



19th October 2015

SACC Review Secretariat  
Financial System and Services Division  
Markets Group  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Via email: [consumercredit@treasury.gov.au](mailto:consumercredit@treasury.gov.au)

Dear Sir/Madam

## **Review of small amount credit contract laws**

This is the submission of The Financiers' Association of Australia Limited (the **FAA**) for the review of small amount credit contract (**SACC**) laws and related provisions in the *National Consumer Credit Protection Act 2009* (the **NCCP Act**) established on 7 August 2015 (the **SACC Review**).

### **About the FAA**

Established in 1927, the FAA represents more than 60 financiers, of which many are small to medium sized credit providers that offer both consumer and commercial credit.

A number of FAA members offer SACC loans; others do not.

### **General comments**

The FAA believes that the best protection for borrowing consumers is free market competition and prudent lending practices.

We oppose price controls in the credit market, traditionally known as usury laws. Price controls cause shortages of supply and create incentives for evasion.

We believe that consumers rather than government are best able to judge their credit requirements and that credit providers generally have no reason or incentive to make bad loans.

We believe that the continually expanding scheme of credit regulation in recent years has had the effect of increasing barriers to entry in the market and made a number of small credit businesses unviable. This may have caused increasing market concentration and reduced choice for consumers.

The FAA also supports the rule of law principle that legislation should apply equally to all persons. The entire SACC scheme is unequal. It only applies to persons who are not authorised deposit-taking institutions. Whatever scheme of regulation applies to SACCs, it should apply equally to all persons and not target particular credit providers.

As a final general comment, we submit that legislation should not be judged by the good intentions of the legislators but by its practical consequences. Often these are unforeseen or unintended.

### **Comments on the consultation paper**

We refer to the consultation paper released for the SACC Review. Set out below are the matters raised in the consultation paper and the comments of the FAA in respect of those matters.

**1. Question**

**1: Competing objectives**

The FAA submits that the mechanism to balance the protection of consumers and to ensure that the industry remains viable is free and competitive markets, including effective and accessible laws against fraud and deceptive or unconscionable conduct by credit providers and brokers.

**2. Question**

**2: Complexity**

The FAA believes that the current regulatory regime is complex and is concerned that further regulation will only add to complexity.

The regulatory regime could be simplified by repeal of the SACC provisions.

If a credit contract is not unsuitable for a consumer, the consumer and the credit provider should be able to enter into that credit contract. Consumers have free dispute resolution mechanisms which are now available if they are experiencing difficulties in making loan repayments.

**3. Question**

**3: Sanctions**

The FAA has no comment on this question.

**4. Question**

**4: Obligation to obtain and consider bank account statements (TOR 1.1)**

Our members have found that many consumers regard scrutiny of their bank statements as intrusive and disproportionate to the value of the loan being applied for.

We submit that credit providers should not be forced to conduct their credit assessment using particular types of information or information sources. A prudent credit provider would in any event obtain bank statements when it considered it necessary to do so in order to assess the creditworthiness of a borrower.

Where the borrower is known to the credit provider or with a demonstrated good credit history (such as where the borrower is applying for a credit increase) the credit provider should not have to conduct the same level of assessment as with a new loan to a new customer.

**5. Question**

**5: Restrictions on repeat borrowing (TOR 1.2)**

The FAA opposes all forms of credit rationing and believes that a restriction on repeat borrowing is not appropriate. Borrowers should be free to choose when they borrow. Banning the provision of credit to a borrower may potentially cause greater hardship for the borrower. Consumers who apply for SACC loans are often in financially challenged circumstances, but restricting the availability of credit to such consumers, however well intentioned, may not be the best option for a consumer, based on their individual circumstances.

The FAA does not support mandatory benchmarks in credit assessment. We consider that credit providers rather than the government are best placed to determine the most appropriate method of assessing the creditworthiness of their customers. However the FAA is not opposed to government recommending the use of particular benchmarks where appropriate.

**6. Question**  
**6: Ban on short term credit contracts (TOR 1.3)**

The legislation may have prevented loans with terms of 15 days or less, but credit providers wishing to make short term loans can still lend for terms of 16 days or more. The FAA queries why it should be a crime to lend for 15 days but lawful to lend for 16 days.

Consumers should be free to decide the length of the loan term for a loan that they apply for. It may suit the consumer to have a shorter rather than a longer loan term. The consumer is best placed to choose the appropriate term for a loan.

**7. Question**  
**7: Warnings (TOR 1.4)**

The FAA does not know if the warnings have been effective. However it believes that consumers generally do not pay much attention to notices of this kind and doubts that they would on the whole materially influence consumer behaviour.

The onus should be on the government to demonstrate the usefulness of such mandatory warnings.

Where a credit provider is leasing premises there may be contractual restrictions on the ability of the credit provider to display the warnings as required in the regulations.

**8. Question**  
**8: Caps on costs (TOR 1.5 & 1.6)**

The cap on SACC costs, intended to act as a maximum amount, has become the standard amount charged, as often occurs when price caps are introduced. It may have impeded the cost of credit coming down, as well as going up.

As previously stated, the FAA opposes price controls for credit.

In relation to ASIC Class Order 13/818, the FAA supports the temporary exemptions in this class order being made into regulation.

**9. Question**  
**9: Protection for Centrelink customers (TOR 1.7)**

The FAA in principle opposes differential treatment of consumers and therefore any form of specific protection for particular customer types, including Centrelink customers. All consumers should be equal under the law with the same rights and protections.

There are general requirements regarding unsuitable contracts which should be sufficient for protection of consumers who happen to be Centrelink customers.

**10. Question**  
**10: National database (TOR 2.1)**

The FAA believes that the only reason why there would be any need for legislation to establish a national database of SACCs is because of other legislation, namely the prohibition on entering into a SACC when the consumer has had two or more other SACCs in the last 90 days or has been in default under another SACC.

The private sector has credit reporting bodies which collect credit information and which are used by most credit providers. It would be most efficient to allow those credit providers to collect credit information about SACCs. If there is a market need for a national database of SACCs, the market should be permitted to develop such a database. A database should not be created by legislation.

Consumers may be stigmatised as poor credit risks if their SACC loans were recorded in a national database.

**11. Question**  
**11: Additional provisions for SACCs (TOR 2.2)**

The FAA submits that additional provisions relating to SACCs are not necessary.

**12. Question**  
**12: Anti-avoidance provisions (TOR 2.2)**

The FAA believes that businesses will naturally evolve products and practices which optimise their returns under any given regulatory structure. We oppose any anti-avoidance provisions in the NCCP Act. If a particular product or practice is lawful, it should not be made unlawful by a regulator deeming it to be done for avoidance purposes.

**13. Question**  
**13: Documentation of suitability assessments (TOR 2.2)**

The NCCP Act requires a suitability assessment to be made. There is no prescribed form for documenting an assessment but confusingly, the NCCP Act requires a “copy” of the assessment to be given to the consumer (assuming implicitly that the assessment is reduced to a document of some kind). It would be better to simply require that the credit provider (or credit assistance provider as the case may be) give reasons for their decision on request.

**14. Question**  
**14: Comparable consumer leases (TOR 3)**

The FAA is of the view that consumer leases are not comparable to loans. Some of the important differences are as follows:

- A loan is the lending of money whereas a lease is the lending of goods.
- A loan has to be repaid but leased goods do not have to be returned (if the lessor and lessee agree on terms).
- A small amount loan is usually unsecured. A lease is secured.
- A small amount loan is usually for general expenses while a lease is for specific goods.

Consumer leases in summary are not substitutes for SACCs and vice versa.

**15. Question**  
**15: Applying SACC provisions to comparable consumer leases (TOR 3)**

The FAA does not support applying SACC provisions to consumer leases.

Under a consumer lease, the lessor remains responsible for delivery, maintenance and servicing of the goods. These are all costs to the lessor and it is an oversimplification to assert that the cost of a lease is the amount in excess of the cash price for the goods. Cost comparisons based on this flawed methodology are misleading.

The regulation of consumer leases should not be dealt with in a piecemeal fashion. Rather than applying a completely inappropriate price control system for SACCs to some consumer leases that are “comparable”, the general scheme of regulation of consumer leases as a whole should be considered.

16.

**Question**

**16: Cap on costs for consumer leases (TOR 3)**

The FAA opposes any cap on costs for consumer leases or any further extension of price controls on credit.

We also note that applying a SACC limit to consumer leases may have the effect of increasing the cost of consumer leases if the cap becomes the de facto standard price.

We trust that these comments will be of assistance in the SACC Review. We would be happy to answer any questions in respect of our submission or to make further submissions if required.

Yours sincerely

The Board of Management Financiers Association of Australia.

Lou Statos / Secretary

Email: [info@financiersassociation.com.au](mailto:info@financiersassociation.com.au)

Tel: + 61 2 9299-4906 / Fax: + 61 2 9299-1433