Response to Interim Report

of

Review of the Small Amount Credit Contract Laws

from

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ACN 130 894 405

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A. **General Response to Interim Report:**

The Terms of Reference "required the Panel to consider:
• 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 interim report and observations fail to adequately consider in the "observations" and "options" the majority of the elements in the Terms of Reference, in particular "innovation", "efficiency", "access to finance", and "regulatory compliance costs".

Treasury needs to run an orthodox economic rule across the Committee's "observations" and "options", in particular:
(a) the interim report's failure to recognise and address:

- that the existing and proposed regulation does not support nor encourage "innovation" in the provision of credit. Regulation has created uniformity and with no incentive for innovation, that would benefit consumers. Examples that could have been considered are flexibility to arrange a break from repayments and to change the repayment period after the loan has commenced.
- that the existing and proposed regulation reduces competition in the market. The Interim Report itself reports that under the existing regulation "while the volume of SACCs advanced has increased, the number of industry participants has fallen, suggesting the sector has consolidated". In other words despite demand continuing to increase, regulation has caused the number of suppliers to decrease. What is needed is more suppliers in the SACC space, not less and to achieve that requires not more uniform regulation but more flexibility to facilitate and promote real competition in this credit space.
- that unreasonable compliance costs are being incurred by existing and proposed regulation that, in the words of his Honour Jonathan Beach in Make it Mine Finance [2015] FCA (28 April 2015) at paragraph 65, "are shrouded in conceptual imprecision".
- that the observations and options presented seem to be based on the view that that all persons who utilise small and medium amount credit contracts are "vulnerable" people and that all credit providers are taking unconscionable advantage of them. The fact is demand is increasing and the size of the market segment demonstrates that the vast majority cannot fit the "vulnerable" tag. There are already laws to deal with unconscionable conduct.
- Data upon which the "Observations" and "Options" are based are not relevant to the post SACC legislative reforms period.

(b) the need for more flexible regulation not increased "bright line" regulation, as demonstrated by:

i. The significant and increasing demand for small amount credit contracts.
i. The number of repeat customers (which the regulation is directed at preventing) proving the vast majority of small amount credit contracts satisfy consumers and suppliers.
ii. Consumer outcomes being best served by competition between suppliers in a market and the market for small amount credit contracts is no exception.
iii. All regulatory costs are ultimately borne by consumers and regulation that prevents costs being allocated to the consumer who received the credit simply imposes an unfair cost onto other consumers. (e.g restrictions on proper allocation of costs of managing defaults)
iv. Regulation must not constrain competition between suppliers to develop and offer better products and services for consumers. Regulation of small amount credit contracts is no exception. Regulation that mandates uniformity between suppliers fails that economic test.

Response on Specific "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.)

Response to Observation 1:
This "observation" is social engineering and based upon a bias against providers of small and medium credit providers. It is also based upon the false notion that government regulation and not market forces can produce better outcomes.

It is submitted that orthodox economic experience will demonstrate that less regulation rather than more regulation is more likely to produce the outcome of "inclusion" by encouraging more suppliers, more competition and more innovation.

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.)

Response to Observation 2:
This "observation" is totally misguided, fails to understand the difference between outcomes, compliance and enforcement and is not supported facts.

The assertion by ASIC that principles based regulation has lower compliance than bright line regulation is just not true. Principles based regulation is directed at achieving better outcomes. Only government regulators like black and white rules and ignore the fact that the real test is not compliance but outcomes. Performance based regulation has been demonstrated to produce better outcomes and that is why it has been widely adopted throughout regulatory policy.

It is not additional ASIC "enforcement" that is required but rather additional co-operative ASIC "compliance". Given his Honour Jonathan Beach in Make it Mine Finance [2015] FCA (28 April 2015) at paragraph 65, that "the relevant statutory provisions are shrouded in conceptual imprecision", the emphasis necessary to achieve innovation and reduced regulatory costs, is ASIC working co-operatively with individual credit providers where those providers are genuinely seeking to develop innovative credit products and services that will benefit consumers. ASIC should be willing to grant Relief to individual credit providers for such products and services.

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.

Response to Observation 3:
All successful businesses rely upon winning and retaining customers. Observation 3 and Observation 1, make manifest the Committee is biased against small and medium amount credit providers. The information quoted is outdated anyway. The prevalence of repeat customers is evidence that the vast majority of small amount credit contracts satisfy consumers. And yet, the regulatory framework works to deny suppliers building customer loyalty and repeat business. It must be recognised that in market economies it is repeat business based upon the customers experience and satisfaction with a supplier that will determine the sustainability and growth of the credit supplier.

Response to Option 1 (reduce establishment fees for repeat SACC to 10%):

It is simply wrong to conclude that the cost to credit providers for assessing loans has reduced because it is an existing customer. The law requires every new application to be assessed afresh. The costs are therefore materially the same whether it be the first loan or a subsequent loan. The SACC fee for a subsequent loan should not be reduced. To so do will result in more credit providers exiting the sacc market with subsequent reduced competition, reduced innovation and less availability and choice for consumers.

Response to Option 2 (Replace rebuttable presumption in assessing unsuitability with bright line prohibition):

The option is in direct contradiction to the desired Terms of Reference "access to finance" and "fairness". The basis of this option is to tar everyone with the same brush. A consumer should have the right to be considered on their personal merits. A credit provider should be able to rebut the presumption, and there is sufficient safeguards in requiring the provider to have an adequate and recorded basis for such decision. Removing the rebuttable presumption can actually cause consumers to suffer severe financial hardship.

Response to Option 3 (Extend the protected earnings amount for Centrelink recipients, to all consumers and lower the protected earnings amount from the existing 20% to no more than 10% of net income):

The option loses sight of the purpose of this existing limitation was to protect people on the lowest incomes from themselves. Extending this limitation to other categories is both unnecessary and fails to appreciate the variety of income levels, financial circumstances and objectives of consumers who apply for small and medium amount credit products.

This provider does not provide loans to Centrelink recipients. It has exited this space due to the regulation. Introducing limitations into the broader community is likely to result in this provider exiting the sacc marketplace altogether.

The options presented will reduce further the consumer's access to finance and the number of suppliers willing to remain in the sacc marketplace.

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."

Response to observation 4:
The reality is that all costs are ultimately borne by consumers. Regulation preventing proper recovery of costs simply re-distributes those costs to other customers who should not be unfairly burdened. There is simply insufficient post sacc legislative reform information presented to justify such observation and options.

Response to Option 4: (Introduce a default window, where no default fees can be charged until the consumer has missed a payment by one payment cycle):

It is competition and not regulation that will best serve consumers. This option once again mandates uniformity not innovation.

Secondly, all costs are ultimately paid by the consumer. Otherwise businesses go broke. As this proposal will directly affect business costs, it must result in changes to other fees and charges in the business. If the cost is not recovered from the particular borrower, other consumers will be burdened with the cost of this regulation option.

Once again, there has been insufficient analysis of current practices in different credit providers. The fact that this is not known is an example of how regulation has clouded rather than made transparent to consumers the differences between suppliers of small amount credit contracts.

This proposal cannot proceed without proper consideration of actual practices of all providers and consideration of the following impacts:

I. repayments that are weekly, fortnightly, monthly etc.
II. cost consequences to other consumers
III. likely reduction in the number of credit providers in the sacc market segment

Response to 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)):

The effect of such a proposal would be to encourage consumers to default and encourage consumers to stay in default. This increases administrative costs ultimately borne by consumers.

Response to Option 6: (Cap default fees as a percentage of the amount outstanding on the SACC)
The option fails to understand that the default fees are not a penalty or additional profit but a cost recovery. Already the cap creates an allocation distortion that may disadvantage non-defaulting borrowers. The interim report has no analysis of the actual costs incurred by credit providers in managing defaults, the proportion of those costs actually recovered from the defaulting consumer and the impact on non-defaulting consumers of distorting the allocation of those costs.

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.

Response to Observation 5:

This credit provider does provide for early repayment. The fact the report cannot give any statistics of actual lending practices indicates the superficial level of analysis that has been undertaken.

The observation assumes a problem when there is simply no actual data presented upon which to know the extent to which this practice exists. The proposal can be detrimental to those existing credit providers that already have relevant terms and conditions.

The observation is good example of how regulators and policy makers do not facilitate recognition of suppliers who provide higher standard products and services.

Regulation and government agency consumer advice websites continually publicise the regulated requirements. These can mask the marketplace signals that could otherwise be visible to assist consumers to discern between suppliers.

Response to 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)

This credit provider only charges the monthly fee if and when it accrues. If a consumer pays out early then the consumer does not pay for any further period.

It is for the credit provider to provide account information to a customer in real time, usually by a telephone ap or website.

What would encourage consumer choice is to permit a small administration fee, say $20, to enable a consumer to elect to have a break in repayments or to shorten or extend the term.

Response to 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)

A credit provider should be permitted to be flexible. A consumer's circumstances vary and a credit provider should able to present the customer with options from which they choose. A consumer may want simply a break from payments, or prefer a shorter or longer term. At present the offer of flexibility is constrained by fixed fees and caps. There is both a cost that will need to be recovered if a consumer chooses to alter the contracted period or repayments and a small fee (perhaps $20) should be permitted for each change made by the consumer. It would be impractical to offer change without a fee as it will also lead to consumers continually changing which would make the whole offer of flexibility impractical to implement.

C. **Consumer Leases**:

This credit provider does not provide consumer leases and therefore is not in a position to make an informed response.