

21 October 2015

Ms Danielle Press
Chair, SACCs Review Panel
SACC's Review Secretariat
Financial System and Services Division
Markets Group
The Treasury
Langton Crescent
Parkes ACT 2600

By email consumercredit@treasury.gov.au

Dear Ms Press

Review of the Small Amount Credit Contract Laws

The Australian Bankers' Association (ABA) is pleased to have the opportunity to provide its views to your Panel on this review of small amount credit contracts (SACCs).

With the active participation of 25 member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

Many of the specific questions posed in the Review consultation paper concern matters which the small amount credit providers and consumer advocates may be better positioned to answer than is the ABA.

In general, the ABA notes that the small amount credit contract provisions in the National Consumer Credit Protection Act (NCCPA) were introduced to address certain market and regulatory failures on the part of those credit providers. In principle, the ABA would be supportive of changes to ensure those consumer protections are as effective as they were intended to be.

This submission will focus on three key points. Should your panel advise us of further matters requiring our consideration, we look forward to that further opportunity to assist the panel.

1. Authorised Deposit Taking Institutions (ADIs) and SACCs

Currently the SACCs regime under the does not apply to banks and other ADIs.

On 10 April 2012 Treasury made it clear that the proposed SACCs regime was not intended to apply to a credit contract outside the definition of a "small amount credit contract".

Part 3-2C of the NCCPA applies to both short-term credit contracts and to SACCs which are defined among other things as contracts that are not continuing credit contracts or contracts where the credit provider under the contract is an ADI.

The September 2015 Review consultation paper does not mention these exceptions or that the terms of reference should require the panel inquires specifically into these exceptions contained in these definitions.



The ABA submits that these exceptions should be continued on the ground that the SACCs regime was not introduced to address any market or regulatory failure on the part of ADIs' lending practices or credit products. Further, the Review consultation paper does not raise any matter that would call the continuation of these exceptions into question.

2. Comparable consumer leases (TOR 3)

There are two key aspects of the Review consultation paper regarding consumer leases which the ABA wishes to raise.

2.1 Meaning of “comparable” leases

The paper provides some pointers for the purpose of a comparison of SACCs with consumer leases.

ASIC's findings in its Report 447 (September 2015) was on the costs charged by providers of leases of household goods. In undertaking its review, ASIC analysed data from two sources:

- advertised price data collected by the Royal Melbourne Institute of Technology (RMIT); and
- a targeted review by ASIC of leases to consumers in receipt of Centrelink payments.

ASIC noted that

“A 2014 report by IBISWorld estimated the value of the leasing industry in Australia as around \$570 million for rentals of electronic goods (including televisions, stereos, DVD players and computers) and household appliances (including fridges, ovens, microwaves, toasters and blenders).”

A second element of the nature of consumer leases being “comparable” with SACCs is whether the key defining aspects of a SACC are intended to apply to a consumer lease which is considered to be “comparable”.

The Review consultation paper states –

“The focus of this review is on consumer leases that can be considered comparable to SACCs in that, in general terms, they are leases of relatively low value goods (for example, less than \$2,000) and are predominately used by consumers who are excluded from mainstream forms of finance or payment for those goods (or who self-exclude). However, while the value of the good under a comparable lease is prima facie likely to be similar to that of a SACC, the term of a comparable lease may be longer than that of a SACC, and can often extend beyond one year to three years or more.”

And further in there being similar bases for SACCs and consumer leases –

“The consumer base for SACCs and comparable consumer leases is similar. Evidence suggests that a large portion of comparable consumer leases is taken out by consumers that are excluded from mainstream sources of finance, such as personal loans and credit cards.”

And with similar economic outcomes –

“Comparable consumer leases are often structured so that the consumer has the benefit of owning the good at the end of the lease without having a legal 'right or obligation to purchase the good'.”

The Review consultation paper invites submitters to identify which leases could be considered comparable with SACCs.

A question is whether the Review panel intends to confine its approach to consumer leases of low value household goods or to a wider class of goods.

Members of the ABA do offer consumer lease products on a range of goods such as electronic equipment, motor vehicles, boats and other goods.

There may be circumstances where goods leased by a bank to a consumer could fall within the undefined class of “household goods”, for example art works or antiques.



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Adopting the apparent approach of this review to comparing certain consumer leases with SACCs, the ABA submits that any extension of the SACCs regulatory regime to such comparable consumer leases should apply only to lessors which are not ADIs i.e. that the current exception of ADIs under SACCs provisions in the NCCPA would be extended to those comparable consumer leases.

This assumes that for non-comparable consumer leases the current regulation in the NCCPA would remain unchanged.

The ABA requests a further opportunity to provide its views to the panel should the panel consider that any changes that might be made to cover comparable consumer lease provisions under the National Credit Code (NCC) contemplate extending those provisions further to other non-comparable consumer leases.

3. Anti-avoidance

The ABA expressed serious reservations to Treasury in response to its consultation in 2012 on a possible general anti-avoidance provision for inclusion in the NCC.

A key concern was the breadth of the proposed provision and the proposed “scheme” provision which could have captured not unusual circumstances associated with customer preferences for their credit facilities.

The Review paper appears to be raising again consultation on a general NCC anti-avoidance provision that would apply not just to avoidance practices with respect to SACCs but to NCC credit facilities generally.

Recently, the Federal Court found that payday lenders, Fast Access Finance Pty Ltd, Fast Access Finance (Beenleigh) Pty Ltd and Fast Access Finance (Burleigh Heads) Pty Ltd (the FAF companies) breached consumer credit laws by engaging in credit activities without holding an Australian credit licence. ASIC claimed that the companies constructed a business model which was deliberately designed to avoid the protections offered to consumers by the National Consumer Credit Protection Act 2009 (National Credit Act), including the cap on interest charges.

This case suggests that the courts have the ability to strike down avoidance in connection with the NCC.

The ABA agrees with the principle that the practices of contrivance for avoidance of the NCC should be prohibited. The means of achieving this will require a detailed consultation and the various options that might be available.

The ABA looks forward to the proposed roundtable discussions and further engagement with your panel.

Yours sincerely

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