Review of the small amount credit contract laws

Interim report
December 2015

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FOREWORD

BACKGROUND TO THE REVIEW

On 7 August 2015, the Government announced a review of the small amount credit contract laws contained in the *National Consumer Credit Protection Act 2009* (the Credit Act) and comparable consumer leases.

The Government asked the Review Panel (the Panel) to examine and report on the effectiveness of the law relating to small amount credit contracts (SACCs), and to make recommendations on whether any of the provisions which apply to small amount credit contracts should be extended to consumer leases. [1]

The terms of reference are at Appendix 1.

The Panel was initially asked to report to the Government by the end of 2015. To allow time for additional consultation, the Minister for Small Business and Assistant Treasurer, the Hon Kelly O'Dwyer MP, extended the Panel's reporting date until the end of February 2016.

CONSULTATION

Submissions for the first round of consultations, based on the terms of reference, opened on 17 September 2015 and closed on 15 October 2015. More than 40 submissions were received.[2] Refer to Appendix 2 for a list of public submissions received.

Four roundtables were held with interested stakeholders to gather information, seek alternative perspectives and discuss policy issues in depth. The Panel also held bilateral meetings with financial institutions, businesses, academics, consumer groups, regulators and international bodies.

This consultation process is the primary source of information for the interim report.

The Panel would like to thank all stakeholders for their contribution to the consultation process thus far.

The interim report sets out the Panel's initial observations in key areas and canvasses potential policy options. The interim report does not make recommendations nor does it provide the final view of the Panel.

The interim report is an opportunity for stakeholders to comment on the observations and options presented including whether they would be workable in practice and if one option is likely to be more effective than another. This is an opportunity for stakeholders to provide additional data and evidence to support alternative views. Further views are sought, along with cost/benefit analyses, on these observations and options.

The responses to the interim report will be used, in addition to the submissions and feedback already received, to formulate final recommendations.

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1 Ms Danielle Press is the chair of the review. Mr Stephen Cavanagh and Ms Catherine Walter AM are the other panel members.

2 Submissions are available on the Consumer Credit website http://consumercredit.treasury.gov.au.

During this second round of consultation, stakeholders are invited to provide targeted submissions. Further stakeholder engagement will occur through invitation.

Submissions are requested by **22 January 2016**. Submissions can be made by emailing consumercredit@treasury.gov.au.

SCOPE OF INTERIM REPORT

The interim report does not cover all the issues that the Panel is required to consider. Instead, the report focuses on the areas where further evidence would be helpful. The issues covered in the interim report tend to be the matters where stakeholders had the broadest range of views and which generated the most discussion following the release of the consultation paper.

Each section of the interim report makes a number of observations including some which focus on financial harm to consumers. These observations reflect the Panel's current thinking based on available evidence.

Reflecting the observations made, the interim report includes a range of possible policy options and, in some cases, a preferred option. The preferred options are not the Panel's draft recommendations. They are presented to assist stakeholders to understand the Panel's current thinking and generate feedback. The Panel seeks supporting documentation from stakeholders on the costs and benefits of these options.

The issues covered in the interim report are:

- responsible lending;
- repeat borrowing;
- SACCs default fees; and
- regulated consumer leases.

These primarily correspond to issues 1.2, 1.6 and 3 in the terms of reference.

OBSERVATIONS

Observation 1

One of the key outcomes of regulation in the financial sector should be the facilitation of consumers onto a path of financial inclusion rather than exclusion.

Observation 2

The responsible lending obligations do not appear sufficient to prevent financial harm to consumers who use SACCs. Additional consumer protection specific to SACCs seems to be required. ASIC enforcement of the responsible lending practices of SACC providers should be a priority.

Observation 3

High levels of repeat borrowing appear to be causing consumers financial harm. The structure of the SACC cap and industry costs appears to promote repeat borrowing and the rebuttable presumptions do not appear to have limited repeat borrowing.

Observation 4

The limit on the amount that a SACC provider can recover in the event of default is an important safeguard for consumers. However, in some circumstances, the fees charged on default appear to be charged in a manner that significantly disadvantages vulnerable consumers.

Observation 5

Some SACC providers do not appear to be giving consumers any benefit or discount when they make early repayments or pay back the loan in full before the due date. These practices may result from the SACC cap being based on a fee, rather than an interest rate.

Observation 6

The high cost of consumer leases appears to be causing consumers financial harm. While there are technical differences between credit contracts and consumer leases, these differences do not appear to justify consumer leases being excluded from the consumer protection regulations that apply to other forms of finance under the Credit Act.

Observation 7

During consultation, stakeholders noted that a large proportion of the cost of consumer leases can be attributed to add on products. There is little transparency regarding the nature or cost of these services and the value that they provide to consumers. It may not be clear to consumers that these features are available when they enter into a lease, or that they extend beyond the statutory guarantee under the Australian Consumer Law.

Observation 8

If a cap were to be introduced on a restricted category of consumer lease, it should be designed in a way that limits the risk of avoidance. Although extending a cap to all leases and broadening the scope of the Credit Act to include indefinite term leases are matters outside the terms of reference of the review, government may wish to consider the implications for those leases outside the scope of this review.

Chapter 1 — Overview and background

Jurisdiction for the regulation of consumer credit was transferred from the states and territories to the Commonwealth on 1 July 2010 with the commencement of the *National Consumer Credit Protection Act 2009* (Credit Act). Prior to this, states and territories regulated consumer credit through the Uniform Consumer Credit Code (UCCC). Enhancements to the Credit Act, which included specific provisions for SACCs, were enacted by the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (the Enhancements Act).

The terms of reference for the review require the Panel to consider:

- competition;
- fairness;
- innovation;
- efficiency;
- access to finance;
- regulatory compliance costs;
- consumer protection; and
- whether the laws relating to SACCs and consumer leases are appropriate for the current economic climate and whether they will continue to meet Australia's evolving needs.

The Panel has also taken into account the objectives of the Enhancements Act which were to reduce repeat borrowing and reduce the risk of regulatory arbitrage.[3] In relation to consumer leases, the Enhancements Act also aimed to reduce the risk of regulatory arbitrage by removing some of the regulatory differences between consumer leases and credit contracts.[4]

Observation 1

One of the key outcomes of regulation in the financial sector should be the facilitation of consumers onto a path of financial inclusion rather than exclusion.

It is the Panel's view that a key outcome of regulation is to facilitate financial inclusion. In this context, regulation and consumer protection should enable consumers to access credit that they can afford and place consumers on the road to financial inclusion over time. Unaffordable finance that absorbs a large portion of a consumer's income promotes financial exclusion and can exacerbate the problems faced by vulnerable consumers.

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3 Revised Explanatory Memorandum for the Consumer Credit Legislation Amendment (Enhancements) Bill 2012 (Explanatory Memorandum), paras 4.7 to 4.8.

4 Revised Explanatory Memorandum for the Consumer Credit Legislation Amendment (Enhancements) Bill 2012 (Explanatory Memorandum), paras 6.4 to 6.9.

Cap on interest rates for credit contracts

Under the Credit Act, credit providers are only permitted to charge a maximum of 48 per cent interest on a credit contract.[5] Historically, it has been recognised that there are benefits associated with preventing lenders from charging excessively high interest rates.

SACCs were granted a concession from the 48 per cent cap to reflect the high administration costs relative to the sizes of the loans and the short period of time that lenders have to recoup their costs.[6] Accordingly, instead of being bound by the 48 per cent cap, SACC providers are able to charge a 20 per cent establishment fee and a 4 per cent per month ongoing fee that is based on the initial amount borrowed. SACC providers are also required to comply with limits on the total amount that can be recovered when a consumer defaults.

A different concession was introduced for medium amount credit contracts (MACCs), which are credit contracts with values between $2,000 and $5,000. Providers of MACCs are subject to the 48 per cent cap but are able to charge an additional one-off fee of $400.

The Panel has given consideration to the appropriateness of the concession from the 48 per cent cap in relation to SACCs and considers that a concession continues to be relevant.

The Panel has also considered whether consumer leases should be subject to a cap. Leases are currently exempt from any cap. The case as to why consumer leases, that are in essence credit contracts, should be excluded from a cap is not clear. This issue is discussed in greater detail in the consumer leases chapter of the interim report.

SACC industry since the introduction of the Enhancements Act

During the course of consultations, a range of data and analysis providing perspectives on the current state of the SACC industry was received. General perspectives from this data indicate that:

- the SACC industry continues to grow in terms of the volume of funds advanced, the number of SACCs and the number of customers;
  - evidence suggests that the SACC market is between $700 million to $1.2 billion in terms of funds advanced per year and that between 500,000 to 1 million consumers use SACCs each year;[7]
- while the volume of SACCs advanced has increased, the number of industry participants has fallen, suggesting the sector has consolidated since the introduction of the Enhancements Act;[8]
- more SACCs are being provided online instead of at bricks and mortar shopfronts as a result of improvements in technology;[9] and

5 Schedule 1 of the *National Consumer Credit Protection Act 2009*, National Credit Code, section 32AA.

6 Revised Explanatory Memorandum for the Consumer Credit Legislation Amendment (Enhancements) Bill 2012 (Explanatory Memorandum), para 5.34.

7 See CoreData in the NCPA's submission, p.2 and Credit Corp's submission, para 1.2.

8 ASIC data shows a reduction in licence numbers for lenders operating in this sector (from 1,208 in December 2013 to 1,036 in December 2014) and a very small decrease in the number of new entrants (68 licences granted in 2012–13 and 64 licences granted in 2013–14).

9 Digital Finance Analytics' (DFA's) survey results suggest that the percentage of SACCs transacted online is around 44 per cent (see CALC's submission, p.5.).

- SACC loans are generally for amounts of around $500[10] and for periods of approximately three months or less.[11]

SACC borrower characteristics

The submissions provided an overview of the characteristics of SACC borrowers.

Evidence presented during the consultation process suggests that most SACC customers are male.[12] Sole male households account for the largest portion of SACCs (53 per cent), followed by family groups (32 per cent) and sole female households (15 per cent). Estimates for the average age of a SACC consumer varied from mid-30s to early 40s.[13]

There are differences between the characteristics of consumers who use online-only lenders and consumers who use SACCs that have a bricks and mortar presence. A higher proportion of consumers who use online-only lenders are employed (around five employed consumers to each unemployed consumer for online-only lenders compared to two employed consumers for each unemployed consumer for lenders with a bricks and mortar presence).[14]

The difference in the characteristics of consumers who use online-only and bricks and mortar lenders may reflect the lower willingness of online lenders to take on risk and the subsequent higher rejection rates.[15] It may also be harder to assess the credit worthiness of consumers when the SACC provider does not meet the consumer in person.

Submissions differed regarding the average income of SACC consumers but generally the income appears to be somewhat lower than the Australian average.[16] That said, there appears to have been an increase in the average income of SACC consumers since the Enhancements Act was passed.[17]

Further information on the following is requested:

1. *Information on trends in the SACC and leasing industries including consumer characteristics.*

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10 NCPA's submission, p.4.
11 Credit Corp's submission, para 1.4.
12 Appendix 2 of the Financial Rights Legal Centre's submission, Digital Finance Analytics Report p.21.
13 NCPA's submission, p.3 and Appendix 2 of the Financial Rights Legal Centre's submission, Digital Finance Analytics Report p.21.
14 RMIT's submission, p.7.
15 RMIT's submission, p.7.
16 See Credit Corp's submission, p.15, Financial Rights Legal Centre's submission, p.8, and ABS cat.no. 6302.0.
17 See RIS, p.13.

Chapter 2 — Responsible Lending obligations for SACCs

Introduction

The Credit Act includes responsible lending obligations that apply to all credit providers and credit assistance providers. The responsible lending obligations require providers to make reasonable inquiries about the consumer's financial situation, requirements and objectives. The obligations prohibit providers from offering a credit contract to a consumer if the credit contract is unsuitable. A loan is not suitable if it fails to meet the consumer's requirements and objectives or the consumer does not have the capacity to repay the loan without experiencing substantial hardship.[18]

There are also specific SACC obligations that supplement the responsible lending obligations including:

- a requirement to obtain and consider a consumer's bank account statements;
- a rebuttable presumption that a loan is unsuitable where the consumer is in default under another SACC or has held two or more other SACCs in the past 90 days; and
- specific protection for consumers who receive 50 per cent or more of their income from Centrelink.

Preliminary Assessment

Observation 2

The responsible lending obligations do not appear sufficient to prevent financial harm to consumers who use SACCs. Additional consumer protection specific to SACCs seems to be required. ASIC enforcement of the responsible lending practices of SACC providers should be a priority.

Several stakeholders suggested that there was no need to address repeat borrowing as financial harm to consumers could be prevented by relying on the responsible lending obligations.[19]

However, the evidence appears to suggest that reliance on responsible lending obligations alone is not sufficient:

- ASIC's Report 426[20] found that rates of compliance with the responsible lending obligations are low;[21] and
- some stakeholders noted that it can be difficult to understand and comply with the responsible lending obligations as they are abstract and highly principle-based. The

18 Regulatory Guide 209: Responsible lending conduct, available at: download.asic.gov.au/media/2243019/rg209-published-5-november-2014.pdf.

19 NCPA's submission p.18.

20 ASIC's Report 426 'Payday lenders and the new small amount lending provisions' (ASIC Report 426).

21 See p.38 of CALC's submissions where it noted 'ASIC's payday lending report provides evidence that a large number of payday lenders are not currently meeting the requirements to make a suitability assessment. This finding accords with our casework experience'.

Credit and Investment Ombudsman (CIO) noted, in relation, to one responsible lending obligation:

> *[i]t is the observation of CIO that the lending staff of SACC lenders appear to have difficulty with the concept…[T]he training material and operational guidance manuals of some SACC lenders that CIO has seen during its investigations do not appear to either address this issue adequately or do so in inappropriate ways.*[22]

Academics have also noted that the reliance on responsible lending obligations is not in itself sufficient.[23]

ASIC has observed inconsistent compliance with the responsible lending obligations in many market sectors including interest-only home loans provided by authorised deposit-taking institutions.[24] However, compliance with the responsible lending obligations in the SACC industry appears to be particularly inconsistent. Complaints about responsible lending and unjustness make up 18.4 per cent of all complaints about SACC lenders received by the CIO. This is more than three times the number of responsible lending complaints received about providers in other sectors.[25]

In its submission, ASIC provided evidence that rates of compliance with principle-based obligations, such as the responsible lending obligations, tend to be lower. ASIC argued for bright line tests to be used wherever possible:

> *[O]ur view is that a 'bright-line test' or objective rule would be a better way of preventing debt spirals… [O]ur experience to date has been that there have been fewer compliance issues in this area with objective, 'bright line' requirements.*[26]

The specific obligations for SACCs were introduced because there was a recognition that the responsible lending obligations were not in themselves sufficient to protect consumers in this market. In many cases, the responsible lending obligations were complemented with bright line requirements. For example, the responsible lending requirement to obtain information about a consumer's financial situation was supplemented by an explicit requirement to obtain and consider 90 days of bank statements. While evidence appears to suggest that SACC providers collect 90 days of bank statements, it is less clear that they are being fully considered when assessing a borrower's capacity to repay the SACC.[27]

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22 CIO's submission, p.5.

23 E.g., E. Meade noted, 'it is naïve to assume that the adoption of a single strategy such as responsible lending could solve what is an age-old problem of borrower abuse by lenders' (Responsible lending: Irresponsible lending of consumer credit in New Zealand?, available at: www.otago.ac.nz/law/research/journals/otago043940.pdf, p.58.)

24 ASIC Report 445: Review of interest-only home loans (August 2015).

25 CIO's submission, p.5.

26 ASIC's submission, p.20.

27 ASIC report 426, p.8.

CHAPTER 3 — SACC PROVISIONS

INTRODUCTION

The overall objectives of the SACC provisions of the Credit Act are to:

- assist consumers to have a greater degree of social and financial inclusion; and
- mitigate the particular risks associated with short term credit (and to do so in a way that minimises the risk of avoidance).

In relation to the risks that the SACC provisions seek to mitigate, the 2011 Regulation Impact Statement noted that consumers can be charged costs that, given their financial position, create a risk of:

- a debt spiral where an increasing percentage of the consumer's income is used to meet repayments under a contract; and
- an ongoing cycle of disadvantage that reduces the potential for financial and social inclusion. [28]

The SACC provisions include two key requirements that were intended to mitigate these risks, namely, the cap on costs and the rebuttable presumption that a SACC is unsuitable where the consumer has had two or more SACCs in the past 90 days.

REPEAT BORROWING

Preliminary Assessment

Observation 3

High levels of repeat borrowing appear to be causing consumers financial harm. The structure of the SACC cap and industry costs appears to promote repeat borrowing and the rebuttable presumptions do not appear to have limited repeat borrowing.

How prevalent is repeat borrowing?

The high levels of repeat borrowing present in Australia may suggest that the rebuttable presumptions have largely failed to achieve their objective.

Based on the evidence provided during the consultation process, it appears the repeat use of SACCs with terms of up to 90 days is common practice in Australia. Evidence from submissions includes:

- Research by Digital Finance Analytics (DFA) that indicates that the average number of SACCs taken out by borrowers during the 12 month period to 20 July 2015 was 3.64, an increase from 2.50 in 2010. DFA also found that 30 per cent of households, with customers who had a SACC, had more than one SACC concurrently.[29]

28 The Regulation of Short Term Small Amount Finance, Regulation Impact Statement, June 2011.
29 CALC's submission, p.15.

- One large provider provided evidence that 64 per cent of applications they received were from borrowers who had at least one other SACC in the previous 90 days and 85 per cent of those SACCs were for terms of less than 90 days. Five per cent of the applications were from borrowers who had 10 or more SACCs in the past 90 days.[30]
- The NCPA's CoreData survey found that around 80 per cent of lenders answered yes to the following question, 'In each quarter, did you provide SACC loans to customers who have had two or more SACCs in the previous 90 days?' The NCPA submission also notes that in around 7 per cent of cases, an individual was advanced credit when they already had an active SACC (that is, they had concurrent SACCs).[31]
- ASIC found that 54 per cent of SACCs reviewed triggered the multiple loan presumption. Of the 13 lenders selected for ASIC's survey, only one maintained files that contained evidence on how the presumptions had been rebutted.[32]

The proportion of consumers with multiple SACCs has increased in recent years. DFA's research showed that 12.6 per cent of consumers had more than one SACC in 2010 but by 2015 this figure had increased to 29.4 per cent of consumers.[33]

Repeat use of SACCs appears common in other countries. A report by the United Kingdom (UK) Competition and Markets Authority found that around three-quarters of consumers take out more than one loan in a year and that on average a consumer takes out around six loans per year.[34] The UK report found that repeat borrowing typically accounts for a large proportion of lenders' business — 80 per cent of all high-cost short-term credit contracts in 2012 were made to consumers who had previously borrowed from the same lender.

In the United States (US), a study by the Federal Reserve Bank of Kansas City noted that:

> *Although payday loans are marketed as short-term credit vehicles to help bridge the gap between now and the next payday, a substantial portion of borrowers remain in payday debt across several pay periods.*[35]

The US study found that a lender's profitability was dependent on repeat borrowing.

Why do lenders engage in repeat borrowing?

Repeat borrowing appears to enhance the economic returns for SACC providers and some business models appear to reflect this.

Discussions with stakeholders suggest that:

- The average acquisition cost for a successful customer is around $200 with about two-thirds of this cost relating to advertising. The acquisition cost also reflects:
  - other administration costs including verifying a customer's identity and complying with the legislative requirements; and

30 Credit Corp's submission, p.49.
31 NCPA's submission, p.15.
32 ASIC Report 426, p.11-13.
33 DFA quoted in Good Shepherd Microfinance's submission, p.11.
34 2015, 'Payday lending Market Investigation Final Report', Competition and Markets Authority p.5.
35 See, Robert DeYoung and Ronnie K. Phillips, 'Payday loan pricing' Federal Reserve Bank of Kansas City, p.7.

  - the relatively high rejection rates of applicants, with extensive advertising encouraging individuals for whom a SACC is unsuitable to apply for credit.

- The cost of providing a returning customer with a subsequent SACC is significantly lower than the cost of providing a SACC to a new customer, given that customer has already been acquired.

Currently, the 20 per cent cap on establishment fees applies to all SACCs irrespective of whether the SACC is for a new or a returning customer. That is, the current cap does not recognise the difference in the upfront cost of providing a new loan compared to a subsequent loan. Evidence suggests that:

- The maximum establishment fee appears not to cover the cost of acquiring a new customer for the majority of SACCs. As a result, the first SACC issued to a customer is not profitable for some providers and they need consumers to borrow SACCs repeatedly to recoup the acquisition cost and generate positive returns.

- Profit margins on the second, third and fourth SACC appear significantly higher than the profit margin on the first SACC. This would make repeat borrowing attractive to all lenders even if they are able to make a profit on the first SACC.

Repeat borrowing may be attractive to lenders because, in comparison to a larger loan over a longer time period, the lender's capital is at risk for a shorter period of time when a customer borrows small amounts repeatedly. Thus, five $200 loans with a term of one month are likely to be less risky than a five-month $1,000 loan. Having less capital at risk also means that lenders may be less prudent when providing credit.

Many SACC providers appear to take the view that repeat customers are less of a credit risk than new customers. For example, Speedy Money's website states:

> *It is not uncommon for payday loan customers to be repeat customers. Lenders become more comfortable providing payday loans to repeat customers who have established a record of repayment.*[36]

What is the harm of repeat borrowing?

SACCs can be useful for consumers when they are used as an emergency source of funding for one-off expenses. While the cost of SACCs are high relative to alternate sources of finance, in an emergency situation, such as a car break down, the benefits of having access to credit can outweigh the relatively high cost of SACCs provided the consumer can afford the SACC. The NCPA provided the following explanation for when consumers should use a SACC on its website.

> *They [SACCs] are designed to help meet unexpected expenses and are a convenient and economical way to manage a temporary cash flow problem such as an unexpected car repair bill, car registration, school fees, utility bill, etc. It is important to remember that these loans are only for short term emergencies and are not suited for long-term or continuing financial needs.*[37]

However, repeat borrowing can put some consumers on a path to financial exclusion. When a consumer takes out more than one SACC, the repayments consume a greater portion of the

36 Speedy Money, 'Repeat payday loan customers', available at: www.speedymoney.com.au/Payday-Loan.

37 NPCA's website, www.ncpa.net.au/consumer-info/.

consumer's income and can become increasingly unaffordable. With a large portion of income being used to cover repayments, more credit may be needed to cover living expenses inhibiting the consumer's capacity to improve their financial situation over time.

Several submissions recognised that the repeat use of SACCs can lead to unmanageable debt and debt spirals.[38] This view is also supported by academic literature.[39]

During consultation, one stakeholder provided evidence which demonstrated that 97 per cent of consumers with only one SACC spend less than 20 per cent of their income on repayments. However, once a consumer has three or more SACCs within 90 days, they are more likely to be spending more than 20 per cent of their income on repayments. For example, 34 per cent of consumers with four SACCs and 48 per cent of consumers with five SACCs were spending more than 20 per cent of their income in repayments.[40]

The rebuttable presumptions that a SACC is unsuitable where the consumer has had two or more SACCs in the past 90 days or is in default under another SACC, were designed to limit repeat borrowing while allowing consumers access to short term credit where they were able to afford it and it was not unsuitable.

However, repeat borrowing appears to remain prevalent and the presumptions seem to be failing to counteract the strong incentives for consumers to seek, and SACC providers to offer, repeat loans.

Taking further action to reduce repeat borrowing may create regulatory incentives to align lending practices with affordable loans to the most vulnerable. Lenders would likely respond by extending the maturity of the loans, with evidence presented during consultations suggesting that longer term credit is more affordable relative to repeat use of shorter term loans.[41]

Policy options for consultation

Option 1

Reduce the establishment fee for subsequent loans for a returning customer from 20 per cent to 10 per cent.

The cap on establishment fees does not appear to align with the actual expenses incurred by lenders. Several stakeholders noted that there is a lack of competition on price in the industry, with most SACC providers charging the maximum amount of establishment fees for subsequent loans even though the fee does not reflect the actual costs.[42]

This is of concern for two reasons. First, it creates a strong incentive for SACC providers to encourage repeat borrowing because subsequent loans are more profitable than the first loan.

Second, the rationale for granting SACC providers a concession from the 48 per cent cap breaks down for subsequent loans. At the time the caps were introduced, the concessionary treatment for SACCs was justified on the grounds that SACC providers had high upfront

38 See, e.g., CALC's submission, p.15.
39 For example, Ali et. al., 'The politics of payday lending regulation in Australia', Monash University Law Review, 2013, p.15.
40 Credit Corp's submission, pp.16 and 51.
41 See Credit Corp's submission, p.4.
42 CALC's submission, p.7 and Credit Corp's submission, para 6.2.

administrative costs. However, this argument does not hold for subsequent loans as the upfront administrative costs are significantly lower.

Lowering the permitted establishment fee for subsequent loans could resolve the misalignment between the maximum establishment fees and the actual costs incurred.

The advantages of this policy option are that it ensures that the establishment fees more closely align with the actual costs incurred, and it reduces the incentive for a SACC provider to encourage consumers to take out another SACC.

Given the harm associated with loan repayments absorbing a high portion of a SACC borrower's income, the Panel considers that increasing the establishment fee on initial loans from 20 per cent is likely to cause significant consumer detriment and is not a viable option.

Option 1 is not in itself sufficient to deter repeat borrowing because SACC providers would still have an incentive to offer repeat loans to returning consumers. Accordingly, it is proposed to combine option 1 with another policy option, either option 2 or option 3.

Option 2

Replace the rebuttable presumption that a SACC is unsuitable if a consumer has had two or more SACCs in 90 days, with a bright line test banning the provision of SACCs to consumers who have had two or more SACCs in the past 90 days.

The evidence presented during consultation appears to indicate that:[43]

- it is very common for the repeat borrowing rebuttable presumption to be triggered;
- the repeat borrowing rebuttable presumption is generally rebutted with limited evidence as to why the presumption has been rebutted;
- the regulatory costs of properly considering whether to rebut the presumption are high; and
- SACCs provided to consumers who trigger the rebuttable presumption tend to become unaffordable.[44]

Replacing the rebuttable presumption with a bright line test would significantly reduce the incidence of repeat borrowing and would be easier for industry to comply with. However, in some instances, it may result in consumers taking out larger loans.

Option 3

Extend the protected earnings amount for Centrelink recipients, where total SACC repayments cannot exceed 20 per cent of gross income, to all consumers and lower the protected earnings amount to no more than 10 per cent of net income.

Repeat borrowing appears to lead to a situation where SACC repayments consume an increasingly larger portion of a borrower's income over time.

Capping SACC repayments as a proportion of income would limit the possibility of a debt spiral occurring. Capping SACC repayments as a proportion of income would also have a

43 See above discussion of observation 1.

44 See Credit Corp's submission, p.51 for statistics.

greater impact on the more vulnerable as the cap is less likely to be binding on persons with higher incomes.

SACC repayments that consume more than 10 per cent of income have the potential to be unaffordable for low income earners and exacerbate financial exclusion.

The cap should apply to a consumer's net income (that is, income after tax), rather than their gross income, as this is the amount of income that a consumer actually receives to spend each period. The current protected earnings amount is based on a consumer's gross income, however, given that a person who receives 50 per cent or more of their income from Centrelink pay very little or no income tax, the concept of net income or gross income has been less relevant up until now.

It is also simpler for lenders to determine a consumer's net income as this is what appears in their bank statements.

To be effective, the cap would need to apply to all SACC repayments at a given point in time. For example, if the cap was set at 10 per cent of income and a person had a SACC which consumed 6 per cent of their income, they would only be able to access another SACC with repayments equal to 4 per cent of income.

If a similar income cap was introduced on consumer lease repayments to promote financial inclusion, the cap would likely need to cover both SACC and lease repayments.

Further information on the following is requested:

- *Is policy option 2 or policy option 3 more effective at improving consumer outcomes? Please consider the cost and benefit of both options including the effect on competition, fairness, innovation, efficiency, access to finance, regulatory compliance costs and consumer protection.*
- *In relation to policy option 3, what percentage cap on repayments, relative to income amount, would be most appropriate to promote financial inclusion?*
- *Does the cap on repayments need to be broader than just SACC repayments? For example, should lease repayments and other fixed obligations also be included?*
- *In relation to policy option 3, would a higher percentage of income, applied to the consumer's net income, subtracting lease repayments and other SACC or lease payments, be more appropriate? Are providers able to ascertain these figures?*

DEFAULT FEES

The Credit Act allows SACC providers to impose fees or charges payable in the event of default. Default fees can be charged in addition to the establishment fee and monthly fee. However, the maximum amount recoverable by the SACC provider in relation to a default is limited to twice the adjusted credit amount (the amount the consumer receives in the hand) of the contract. This maximum amount recoverable is inclusive of all repayments made and other fees charged.[45]

45 National Credit Code, subsection 39B(1).

The Credit Act does not regulate:

- the rate at which fees can be charged;
- the types of fees which can be charged; or
- how a SACC provider recovers the funds.

The Credit Act does not define the word 'default' but generally SACC providers appear to interpret a consumer as being in default if a single payment is late (even by a day).

Preliminary Assessment

Observation 4

The limit on the amount that a SACC provider can recover in the event of default is an important safeguard for consumers. However, in some circumstances, the fees charged on default appear to be charged in a manner that significantly disadvantages vulnerable consumers.

The The cap on default fees is an important safeguard to protect consumers. High default fees can contribute to debt spirals and repeat borrowing. This is because the amount the consumer has to repay is higher, reducing the consumer's surplus and increasing the need for a subsequent loan to meet the consequent shortfall in income.

Some submissions expressed concern at the way default fees are charged within the default cap. Submissions noted that some SACC providers, in charging default fees:

- seek to maximise their return;
- charge fees at levels that do not appear to reflect the actual costs incurred by the SACC provider; and/or
- unnecessarily increase the cost to the consumer given that the consumer may ultimately repay the loan.

While submissions generally noted that there are a relatively low number of borrowers formally in default, evidence also appears to suggest that a large number of consumers are entering into arrears but repaying the loan before formally entering default.[46] This could be a reflection of consumers' anxiety that a formal SACC default would mean they could no longer access conventional credit of any kind.

Defaults fees charged by SACC providers appear to range in amount and type (noting that not all SACC providers charge each fee):

- dishonour, missed/late payment fees from $10-$59;
- default notices or letters from $10 each;
- periodic default/arrears fees, for example, $5 a day while in default or $30 a week; and
- collection fees from $47 — $50.

46 Financial Rights Legal Centre Submission, Appendix 2, Digital Finance Analytics Analysis page 20.

Several consumer groups raised concerns about the impact of default fees. These included:

- The Consumer Action Law Centre:

  A number of lenders charge significant and, sometimes, multiple fees for default. There may also be charges associated with enforcement. These fees appear to outweigh the actual costs incurred by the lender.

  Given inconsistent practices in this area, and the lack of competition in the sector generally, there is a case for regulating these fees further.

- Care Inc (this submission included a case study on default fees):

  … we consider the current regime does not provide adequate protection to consumers in respect of default fees and from our casework we have observed numerous clients being charged large amounts of default fees per month on small amount credit contracts.

- The Consumer Credit Legal Service (WA) Inc:

  Another concern is that when default charges are combined with monthly rate charges, consumers are often still required to pay large fees, making it extremely difficult for consumers to repay their loan in the required time period. This in turn causes many consumers to roll over their loan into another loan, initiating a financially damaging debt spiral.

Policy options for consultation

Option 4

Introduce a default window, where no default fees can be charged until the consumer has missed a payment by one payment cycle.

During consultation, stakeholders noted that some SACC providers began charging default fees when a consumer misses a payment by one day. This means that some consumers, who may intend to pay but are inadvertently late, are required to pay default fees. Charging default fees from the day after payment is due allows SACC providers to quickly reach the maximum default fees.

Option 4 would address this problem by allowing a window during which a consumer could remedy the default without incurring charges other than the permitted 4 per cent monthly fee. For example, if the contract required the consumer to make fortnightly repayments and the consumer missed a payment that was due on 14 November, the SACC provider would not be permitted to charge a default fee until 28 November.

Option 4 also acknowledges that the SACC provider's losses and costs resulting from a consumer's default are likely to increase the longer the default continues.

However, implementing option 4 would mean that any steps taken by the SACC provider to remedy the default during the no default fee window would not be recoverable.

Option 4 may be more effective if it is combined with a periodic cap which caps the amount that can charged in a given period of time. If there is no periodic cap, SACC providers would be able to avoid the effect of option 4 by increasing the default fees charged after the first payment cycle.

Option 5

Maintain the current maximum amount recoverable for default of a SACC but introduce a supplementary cap to limit how quickly fees can be charged (for example, $10 per week).

Option 5 limits the rate at which default fees can be charged. It does not specify the action SACC providers can take. Option 5 may encourage SACC providers to take steps which are more effective in having a default remedied. The intent of the supplementary cap would be to set it at a level that is equal to the reasonable costs of recovery.

The periodic cap would be set at a level which enables SACC providers to recover reasonable costs. Automated technology has significantly reduced the cost of identifying which consumers are in default and of taking remedial action (for example, by automatically sending a text).

Option 6

Cap default fees as a percentage of the amount outstanding on the SACC.

Option 6 takes into account that the loss to the SACC provider on default is linked with the amount outstanding and that the consumer should be able to have some benefit afforded to them based on the repayments they have made.

Many of the costs incurred by lenders as a result of default appear to be fixed in nature (for example, the costs associated with contacting the consumer). Depending on the amount of credit outstanding, linking the default cap to the amount of credit outstanding could result in situations where the default cap is well below or above these fixed costs.

Further information on the following is requested:

- *What costs do lenders incur when a consumer defaults?*
- *In relation to option 4, what are the typical payment cycles and what is the most appropriate default fee window?*
- *What is the appropriate level of the default caps under option 5 and 6? If you are a SACC provider, please also provide evidence of the actual costs that you incur as a result of a consumer's default.*

ANOMALIES ARISING FROM THE SMALL AMOUNT CREDIT CONTRACTS CAP

Under the Credit Act, SACC providers are subject to a cap on fees where they can charge a 20 per cent upfront fee and a 4 per cent per month ongoing fee. Submissions identified that SACC providers appear to be engaging in two practices that are financially disadvantageous to consumers:[47]

- the use of two-tier repayment amounts over the term of the contract (often referred to as fee-splitting), with the debt largely repaid in the early months of the contract, and nominal payments in the later months (to maximise both fee revenue and the rate at which capital is repaid); and

47 See, e.g., Min-It Software's submission, p.23.

- charging monthly fees in a way that allows the lender to earn all the fees outstanding even if the SACC is repaid early.

Preliminary Assessment

Observation 5

Some SACC providers do not appear to be giving consumers any benefit or discount when they make early repayments or pay back the loan in full before the due date. These practices may result from the SACC cap being based on a fee, rather than an interest rate.

Under the SACC concession the monthly fee revenue replaces the interest payable under a credit contract. A monthly fee allows lenders a higher return than an interest rate cap because the monthly fee is not based on the diminishing balance of the loan as is the case for interest.

The effect of the monthly cap is that SACC providers do not have to give the consumer a discount for early payment. This appears inconsistent with the policy intent of the monthly cap on fees and it would not be the case if there was an interest rate cap.[48]

Further, the two-tier repayment model is inconsistent with the policy of promoting long-term contracts with lower repayments. Under the two-tier repayment model, longer term contracts still have an initial period of relatively high repayments. This forces consumers to commit a higher percentage of their income to repayments in the initial period and increases the risk of repeat borrowing.

Policy options for consultation

Option 7

Provide SACC consumers with a benefit for early repayment by specifying the reduction in payment that would arise from early repayment of a SACC (whether in full or in part).

Option 7 ensures that consumers receive a benefit from early repayment by specifying a formula or principle for determining the amount owed by consumers who make higher repayments in the early period of the contract or pay the SACC out early.

Examples of the approach that could be taken are:

- apply a discount to the monthly fees that could be charged according to the amount that was repaid, such as providing that the amount of the monthly fee reduces once 50 per cent or 75 per cent of the amount borrowed has been repaid;
- base the 4 per cent monthly fee on a declining balance; and
- in relation to situations where the consumer pays out a loan early — provide that fees can only be charged on a monthly basis, so that the consumer is not liable to pay the 4 per cent fee in respect of any outstanding months after they have repaid the outstanding balance.

Any such formula would need to balance the outcomes for the consumer and the lender and should be simple to apply. It would also need to assess the impact on loan term (for example,

48 Section 28 of the National Credit Code states that interest is paid on a diminishing balance.

a reduction in the amount of the fees that could be charged once 50 per cent of the amount borrowed has been repaid is likely to encourage shorter-term loans).

Option 8

Require SACCs to have equal repayments over the life of the loan, while still allowing consumers the ability to pay off a SACC early.

This option would prevent the situation where a SACC is largely repaid in the early months of the contract, with nominal payments in the later months (to maximise both fee revenue and the rate at which capital is repaid).

Further information on the following is requested:

- *Should lenders under a SACC be required to provide consumers with a benefit for early repayments of the balance and, if so, how should any such requirement operate? Should the same requirement apply to both the fee-splitting model and where the loan is repaid in full early?*
- *Are there circumstances in which SACC providers require consumers to make repayments for different amounts? If so, in what circumstances is this done and what is the difference in the size of repayments?*
- *To what extent do SACC providers charge fees in respect of outstanding months when a consumer repays a SACC early?*

CHAPTER 4 — CONSUMER LEASES

INTRODUCTION

The Australian consumer leasing industry provides consumers with access to a range of household and electronic goods. Consumer leases allow consumers to lease an item (for example, a fridge), with ownership resting with the provider of the lease, until the term of the lease finishes or the item is returned to the lessor.

The terms of reference require the review to consider whether any of the provisions in the Credit Act that apply to SACCs should be extended to regulated consumer leases. As outlined in the media release announcing the establishment of the review, while the consumer base for SACCs and regulated consumer leases are similar, many of the regulatory requirements for SACCs do not apply to consumer leases.[49]

Definition of a consumer lease in the Credit Act

The majority of consumer leases (leases primarily for personal purposes, as opposed to business leases) are regulated under the national credit regime.

The Credit Act uses a definition of 'consumer lease' that is based on the form of the contract (whether or not the consumer has a right or obligation to purchase the good) rather than the substance of the contract.

In summary, a consumer lease is only regulated by Part 11 of the National Credit Code if:

- the consumer does not have a right or obligation to purchase the good;
- the amount payable under the lease exceeds the cash price of the leased good;
- the lease term is for a defined period and is for a term longer than four months; or
- the lease is not an employment related lease (such as a novated lease or a lease paid via a salary sacrifice arrangement).

Consistent with other credit providers, providers of regulated leases must meet the requirements in the Credit Act including licensing, responsible lending and external dispute resolution scheme membership.

Other legislative requirements also apply including regulation of the form of the lease, the information that must be disclosed in the lease and an obligation on the lessor to provide a periodic statement of account or to arrange for statements to be provided at the request of the lessee.

However, consumer leases are not subject to the maximum caps that apply to credit contracts. As discussed previously, general credit contracts are subject to a 48 per cent cap (including fees and charges), although more generous caps apply to certain classes of products, such as SACCs, in recognition of their short term nature.

49 See Media Release, 'Review of the Small Amount Credit Contract Laws', the Hon Josh Frydenberg MP, 7 August 2015.

Consumer lease industry since the introduction of the Enhancements Act

It is estimated that the consumer lease industry will have revenues of $593 million in 2015-16, generating profits of $113 million. With 485 businesses offering home appliance rental services, industry concentration is medium; Thorn Group Limited (23.6 per cent) and Mr Rental (11.5 per cent) have the largest share of this market.[50]

Based on the latest ABS data, IBISWorld estimates that consumers aged under 24 years will account for 20.5 per cent of industry revenue in 2015-16, with consumers aged 35-44 years accounting for 20.9 per cent.[51]

The industry rents out a range of home appliances to consumers including kitchen, laundry, electrical, home entertainment (including gaming consoles) and other appliances. The industry also appears to generate revenue from the sale of home appliances at the end of the rental agreement periods.[52]

There seems to be three distinct business models in the lease market:

- lessors with shopfronts (including national and single-store operators) who incur costs from having a range of goods available for immediate lease;
- lessors who provide leases through a third party retailer and where the lease competes with other finance options (for example, interest free credit cards); and
- lessors who have no shopfront who purchase goods from a retailer and market their products through catalogues, websites and by word of mouth.

The 2011 Regulation Impact Statement, 'The Regulation of Short Term, Small Amount Finance', found that some retail outlets offer both leases and credit contracts and, therefore, cater to consumers who can access mainstream products. As such, lessors who provide leases through a third party retailer tend to be under more competitive pressure because their consumers have a broader range of finance options available (including paying for the goods outright).

Many consumer lease contracts appear to be designed in a way that effectively gives the consumer a right or obligation to own the good, or equivalent good, at the end of the lease without meeting the legal definition of a credit contract. This structure seeks to give the consumer the benefit of owning the good at the end of the lease, without meeting the definition of a credit contract, which would result in the lease being bound by the 48 per cent cap.

Consumer lease customer characteristics

It is recognised that the customers using leases can be varied. However, the consumers of concern are those that are on low incomes.

There is a high level of use of leases of low-value household goods by consumers who are in receipt of income from government benefits. The *Report of the independent review of Centrepay* found that, as at March 2013, Centrelink recipients had approximately 118,700 consumer

50 IBISWorld Industry Report OD5467: Home Appliance Rental in Australia (August 2015), p.3.
51 IBISWorld Industry Report OD5467: Home Appliance Rental in Australia (August 2015), p.5.
52 IBISWorld Industry Report OD5467: Home Appliance Rental in Australia (August 2015), p.11.

leases for household goods, with an average fortnightly lease repayment of just under $76.[53] The total payments under these leases in 2013 were expected to exceed $200 million.

It appears that a subset of the customer base for consumer leases is similar to that of SACCs, with substantial levels of use by low-income consumers.

CAP ON CONSUMER LEASES

Observation 6

The high cost of consumer leases appears to be causing consumers financial harm. While there are technical differences between credit contracts and consumer leases, these differences do not appear to justify consumer leases being excluded from the consumer protection regulations that apply to other forms of finance under the Credit Act.

The majority of comments provided during the consultation process can be summarised into two perspectives.

- Perspective 1 — Consumer leases are causing similar financial harm to SACCs and, therefore, the relevant consumer protection that applies to SACCs should be extended to leases.
- Perspective 2 — Consumer leases are functionally different to credit contracts, including SACCs, and should not be regulated in the same way.

It is noted that these perspectives are not necessarily inconsistent. Even if consumer leases are functionally different to credit contracts, this does not automatically lead to a conclusion that consumers should not be provided with similar protection under both leases and credit contracts.

The operation of consumer leases is tested not only against their similarities or differences with SACCs or other credit contracts, but also against the nature of the customer base, the harm arising from leases, and the risks arising from the structure and operation of consumer leases.

Perspective 1 — Consumer leases are causing financial harm

High cost of leases

Evidence suggests that the costs of a consumer lease are high and consumers often pay several times the price of the good. Consumer groups provided several case studies of consumers paying four or five times the price of the goods, for example, one consumer paid $3,552 in lease repayments for a television set which retailed for $599, while another consumer paid $2,950 in lease repayments for a standard mobile phone.[54]

Several submissions[55] noted that, on a fortnightly basis, consumer leases may be a relatively affordable option but that over the term of the lease, leases tend to be the most expensive way for a consumer to acquire the good. As most consumers only consider the fortnightly

53 Report to the Secretary of the Department of Human Services, Australian Government, June 2013, available at www.humanservices.gov.au/corporate/publications-and-resources/centrepay-review/.

54 Uniting Communities' submission, p.9 and Good Shepherd Microfinance's submission, p.19.

55 See RMIT's submission, p.4.

repayments, consumer lease providers have little incentive to reduce the total cost of the lease payments.

ASIC's 2015 report found that lessors were charging amounts equivalent to interest rates ranging from 292 per cent to 884 per cent.[56] It is noted that a number of submissions criticised the ASIC report as being unrepresentative of the industry, and that the reported findings only addressed the costs charged by two lessors in remote Australia.

It is accepted that some larger lessors set lease repayments at lower levels. For example, a large provider's average pricing across its entire portfolio (which consists of a significant percentage of leases with terms of more than one year) equates to a multiple of 2.6 times the manufacturer's recommended retail price.[57] This is consistent with the ASIC report, which also found that leases for a broad range of household goods were readily available with lease repayment of less than $24 a fortnight.[58]

Given that low-cost leases are available, there is a question as to whether the range in prices in the ASIC Report may be due to a lack of competition on cost. This may be a result of the high level of use of consumer leases by Centrelink recipients who may be unable to access other sources of finance or may self-exclude (and assume they would not be able to obtain cheaper finance when this is not in fact the case).

The inference that consumers are being charged more because of a lack of bargaining power is supported by findings in the ASIC Report that Centrelink recipients are charged more than other consumers. For example, consumers on a two-year lease were charged between $60 and $80 per fortnight for a $500 television set (total cost of between $3,120 and $4,160). At the time, the television set was advertised as being available for $13.95 per week for a 36 month term (total cost of $2,176.20).[59] The outcome, in respect of these two lessors, was that Centrelink recipients were charged significantly higher costs, particularly when taking into account the differing terms (it would be expected that a 36 month lease would have a higher overall cost than a 24 month lease).

The extent to which high prices and price discrimination is occurring is unknown. However, where this conduct does occur the financial impact on low-income consumers affected will be significant. For example, in the examples referred to above Centrelink recipients were paying nearly $1,000 to $2,000 more than the advertised price. It is of concern that Centrelink recipients, who are generally the least able to afford high cost leases, are being charged more than other consumers.

It may also be the case that some lessors have increased their charges since 2011, which would also be consistent with pricing that is unconstrained by competition. The examples provided in the 2011 Regulation Impact Statement referred to high-cost leases as having effective interest rates of 190 per cent, much lower than the rates cited in the ASIC report.[60] By way of comparison, during this same period (September 2011 to September 2015), major household appliances and furniture prices fell by around 4 and 2 per cent respectively.[61]

In summary, evidence suggests that some lessors are charging lease repayments that are very high and that low-income consumers are paying more in some instances. These findings tend

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56 ASIC's Report 447, Table 7.
57 Thorn's submission, p.19.
58 ASIC's Report 447, Table 3.
59 ASIC Report 447, para. 61.
60 Regulation Impact Statement: Phase two of the National Consumer Credit Reforms Consumer Leases and Enhancements to the National Credit Code June 2011.
61 ABS Cat.no. 6401.0, Table 7, Australia.

to suggest that the lease market is characterised by limited competition on prices, and that consumer behaviour and purchasing decisions are insufficient to impose cost discipline on all lessors.

Evidence also suggests that some lessors may engage in price discrimination where the cost for the same good varies between customers. For example, on a two-year lease, consumers were charged between $60 and $80 per fortnight for a $500 television set (total cost of between $3,120 and $4,160). At the same time, the television set was advertised as being available for $13.95 per week for a 36 month term (total cost of $2,176.20).

Lease payments consume a high proportion of income

For Centrelink recipients and low-income consumers, the higher the percentage of income a consumer spends on meeting lease repayments the greater the risk they will have difficulty meeting their other living expenses, default on other commitments or find it harder to save. It follows that leases may foster financial exclusion where the lease repayments absorb a significant percentage of income.

The impact of lease repayments on users of consumer leases can be assessed by comparing:

The impact of lease repayments on users of consumer leases can be assessed by comparing:

- the income for a single person under two common Centrelink payments; the Centrelink payment for a Disability Support Pension (DSP) of $867 per fortnight (the highest Centrelink payment), and the Newstart Allowance of $523 per fortnight);
- with two levels of lease repayments:
  - the lease repayments under a lease where the consumer pays three times the cash price of the good over one year (noting that the ASIC report identified leases with higher costs relative to the value of the goods); and
  - the lease repayments under a lease using the average multiple of 2.6[62] (and assuming a three-year term).

62 Thorn's submission, p.19.

Table 1: Comparison of different lease repayments on Centrelink income

	Scenario 1	Scenario 2
Value of goods	$500	$500
Multiple used to determine total payments	3 x value of goods over 1 year	2.6 x value of goods over 3 years
Total payments	$1,500	$1,300
Lease repayments	**$57.69/fortnight (1 year)**	**$16.66/fortnight (3 years)**
Disability Support Pension — fortnightly payment	$867	$867
Payments as % of fortnightly DSP income	**6.6%**	**1.9%**
Newstart — fortnightly payment	$523	$523
Payments as % of fortnightly Newstart income	**11.0%**	**3.1%**

The findings from this analysis are that:

- Under scenario 1, a lease of household goods can absorb between 6.6 per cent and 11 per cent of a consumer's income, depending on their benefit level. For someone on a Centrelink pension, a lease can be an expensive way of obtaining goods both relative to the cost of those goods and to their income.
- The average deduction of $80 per fortnight will be 9.2 per cent of a Disability Support Pension payment, and 15.2 per cent of a Newstart payment. Noting that this is an average figure, higher deductions will have an even greater impact on the consumer's income. For example, a deduction of $100 per fortnight would absorb 19.1 per cent of a Newstart payment.

In summary, where the consumer has little disposable income even a small difference in the amount of lease repayments can be significant, while the effect of excessively high costs can be severe.

Consumer groups provided numerous case studies of consumers spending a high proportion of their income on repayments. These cases are indicative of the harm that may result from consumer leases.

- one individual spent one-third of her income on consumer leases;[63] and
- a pensioner who entered into consumer leases for four basic household goods made repayments of $16,000. This was more than the pensioner had been able to save during his lifetime.[64]

An example of the problems that can arise when a large portion of a consumer's income is devoted to lease repayments was provided in the Financial Rights Legal Centre's submission, which referred to a consumer who had multiple lease contracts and had subsequently incurred rent arrears and was facing an eviction hearing.[65] While it could be

63 See Legal Aid NSW's submission, p.34.
64 Good Shepherd Microfinance's submission, p.19.
65 Financial Rights Legal Centre Submission p.74.

expected that a consumer in this situation would prioritise payments for accommodation over all other liabilities, this was not the case, and may reflect the financial vulnerabilities of some users of leases.

The first 2011 Regulatory Impact Statement found that the harm caused by high charges to low-income consumers is not restricted to difficulties in meeting other expenses:

> *In conclusion, the risk of financial harm from being charged excessive costs cannot be considered in isolation. It is likely to have a dynamic relationship with other components of disadvantage (such as poor health or housing), such that there can be a propensity for one type of disadvantage to cause or exacerbate the other.*[66]

In summary, the absence of any cap on the maximum amount that can be charged for consumer leases appears to be having a significant impact on low-income consumers and exacerbating their financial exclusion (including where they maintain payments under a consumer lease but with consequent difficulties in meeting other commitments).

Perspective 2 — SACCs and consumer leases are functionally different

The second perspective presented in the submissions is that SACCs and leases are functionally different and, therefore, the case is not made out for extending the consumer protection under a SACC to consumer leases.

Some consumer lease providers submitted that SACCs are short-term loans primarily used to meet general household living expenses and are rarely used to acquire goods. By comparison, it was submitted that leases are contracts for longer terms than SACCs, and that the consumer gains a number of advantages in relation to the goods, such as flexibility and a range of services.

In Australia, finance leases, where the risks and benefits incidental to the ownership of the good are passed to the consumer,[67] have traditionally been regulated in the same way as credit contracts when the consumer becomes the owner of the good. The credit legislation operating in some Australian states and the Australian Capital Territory before the introduction of the Credit Act, deemed hiring arrangements to be credit contracts if there was a 'wink and nod understanding' that the consumer would become the owner of the goods.[68]

This approach was simplified in the UCCC and the Credit Act, and the reference to a 'wink and nod understanding' was removed. However, it is understood that the UCCC and the Credit Act were designed to have substantially the same effect as the regulation that included a 'wink and nod understanding' by applying the consumer protection to finance leases which were 'functionally the same' as credit contracts.[69]

At the time that the UCCC and the Credit Act were introduced there was little, if any, use of 'wink and nod understandings' but they have now emerged as one of the main ways of structuring leases. Evidence shows that:

66 2011 RIS, p.40.
67 See Ali et al.
68 See, for example, section 13 of the Credit Act 1984 (NSW).
69 Ali, p.243

- in many instances consumers effectively had the right to own the good, because, for example, the goods were gifted to a family member or sold to them for $1 at the end of the lease; [70] and
- consumer lease providers made it clear to consumers that they would be able to own the goods at the end of the lease and many lease providers even used business names which implied that the consumer would become the owner.[71]

On this basis, it appears reasonable to conclude that a lease is not like a credit contract in some aspects but is functionally similar to a credit contract in other respects (where the consumer — as is commonly the case — has a reasonable expectation of ownership or continued possession at the end of the lease).

Some submissions suggested that the same level of consumer protection that applies to credit contracts was not needed for leases because consumers benefited from a lease by receiving additional services.

Mixed evidence has been received about the consumer's rights to access these additional services and their utility.[72]

In any event, the difference in structure between leases and credit contracts is not one that always operates to the advantage of the consumer: one of the risks of a lease for the consumer is that if they do not make all the payments due they can lose possession of the goods, irrespective of how much they have paid. [73]

The approach taken in the Enhancements Act was to significantly narrow the regulatory gap between consumer leases and credit contracts.

In contrast, a number of stakeholder submissions advanced a number of reasons why a cap on costs for leases should not be introduced. These submissions have been carefully considered.

First, it was argued that there was no demonstrated need to introduce a cap given that, at best, ASIC's report only demonstrated that two lessors were charging high costs.[74] From this perspective, a cap on costs affecting all lessors was seen as over-regulation, and it was preferable that ASIC address this conduct by using its existing power to enforce the responsible lending obligations.

The experience in relation to SACCs since the cap on costs on that product came into force in 2013 demonstrates that a cap is an effective way of limiting consumer harm. To the extent that the conduct is not industry-wide it will have a lesser impact on lessors charging lower costs (with this depending on the level at which the cap is set).

Secondly, some submissions suggested that the introduction of a cap would result in greater financial exclusion by reducing the availability of leases, should lessors exit the market. However, financial inclusion is realised through a multi-faceted range of conduct beyond whether the consumer has access to goods. In substance, this is an argument about where any cap should be set, and it may be seen as supportive of a cap if that reform would further financial inclusion.

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70 E.g., Radio Rental's RentTry$1Buy® and Rent The Roo's Give-A-Way offer.
71 E.g., MakeItMine and Rent4keeps.
72 See discussion of option 8.
73 See the example in Case Study 22 in FRLC's submission.
74 See Thorn's submission, p.10.

Another proposition was that lessors offered a broad range of add on products and services that provided value to the consumer. Again, it is considered that this is an issue relevant to the structure of any cap, and is not a compelling reason for not introducing a cap. It is discussed further in this context below.

It was also contended that the structure of a lease means that there is no risk of a debt spiral from the use of consumer leases relative to SACCs because the leased goods can always be returned. For reasons discussed previously, a single lease can absorb, on a fortnightly and an annual basis, a significant percentage of a consumer's income, and so create a risk of continued financial exclusion, and of defaults on other commitments.

Finally, another position was that high costs could be adequately discouraged by a requirement that a lessor must accept return of the goods and write off the debt if the consumer is in financial hardship.[75] While this is a remedy in cases where the consumer experiences extreme hardship, it does not prevent high cost leases and the resulting consumer harm or limit the number of consumers that experience financial hardship.

This approach accepts that consumers can continue to be charged high prices and that responsibility for changing lessor behaviour rests with the consumer base, with any such response uncertain as to whether it will have the desired effect.

Whether a cap on the maximum amount that can be charged by a lessor should be introduced

Option 9

Introduce a cap on the maximum amount a lessor can charge. The cap would apply to a defined class of leases covering low-value goods.

The question of whether or not to introduce a cap on the maximum amount that could be charged by a lessor was previously canvassed in the 2011 Regulation Impact Statement.[76] This found that high-cost leases were causing similar harm to high-cost loans, and that a cap should apply to both classes of products.

The preliminary view in this interim report is that it is appropriate to take the approach in the 2011 RIS into account in considering whether or not a cap on costs for leases should be introduced. As previously discussed, there is evidence of continuing harm from the operation of high-cost leases.

Further information on the following is requested:

- *All other products regulated by the Credit Act are subject to a cap on costs. Is there any reason why users of consumer leases for low-value household or electronic goods should not have the benefit of this protection?*

75 CHERPA's submission, p. 4.

76 Regulation Impact Statement: Phase two of the National Consumer Credit Reforms Consumer Leases and Enhancements to the national Credit Code June 2011.

CONSIDERATIONS FOR IMPLEMENTING A CAP ON COSTS FOR LEASES

The introduction of a cap on costs for leases would raise the following issues:

- the maximum amount that should be allowed to be charged;
- the class of consumer lease that the cap should apply to;
- the value to be attributed to the leased goods to determine the maximum amount that can be charged;
- whether a cap should include or exclude add on products; and
- the need to address the risk of avoidance.

Setting the maximum amount that could be charged

Table 2 summarises the way in which the caps applying to credit contracts operate.

Table 2: Comparison of the maximum amount that can be charged according to type of credit contract

Type of contract	Contract definition	Maximum costs
Small amount credit contracts (SACCs)	Amount borrowed: Less than $2,000 Term: Between 16 days and 1 year	The provider can only charge a maximum upfront fee of up to 20% of the amount of credit and a maximum monthly fee of 4% of this amount. For a 12-month contract, the maximum amount that can be charged in fees is equivalent to 68% of the amount of credit
Medium amount credit contract (MACCs)	Amount borrowed: Between $2,001 and $5,000 Term: Between 16 days and 2 years	The provider can charge interest and fees provided the amount charged does not exceed a maximum cost calculated as the sum of interest charged at 48% and a fee of $400
All other credit contracts (including rental agreements with a right or obligation to purchase)	All other credit contracts with terms and amounts borrowed not covered above	The provider can charge interest and fees provided the amount charged does not exceed a maximum cost calculated as the sum of interest charged at 48%

Currently a cap of 48 per cent, including all fees and charges, applies to credit contracts. While certain categories of credit contracts, such as SACCs, have been granted concessions from this cap in recognition of their specific nature, the 48 per cent cap represents the standard.

Table 3 illustrates the amount that can be charged under a 48 per cent cap, applying the formula in section 32B of the National Credit Code, and deeming the cash value of the goods to be the amount of credit provided. For the purposes of the calculation, the formula assumes that each payment reduces the principal so that the debt has a diminishing balance. This is different to the way the SACC cap is calculated, where the SACC fees are based on the initial principal.

Table 3: Amount that could be charged by a lessor if they were subject to a cap based on the 48 per cent cap

Value of Goods	Term	Fortnightly payments	Total Payments	Multiple of cash price
$1,000	1 year	$48.74	$1,267.17	1.26
$1,000	2 years	$30.04	$1,561.98	1.56
$1,000	3 years	$25.25	$1,891.27	1.89

Other observations in relation to the operation of any cap are:

- It is noted that the lease repayments under a consumer lease include GST of 10 per cent. While this supports an argument that the cap should be higher, it is also the case that lessors can claim depreciation on the leased goods that provides a counter-balance benefit not available to credit providers.
- There is a question as to whether the maximum length of the lease should be prescribed rather than, for example, allowing leases to run for five years or more with the consumer having to make lease repayments for this period. Given that currently many lessors operate models in which the consumer will have ownership or possession of the goods at the end of a lease with a term of four years or less, any such limitation in length would address the risk of changes in practices to maximise revenue in response to a cap on costs.
- In relation to the operation of the 48 per cent cap, section 32B(3) of the National Credit Code specifies that particular types of fees and charges are to be treated as costs of credit (for example, brokerage fees and amounts disbursed to a third party for providing services if the credit provider has introduced the consumer to that third party). By comparison, section 39A only permits the credit provided under a SACC to be disbursed to third parties, if specifically authorised by the legislation, to address the risk of SACC providers avoiding the cap.

Further information on the following is requested:

- *If a cap on the cost of leases were to be introduced, is there a reason for lessors not to be subject to the 48 per cent cap that applies to credit contracts in general?*
- *Should there be a limit on the maximum term of a consumer lease?*

The class of consumer lease a cap should apply to

Preliminary assessment

If a cap on costs was introduced, the question arises as to the class of lease to which any cap should apply. The focus of this review is those leases that could be considered comparable to SACCs in relation to their size, purpose or consumer characteristics.

The simplest approach appears to be to define the class according to the characteristics of the goods. There are two options:

- using the cash value of the good, for example, the cap could apply to any transaction where the value is $2,000 or less; or
- using the features of the good so that the cap applies to a lease of household and electronic goods.

Another approach could be to define the class of transaction to be subject to any cap by reference to the characteristics of the consumer, for example, by reference to income or whether or not the consumer is in receipt of Centrelink benefits. A definition operating by reference to the income of the consumer may be too complex and uncertain to be workable.

Further information on the following is requested:

- *If a cap on the cost of leases were introduced, which types of leases should the cap apply to?*

Attributing a value to the leased goods to determine the maximum amount that can be charged

In many cases it will be straightforward to identify a cash price for goods, which are leased for the purposes of determining the cap, based on either a retail or wholesale price of the goods. However, there will be some circumstances where the cash price may be less certain (such as where the goods are second-hand).

It is noted that section 204 of the National Credit Code defines the cash price of goods or services as:

- the lowest price that a cash purchaser might reasonably be expected to pay from the supplier; or
- if the goods or services are not available for cash from the supplier or are only available for cash at a reasonably similar price to the price paid by a consumer who buys the goods on credit — the market value of the goods or services.

This approach is substantially similar to that in paragraph 13(5)(b) of the *Credit Act 1984* (NSW):

> *(b)* ***cash price*** *in relation to a contract for the hiring of goods —*
>
> *(i) where at the time the contract is made the goods are available for purchase for cash from the person from whom the goods are hired — means the lowest price at which the person to whom the goods are hired might have bought the goods from the first-mentioned person for cash;*
>
> *(ii) where at the time the contract is made the goods are reasonably available for purchase for cash but are not reasonably available for purchase for cash from the person from whom the*

goods are hired—means the price at which, at that time, the person to whom the goods are hired might reasonably have bought goods of that kind for cash; or

(iii) where at the time the contract is made the goods are not reasonably available for purchase for cash—means the amount that is the reasonable value of the goods at that time.

Further information on the following is requested:

- *How should the cash price for determining a cap on leases be determined?*

Whether a cap should include or exclude add on products

Preliminary Assessment

Observation 7

During consultation, stakeholders noted that a large proportion of the cost of consumer leases can be attributed to add on products. There is little transparency regarding the nature or cost of these services and the value that they provide to consumers. It may not be clear to consumers that these features are available when they enter into a lease or that they extend beyond the statutory guarantee under the Australian Consumer Law.

Stakeholders drew attention to the value provided through add on products and services, such as delivery, installation, instructing the consumer on the use of the good, servicing and repairs.[77] These add on products and services appear to fall into a number of different categories:

- set-up services associated with the goods, such as delivery and installation costs;
- ongoing services, which ranged from repairs and maintenance (including providing replacement goods on loan) to minor services such as defrosting fridges or moving items for the consumer;
- products that protect the lessor's interest in the goods, such as insurance cover if the goods are stolen; and
- quasi-insurance products such as waivers of the consumer's liability in certain circumstances (for example, if the consumer becomes disabled or unemployed).

There appears to be no industry consensus on the cost of providing add on products in the submissions received so far and the range of estimates is very wide.

Further, where the price is included in the lease repayments and not separately disclosed to the consumer, the cost is not transparent to the consumer. Accordingly, it is not apparent how they could make an informed purchasing decision. There may not be any straightforward way for the consumer to assess the value offered by any add on products (for example, by understanding the extent to which they may need to rely on servicing) or whether that value is proportionate to the price.

The extra value offered by these products may be limited (depending on the product), and different consumers have different needs:

77 Comments at the roundtable and Thorn's submission, p.7.

- many household items are unlikely to need significant levels of servicing or maintenance (such as furniture and, to a lesser extent, durable items such as fridges or freezers);
- it is understood that some lessors do not provide the consumer with a contractual right to request minor services (such as defrosting), and that these appear to be provided as part of good customer relations; and
- the shorter the term of the lease, the less likely the consumer will need to use add on products.

In relation to servicing and maintenance products, the lessor is under a statutory obligation under the Australian Consumer Law to provide goods that are durable. This obligation would overlap with any additional warranty provided by the lessor and may provide sufficient or adequate protection for consumers in respect of the leased goods. Providing a warranty at an extra cost that overlaps with these statutory guarantees, or where the need for that additional cover may be overstated, does not appear to add value and could potentially be a breach of the law.[78]

However, it is accepted that delivery costs — if reasonably priced — may not be subject to these concerns. During consultation, it was noted that the cost of delivery to clients within 10 kilometres of a local franchisee office could be as little as $10. This compares to $310 delivery where the consumer is located more than 200 kilometres from the local franchisee office.[79]

The value of add on products is unclear. If the leased goods are new, the goods are ordinarily covered by a manufacturer's warranty which gives the lessor recourse against a third party for defects.

Policy options for consultation

Option 10

Include the cost of add on features and products under the cap.

Under option 10, lessors can charge for add on products but the cost of these products would be included in the overall cap which would be based on the cash price. This gives providers flexibility for the cost they allocate to each service, while limiting the overall cost for the consumer.

This approach is broadly consistent with the current cap of 48 per cent for credit contracts which includes all credit fees and charges and some add on costs (noting that, as discussed previously, the identified risk of avoidance this created was addressed in relation to SACCs by the different approach taken in section 39A of the National Credit Code).

An inclusive cap is easier for consumers to understand. Including all add on features under the cap would limit the overall cost that consumers could be charged, addressing some of the consumer harm that is caused by high cost leases. Including add on products under the cap may limit the services that are provided to consumers.

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78 See the ACCC Media Release of 8 December 2015: Lumley undertakes to help improve extended warranty selling practices.

79 Rent the Roo's submission, p 10.

However, similarly to the existing medium amount credit contracts cap, consideration could be given to the addition of an upfront fee outside the 48 per cent cap, if the case is made for an additional charge to cover extra or upfront costs such as the reasonable cost of delivery. A cap on costs would need to ensure viability of consumer leases in remote areas where the cost of delivery is higher.

Further information on the following is requested:

- *If a cap on the cost of leases was introduced, how should add on products be treated?*
- *Are there ways of measuring the value of add on products to the consumer (for example, data on the extent to which consumers utilise those products or make claims under them)?*
- *What are the consequences of including add on services within the cap? Does this pose a particular risk for certain add on features or parts of the market (such as remote areas)?*

Addressing the risk of avoidance

Observation 8

If a cap were to be introduced on a restricted category of consumer lease, it should be designed in a way that limits the risk of avoidance.

Although extending a cap to all leases and broadening the scope of the Credit Act to include indefinite term leases are matters outside the terms of reference of the review, government may wish to consider the implications for those leases outside the scope of this review.

One concern is that lessors could seek to avoid any cap by offering leases that do not meet the characteristics of the class of lease to which a maximum price applies including by:

- offering consumer leases regulated by the Credit Act that fall outside the class of leases to which any cap on costs applies; and
- offering leases that are not regulated by the Credit Act such as indefinite term leases.
  - Leases that have an indefinite term or a term of four months or less are not regulated by the Credit Act and were excluded from the referral of powers provided by the states when the Commonwealth assumed responsibility for regulating consumer credit.

Lease affordability

Some lessors appear to be failing to undertake a robust assessment of the consumer's living expenses.[80] Where this is the case, the consumer may experience financial hardship even though they maintain the lease repayments in order to retain possession of the leased good. However, the submissions did not provide a clear view of the extent to which there may be broad or systemic issues in relation to the adequacy of the practices for assessing a consumer's income or expenditure.

80 See, for example, the ASIC actions described in *15-141MR ASIC accepts EU from Amazing Rentals*, and *15-093MR Rental company found to have breached consumer credit laws.*

Further information on the following is requested:

- *Are stakeholders able to provide information on whether there are broad or systemic problems with the way in which lessors comply with the responsible lending requirements in relation to low-income consumers and Centrelink recipients?*

Policy option for consultation

Option 11

Cap the amount of net income that can be used to service all lease repayments.

Similar to option 3 in relation to SACCs, a cap on the amount of income that can be used to meet lease repayments under a consumer lease could be introduced to deal with the consequent harm from consumers being financially excluded.

Given that leases generally run for a longer term than a SACC, there is an argument that the maximum percentage of income that could be attributed to lease repayments should be lower than the 10 per cent figure discussed in option 3. The analysis in Table 1 provides an indication of how a range of current levels of lease repayments impacts on the consumer's income and suggests that a lower percentage is more likely to be affordable for low income consumers and foster financial inclusion (through, for example, a better ability to budget).

Consistent with option 3, it is considered that the cap should apply to all consumers not only those in receipt of income from Centrelink and that it should apply to a consumer's net income.

Further information on the following is requested:

- *Should a protected earnings amount be introduced for leases, similar to option 3 canvassed in relation to SACCs?*
- *If a cap restricting the amount of income that can be used to make lease repayments were introduced, what level would be affordable for consumers and lead to financial inclusion?*
- *Should a combined cap be introduced that covers both SACCs and consumer leases?*
- *Would there be any difficulties in determining a combined cap covering both leases and SACCS?*

EARLY TERMINATION FEES

The Credit Act does not regulate the amount that can be charged on early termination of a consumer lease. In the absence of specific regulation, the following legal principles, based on case law, control the way in which termination fees can be calculated:

- if a fee results in an acceleration of future instalments without allowing for an appropriate discount for early payment, it is considered to be a penalty and may not be charged;[81]
- the lessor must provide the consumer with a benefit equivalent to the difference between the value of the leased goods at the time they are returned to the lessor with the value they would have at the end of the lease term.[82]

81 *Citicorp Australia Ltd v Hendry* [1985] 4 NSWLR 1.

It is understood that there are differences in the way in which lessors calculate the fee payable on early termination, and that, in particular, some lessors charge all of the outstanding lease repayments or provide only a very small discount. It is also noted that where the consumer is charged a separate amount for add on services, there is a question as to how much, if any amount at all, the lessor should be able to charge in respect of those services when they will no longer be providing them.

In the absence of any court decision it is likely to be difficult for consumers to obtain any refunds, even in extreme cases (for example, where no discount is provided on early termination).

Policy options for consultation

Option 12

Prescribe the maximum amount that can be charged on early termination of the contract.

There may be benefits to specifying how much a lessor can charge on termination (whether it is voluntary or as a result of hardship), to ensure that all lessors are providing a reasonable discount to the consumer based on the principles set out above.

If adopted, this approach would recognise that it is preferable to specify a particular formula for deriving a figure, given the difficulties of consumers obtaining refunds, and the effectiveness of 'bright-line' rules in regulating other aspects of the relationship between providers and low-income consumers.

It is noted that there is a regulation-making power in the Credit Act to prescribe the maximum amount that can be charged on early termination of the contract:

- Section 175A contains a general regulation-making power enabling consumer lease fees or charges to be prohibited.
- Section 179 of the National Credit Code enables regulations to be made regulating the amount that can be charged on early termination through return of the goods (but not by making lease repayments earlier than required under the contract).

Option 13

Provide a remedy for consumers similar to that in section 78 of the National Credit Code allowing action to be taken for an unconscionable termination charge.

Section 78 of the National Credit Code provides a remedy for borrowers under a credit contract where an establishment fee is unconscionable, and specifically directs the court to have regard to the credit provider's average reasonable costs in assessing whether a fee is unconscionable.

A similar provision could be introduced in relation to termination costs under a consumer lease. Under this approach a formula would not be specified but the court or Ombudsman would be directed to take into account specific matters and, so make it easier for consumers to obtain a remedy where appropriate than is currently the case.

82 *O'Dea v Allstates Leasing System (WA) Pty Ltd* (1983) 152 CLR 359.

Further information on the following is requested:

- *What levels of discount on the outstanding lease repayments do lessors provide in their termination clauses?*

- *Do lessors provide different discounts on the amount attributable to future leases and the charges for future services?*

Supplementary submissions

Subsequent to the stakeholder roundtables, the Panel received supplementary industry submissions proposing various models for a cap on costs for consumer leases. These submissions were provided at stakeholders' instigation. The Panel has not had any separate discussions with industry in relation to any models. That said, we thank stakeholders for their input. These supplementary submissions will be considered together with any other responses to the interim report.

APPENDIX 1: TERMS OF REFERENCE

Terms of reference

1. The review will make recommendations about the effectiveness of, and, where necessary, recommend changes to the following:

   1.1. the requirement to obtain and consider a consumer's bank account statements in subsections 117(1A) and 130(1A) of the Credit Act;

   1.2. the rebuttable presumption that a loan is unsuitable where the consumer is in default under another SACC or has held two other SACCs in the past 90 days in subsections 118(3A), 123(3A), 131(3A) and 133(3A) of the Credit Act;

   1.3. the prohibition on entering into, or increasing the credit limit of, a loan contract that has a term of 15 days or less with a consumer, and on suggesting or assisting a consumer to do so in sections 124A, 133C and 133CA of the Credit Act;

   1.4. the requirement to display a warning statement about the alternatives available to SACCs in sections 124B, 133C and 133CB of the Credit Act;

   1.5. the cap on fees and charges (including the maximum of a 20 per cent establishment fee and of a monthly 4 per cent fee) in sections 23A, 31A, 31B and 39A of the National Credit Code;

   1.6. the requirement that consumers who default under a SACC must not be charged an amount that exceeds twice the amount of the relevant loan in section 39B of the National Credit Code; and

   1.7. the power to introduce specific protection for particular groups of consumers in sections 133C and 133CC of the Credit Act and the protection for consumers who receive 50 per cent or more of their income under the *Social Security Act 1991* in regulation 28S of the National Consumer Credit Protection Regulations 2010.

2. The review will make recommendations on:

   2.1. whether a national database of SACCs should be established and, if so, by whom and how it should be funded; and

   2.2. whether any additional provisions relating to SACCs should be included in the Credit Act, the accompanying regulations, or the National Credit Code.

3. The review will make recommendations on whether any of the provisions which apply to SACCs should be extended to regulated consumer leases.

4. The review will make recommendations that take into account:

- competition;
- fairness;

- innovation;
- efficiency;
- access to finance;
- regulatory compliance costs; and
- consumer protection.

5. In examining the issues set out above, the review should also consider whether the laws relating to SACCs and regulated consumer leases are appropriate for the current economic climate and whether they will continue to meet Australia's evolving needs.

6. The review should conduct consultations with stakeholders and hold public meetings where appropriate.

7. The review will not recommend the establishment of an additional body or the establishment of a further review(s).

8. The review will not recommend changes to any area of the law that the Commonwealth does not have the direct power to regulate.

APPENDIX 2: LIST OF SUBMISSIONS RECEIVED

Anglicare Sydney

Australian Bankers Association

Australian Finance Conference

Australian Retail Credit Association

Australian Securities and Investments Commission

Carboodle

Care Inc

Consumer Action Law Centre

Consumer Credit Law Centre South Australia and Uniting Communities

Consumer Credit Legal Service (WA) Inc.

Consumer Household Equipment Providers Association

Credit and Investments Ombudsman

Credit Corp

Finance Industry Delegation

Financial Association of Australia

Financial Rights Legal Centre

Foresters Community Finance

Good Shepherd

Good Shepherd Microfinance

IPF Digital Australia

K & L Gates

Law Council of Australia

Legal Aid Queensland

Legal Aid NSW

MakeItMine

Min-it Software

Monash

Money 3

Moneybox Loans

National Australian Bank

National Credit Providers Association

Nimble

Office of the Australian Information Commissioner

Policis

Redfern Legal Centre

Rent4Keeps

Rent the Roo

RMIT University

Rob Bryant

Sir Rentalot

The Salvation Army

Thorn Group

Top End Women's Legal Service Inc

Appendix 3: Stakeholder roundtable attendees

1st Choice Rentals

Australian Finance Conference

Australian Securities and Investments Commission

Cash Converters

Consumer Household Equipment Rental Providers Association

Consumer Law Action Centre

Credit Corp

Credit and Investments Ombudsman

Financial Counselling Australia

Financial Rights Legal Centre

Finance Industry Delegation

Financiers Association of Australia

FlexiGroup

Good Shepherd Microfinance

Law Council of Australia

Legal Aid NSW

MakeItMine

Min-it Software

Mr Rental

National Credit Providers Association

Nimble

Ratesetter

Redfern Legal Centre

Rent4Keeps

Rent the Roo

Sir Rentalot

Sophie Grace Pty Ltd

Thorn Group

Walker Stores

APPENDIX 4: GLOSSARY OF ABBREVIATIONS

ASIC — Australian Securities and Investments Commission

ASIC Report 426 — ASIC's Report 426 'Payday lenders and the new small amount lending provisions'

CALC — Consumer Action Law Centre

CIO — Credit and Investment Ombudsman

Credit Act — *National Consumer Credit Protection Act 2009*

DFA — Digital Finance Analytics

DSP — Disability Support Pension

Enhancements Act — *Consumer Credit Legislation Amendment (Enhancements) Act 2012*

MACC — Medium amount credit contract

National Credit Code — Schedule 1 to the *National Consumer Credit Protection Act 2009*

NCPA — National Credit Providers Association

Revised Explanatory Memorandum — Revised Explanatory Memorandum for the Consumer Credit Legislation Amendment (Enhancements) Bill 2012

RIS — Regulation Impact Statement

RMIT — RMIT University, Melbourne

SACC — Small amount credit contract

UCCC — Uniform Consumer Credit Code