giving the impression of unregulated operators) charging up to 900% interest on SACC loans is dishonest, used and repeated by opponents of the SACC sector to demonize this highly regulated sector. At the same time, we can see Good Shepherd Microfinance offer their own SACC loan and heavily promote the product in main-stream media.

Annual Percentage Rates (APR)

The use of APRs to determine the annual cost of a loan is formulated on the basis of a home mortgage of 25 years or more. The APR measure does not work when reverse engineered on a small loan of less than 12 months and gives a distorted and meaningless percentage number. Creative and fanciful number manipulation to derive a sensationalist annual percentage rate number for SACC loans is designed to deceive consumers and policy makers alike.

APRs in other sectors for Products and Services.

For comparison, if consumer activists used APRs in other industries to annualise the cost, you would have the following meaningless numbers that mislead consumers. A hotel room for the night would be $71,175 per annum instead of the actual cost of $195 per night and car parking would be $113,880 per annum, instead of $13 per hour. This APR issue is referred to in the government's response to the 2015 SACC Review Report, Recommendation 22, Disclosure noted: … the Government does not consider it appropriate to require disclosure of an APR for SACCs.[2]

Maximum SACC loan repayment in any condition

The total and maximum that a consumer can repay on a SACC loan (which is typically the result of a default or other penalty), is the original loan plus 100%. It can never be more. As an example, for a loan of $100, (with a payment default in breach of the loan contract), the maximum total repayment inclusive of the principle and all fees and charges, is $200. This is a worst-case scenario with the vast-majority of loans repaid in full and on time at a much less cost. The 2018 CoreData Research Report identified that 84% of scheduled SACC loan repayments were met on time by all consumers.

SACC Loans compared with Credit Cards

According to the Commonwealth Bank credit card calculator[3], a $5,000 credit card debt with minimum required payments of $100/month at the bank stated annual percentage rate APR interest of 20.4 per cent, will take a consumer 9 years and 3 months to repay (only if no further credit is advanced on the credit card) and cost an additional $6,082 in interest above the principle of $5,000. A SACC loan unlike a Credit Card is a fully consumer protected regulated product with caps on all fees and charges and a limited time period for the loan. A SACC loan carries responsible lending obligations and ability to pay based on assessment on the consumer's income and expenses including reviewing 90 days of the most recent banking transactions to meet responsible lending obligations.

Feedback on the Bill

The National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2) as presented to the Senate proposes reforms to small amount credit contracts and consumer leases. This submission addresses the reforms proposed for small amount credit contracts only.

The Bill proposes reforms to numerous provisions in the National Consumer Credit Protection Act including;

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2 https://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/media-releases/government-response-final-report-review-small-amount

3 https://www.commbank.com.au/digital/calculators/credit-card-repayments/how-long

- SUITABILITY OF A SACC - Removing the rebuttable presumption that a SACC is unsuitable if the consumer has entered into two or more SACCs in the last 90 days or is in default under a SACC;
  NCPA SUPPORTS
- EQUAL REPAYMENTS - Requiring SACCs to have equal repayments spread over equal intervals; NCPA SUPPORTS
- MONTHLY FEES - Preventing SACC providers from charging monthly fees in respect of the residual term of the contract where the contract has been paid in full early by the consumer;
  NCPA SUPPORTS
- UNSOLICITED OFFERS - Preventing SACC providers from making unsolicited credit invitations and offers to current and previous SACC consumers;
  NCPA SUPPORTS the general principle of this amendment however proposes AN AMENDMENT TO Schedule 1, item 22 sub-section 133CF (1) SO AS TO NOT PREVENT SACC PROVIDERS FROM CONTACTING THEIR CUSTOMERS
- LOWERING THE PROTECTED EARNINGS AMOUNT - Extending the prohibition on a SACC provider on providing a SACC or offering to enter into a SACC with a consumer where the repayments breach the requirements prescribed in the Credit Regulations. This refers to changing the protected earnings amount regulations from the current law, that applies a cap of 20 per cent of a consumer's gross income in a 'payment cycle period' for consumers who receive at least 50per cent of their gross income from social security payments. The Bill proposes lowering the cap to 10 per cent of a consumer's net income and extending to all consumers, including working Australians;
  NCPA DOES NOT SUPPORT

Feedback in Detail

1. Unsolicited Offers

The NCPA proposes an amendment to 133CF. Under 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. The NCPA supports this proposed reform however proposes an amendment so as to not prevent a SACC provider from contacting their customers. As the Bill is currently framed the proposed changes are overly restrictive and would prevent a SACC provider from making any form of communication with a SACC customer who has an existing SACC with the provider. The NCPA proposes Section 133CF (5) (a) be amended to;

(5) A licensee makes an unsolicited small amount credit contract invitation if:

> *(a) the licensee communicates with an existing customer to offer to enter into a new small amount credit contract;*

This amendment would meet the desired outcome proposed by the Review Committee in that every SACC is subject to a licensed providers responsible lending obligations and unlike a credit card or line of credit unsolicited invitation to apply for a credit limit increase or provision of a credit card on which the recommendation was based.

The Explanatory Memorandum to the Bill referred to on the Senate Committee Homepage says;

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.

The NCPA supports sensible reform however the Draft Bill as currently worded would prevent a SACC provider from making any form of communication with their customers who have an existing SACC. Another important issue for the Committee to consider is that providers such as Credit Corp (Wallet Wizard) and Cigno and others that don't offer SACC's and who are not captured by the NCCP Act and the same rules as SACC providers, will mean more consumers will turn to these providers to access credit.

The NCPA considers this proposed reform requires 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 or to adopt the NCPA's proposed amendment to Section 133CF (5), (a).

2. Lowering the Protected Earnings Amount to 10%

The Protected Earnings Amount (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 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% of a consumer's gross income to 10% of a consumer's net income with significant unintended consequences by increasing the cost of credit by almost double and creating less options for consumers who need access to credit and can often not access credit from a mainstream lender such as a bank.

Specifically, the NCPA does not support any change to Section 133 CC of the National Consumer Credit Protection Act 2009. Currently, Section 133CC of the Act says;

133CC - Licensee must not enter into a small amount credit contract if the repayments do not meet the prescribed requirements

Requirement

(1) A licensee must not enter into, or offer to enter into, a small amount credit contract with a consumer who will be the debtor under the contract if:

(a) the consumer is included in a class of consumers prescribed by the regulations; and

(b) the repayments that would be required under the contract would not meet the requirements prescribed by the regulations.

Civil penalty: 2,000 penalty units.

Note: For example, the regulations may provide that the amount of a repayment must not exceed a specified percentage of the consumer's income.

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.

The proposed law says; 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 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%.

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

Gaps in the legislation that this Bill will not address

National uniform consumer credit laws were introduced in 2009 under the National Consumer Credit Protection Act. Prior to this the states regulated small credit with significant variations in legislation by jurisdiction. The NCPA was supportive of these national uniform laws and was again involved in the framing of the reforms to the NCCP Act introduced in 2013 that saw the introduction of caps on fees and a protected earnings amount to protect consumers in receipt of a government benefit. The aim of the regulations introduced in 2013 were to:

- Decrease the number of loans per customer per year
- Decrease the total number of loans per year
- Continue to offer viable safe loans for the financially excluded

Subsequently, the total number of loans decreased from 1.3 million in 2013/14 to 839,036 in 2018. These laws have been working well and as intended. Unfortunately, what has continued since the introduction of the NCCP Act is the provision of small credit products that are not captured or regulated under the NCCP Act.

Currently, there is two products available to consumers that fall outside of the legislation that regulates small amount credit contracts. They are a continuing line of credit offered by Credit Corp Financial Services Group, which is often marketed as a Wallet Wizard product and is available online and there is a small credit loan available online offered by Cigno, who are based at Southport on the Gold Coast.

Neither of these financial products are a small amount credit contract and are not captured by the NCCP Act. As you would be aware, ASIC has recently taken action through the use of their new Product Intervention Powers issued in June 2019, to ban the small credit model used by Cigno, which is defined as 'short term credit' under s6(1) of the National Credit Code, however Cigno have appealed the ASIC decision in the Federal Court. The matter is listed for the 2oth March 2020[4].

In addition, the recent proliferation of buy now pay later products is having a significant impact on the capacity of consumers to access credit from SACC providers.

The NCPA fully supports the action taken by ASIC and has long called for the Cigno small credit product to be banned and for the regulator take action to prevent the ongoing sale or distribution of that product. NCPA members who provide SACCs are subject to the regulatory controls and oversight of the NCCP Act, legislation that protects consumers from harm. The NCPA considers all holders of an Australian Credit License that provide small credit products should be regulated under the NCCP Act.

Importantly, the Bill before the Senate as it is framed will not prevent either of the two abovementioned companies from continuing to provide their products to consumers. Nothing in the Bill will make any difference to the Wallet Wizard product or the Cigno product if they are successful in their appeal to the Federal Court. Rather, the proposed reforms in the Bill will make it more difficult for financially excluded Australians to access small amount credit contracts and drive consumers toward the two operators that are not regulated by the NCCP Act.

The recent Senate Economic References Committee that inquired into Credit and Financial Services targeted at Australians at risk of financial hardship and reported to the Parliament on the 22nd February 2019 highlighted the widespread use of these small credit products by consumers. The ASIC has taken action to ban the Cigno product for good reason – the consumer harm caused by the small credit model used by the

[4] https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-264mr-cigno-seeks-judicial-review-of-asic-decision-to-make-short-term-credit-product-intervention-order/

company through the use of a third-party service agreement that charges the consumer significant fees.

The inquiry also heard the widespread misuse of the term payday loan which is being applied to pretty much every small credit product on the market, in particular the products provided by Cigno or Wallet Wizard or pawn broking loans (which are not regulated by the Commonwealth) and consumer leases.

For example, the Financial Counselling Australia submission presented case studies of payday loans of which when examined, all but one of their 16 examples were not payday loans. This widespread misrepresentation of a highly regulated and compliant sector must be called out and refuted where examples are put forward that are inaccurate.

The Protected Earnings Amount is working as intended

As identified in the 2018 CoreData Research Report (attached to this submission) 64% of consumers with a SACC 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.

This is demonstrated in Case Study 1 which shows under the current PEA of 20%, the consumer can access a small loan when finance is sought for emergency car repairs. By contrast, the case study also shows that if the proposed changes to the PEA are legislated, the consumer's loan is declined. This shows there is no change to the consumer's income verses expenses, but rather a change to legislation that prevents this consumer from being able to access finance in an emergency. Importantly, this consumer also does not qualify for a No Interest Loans Scheme (NILS) as they are not in receipt of a government benefit and are employed.

CASE STUDY 1 - 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 consumer qualifies for the loan and their car can be 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 of 10% of net income is $72.30 per week and current loan payments are $70 per week which means the consumer will be declined for the new loan to access finance for car repairs.

The case study 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 2 - LOW INCOME CONSUMER

This example is for a typical consumer whose main source of income is from a government benefit. 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 2 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 off 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.

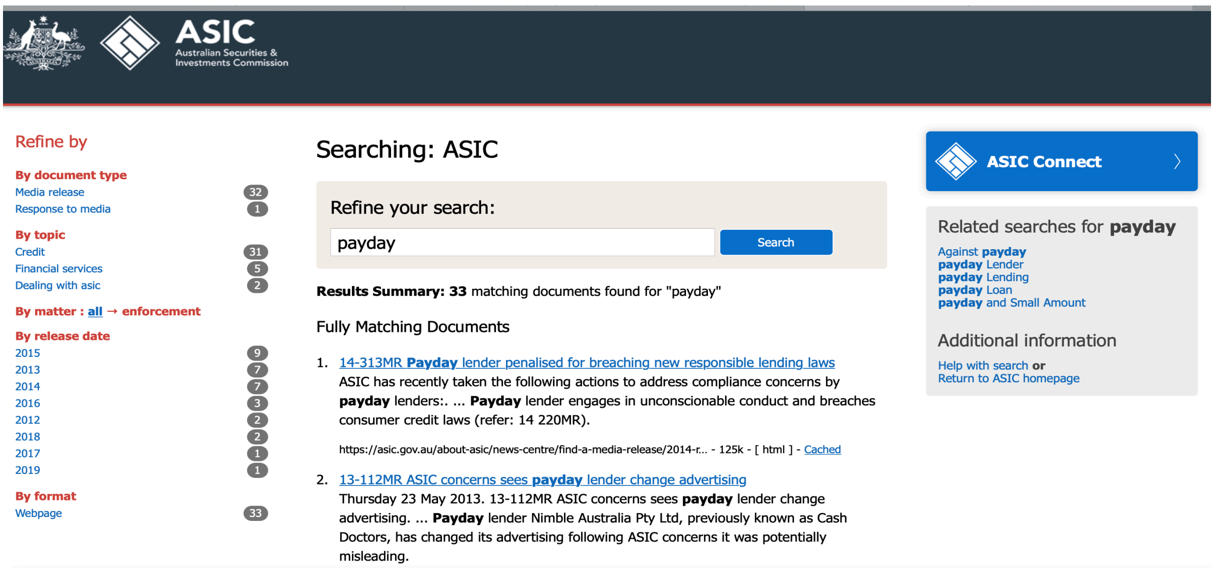
The NCPA supports the government's policy on the continued use of the Cashless Debit Card, designed to help disadvantaged communities decrease the level of consumption of drugs, alcohol and gambling. Importantly, the principles behind the application and use of the Cashless Debit Card that changes the way in which people receive and spend their fortnightly payments, are consistent with the current legislation (the National Consumer Credit Protection Act 2009) that applies to Australians who seek to take out a SACC. That is, like the Cashless Debit Card there is a cap on the amount of the repayment for consumers who receive 50% or more of their gross income from Centrelink payments, to 20% of the consumer's gross income.

This is how the law is currently applied to small amount credit contracts and is consistent with the capped amount for the Cashless Debit Card. The Draft Bill the Senate Committee is examining proposes lowering the protected earnings amount to 10%. This is at odds with the government's rules for the cashless debit card which applies only to some communities in Australia and, only in cases where a community requires assistance to reduce the consumption of drugs, alcohol and gambling.

Ordinary Australians who are unable to access credit from a mainstream lender such as a bank should be free to choose the best credit option available, rather than be told they can only access 10% of their net income for repayments. The latest CoreData research on small loans indicates that 64.4% of customers are working Australians. Lowering the PEA to 10% will have significant consequences for the 3 million Australians who are unable to or choose not to access credit through main-stream financing.

The NCPA and Cash Converters are not aware of another financial services sector that are subject to such extreme over-reach where the government effectively controls how employed consumers can spend their own money. The effects of lowering the PEA to 10% of net income for all Australians also renders responsible lending obligations null and void because they are not required under such a prescriptive legislative model. The small loans and consumer credit sector in Australia have changed significantly since the introduction of national uniform consumer credit laws in 2009 and there is ample evidence to support this claim. There is a declining level of enforcement actions taken by ASIC against payday lenders. A simple search of ASIC's website shows this decline in enforcement action. The table shows that since 2010 the number of enforcement media statements issued by ASIC continues to decline down to just one in 2019.

Year	ASIC Enforcement Action Media
2012	2
2013	7
2014	7
2015	9
2016	3
2017	1
2018	2
2019	1



Source:https://sitesearch.asic.gov.au/s/search.html?query=payday+&collection=asic&profile=asic&f.By+matter%7Cq=enforcement

The claim is also supported by the new Australian Financial Complaints Authority (AFCA) publication of complaints, where they note that of the approximate 115,000 complaints received only 250 were from consumers regarding small credit providers with many of these complaints in relation to a SACC provider declining consumer credit. That equates to a 0.002 of one percent of all complaints and almost immeasurable when comparing to the 840,000 SACC loans issued in FY2018. Small Loans (SACC) providers are meeting consumer protection responsibilities and continue to meet responsible lending obligations.

The NCPA proposes no change to Section 133CC of the NCCP Act 2009 as the protected earnings amount is working as intended following the reforms of 2013.

Closing Comments

Improvements to regulation, new data, and low levels of complaints tells a very different story to that being prompted in the media and with policy makers.

Small loans providers are working within the law and within the spirit of the law and have made enormous changes to practices and business models since the NCCP Act was amended in 2009 and again 2013. The current proposed further amendments go further to strengthen consumer protections and are supported with the exception of recommendations 1 and 8 that are not in the interests of consumers or the sector.

The consumer activists 'stop the debt trap' campaign is misleading and uses false statements to misrepresent legitimate and highly regulated Australian businesses. The data used to push their claims is old and prior to the current regulations enacted in 2013. Their tactics and methods are questionable and conflicted by their relationship with big bank funding and competitive offerings in the same market.

The NCPA representing small amount credit providers continues to support consumer protections and high standards of responsible lending for consumers that choose to access finance other than through a bank credit card.

The NCPA has worked with governments since the introduction of the NCCP Act 2009 to ensure responsible lending obligations are the basis for consumer protections and have long called on the government to do more in areas where some credit operators provide less regulated products.