

21 January 2016

Ms Danielle Press
Chair
Review of the Small Amount Credit Contract Laws Panel
The Treasury
Langton Crescent
Parkes ACT 2600

To: consumercredit@treasury.gov.au

Dear Ms Press

Review of Small Amount Credit Laws (SACCs) – Interim Report December 2015

The Australian Bankers' Association (ABA) is appreciative of this opportunity to provide its views on the Panel's Interim Report in this review.

As explained in its earlier submission to the Panel, the ABA has a narrow focus on the issues arising in the review.

1. ABA's 21 October 2015 submission

Briefly, the October submission made three key points.

- 1) First, currently the SACCs regime does not apply to banks and other ADIs. The ABA submitted that this exception 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 Interim Report does not disclose any reason, in the ABA's view, for this exception not to be continued.
- 2) Secondly, the ABA's October submission sought to better understand and to scope the types of consumer leases which would be considered to be "comparable" with SACCs and therefore to be considered for similar regulation. The Interim Report has provided further insight on this aspect.
- 3) Thirdly, while supporting the principle of an anti-avoidance provision to be included in the Credit Act, the ABA was concerned to ensure the form of this measure would not include an earlier proposed "scheme" provision which would have captured unexceptional circumstances associated with customer preferences for their credit facilities.

2. This submission on the Interim Report

2.1 SACCs Regime Issues

It is noted that the Interim Report does not include any further material concerning a general anti-avoidance provision. The Interim Report does raise a question about the potential risk of avoidance of a cap on the costs of a consumer lease if such a measure were to be introduced on a restricted category of consumer lease.

The ABA inquires whether it is the Panel's intention to revisit the matter of a general anti-avoidance provision or that this may be the subject of further consultation by Treasury at a later time.



More generally, the observations and policy options made by the Panel on the SACCs regime and apparent financial harm being caused to some consumers despite the measures contained in the SACCs regulatory regime are matters the ABA considers should be addressed together with any anomalies which have been identified in the SACCs regime by the Panel.

As the ABA represents banks which are exempt credit providers under the SACCs regime, the ABA believes these are matters which should be addressed in consultation with Treasury, Australian Securities and Investment Commission (ASIC) and the SACCs sector.

Financial literacy has a role to play in helping consumers better understand their SACCs obligations including some of the aspects of the nature and structure of SACCs of which consumers may not be readily aware or understand. The National Financial Literacy Strategy¹ is led by ASIC which is strongly supported by the ABA. ASIC's MoneySmart website currently provides information about various types of credit contracts including payday loans.² ASIC may be able to provide additional targeted fact sheets to better assist consumers identify some of the risks and obligations of a SACC. This information would need to be disseminated through various channels to target the affected consumer cohorts.

The ABA concludes from the Interim Report that the current exception for ADIs under the SACCs regime ADIs will be continued. The ABA submits that it is appropriate for this exception to continue. If this is likely to come under revision by the Panel the ABA respectfully requests receiving early notice of this.

2.2 Comparable consumer leases

The Interim Report indicates that a class of consumer leases to which certain regulatory requirements might be applied include –

- A cap on the cost of consumer leases applying to a defined class of leases covering low-value goods, such as low-value household or electronic goods.
- Alternatively, using the cash value of the good; for example, the cap could apply to any transaction where the value is \$2,000 or less.
- Adding in add-on services to the cash price of the goods.
- A cap on the net amount of income available to service all lease payments (a protected earnings cap) extended to cover both SACCs and consumer lease payments.
- A cap on or a right to claim unconscionability for an early termination fee.

The main thrust of consumer advocates submissions identified by the Panel is with respect to consumers who are generally of low income and who are the focus of the Panel's concern. The Panel notes that 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. This cohort appears to be a subset of the customer base for consumer leases which is similar to that of SACCs.

The ABA agrees with the Panel's approach to the operation of consumer leases which the Panel considers should be 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."

Based on the available evidence and the Panel's approach to the operation of consumer leases, the ABA submits that if the regulation of SACCs were to be extended to consumer leases which are "comparable" with SACCs, the SACCs exception under the Credit Act should be extended in the same way to those consumer leases provided by banks.

¹ <http://www.financialliteracy.gov.au/>

² <https://www.moneysmart.gov.au/borrowing-and-credit/other-types-of-credit>



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This would be consistent with best practice regulation principles. Further, it avoids uncertainty arising from interpretations relating to the applicable classes of goods or to future amendments to the regulatory regime applying to consumer leases of the type identified by the Panel.

The ABA wishes to maintain its involvement with the Panel's review of the SACCs laws including any extension of those laws to consumer leases.

In particular, if the Panel wishes to have further information about the nature and operation of consumer leases provided by its members, the ABA would be pleased to assist the Panel accordingly.

A handwritten signature in black ink, appearing to read 'Ian Gilbert', is written over a light grey, dotted rectangular background.

Ian Gilbert
Director Banking Services Regulation
03 9852 7976
Ian.Gilbert@bankers.asn.au