

23 May 2016

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Review of the Small Amount Credit Contract Laws

The Australian Bankers' Association (ABA) is pleased to have further opportunity to provide its views following the release of the Final Report of the review of Small Amount Credit Contracts (SACCs) and to respond to the Government's further consultation on whether the recommendations relating to consumer leases should apply to all regulated consumer leases (including motor vehicles) rather than only leases of household goods, and how second hand goods should be treated.

The ABA wishes to provide its views on three of the review's Final Report recommendations:

- 1) **Recommendation 6:** A national database of SACCs should not be introduced at this stage. The major banks should be encouraged to participate in the comprehensive credit reporting regime at the earliest date.
- 2) **Recommendation 19:** Retain the obligation for SACC providers to obtain and consider 90 days of bank statements before providing a SACC, and introduce an equivalent obligation for lessors of household goods. Introduce a prohibition on using information obtained from bank statements for purposes other than compliance with responsible lending obligations. ASIC to continue its discussions with software providers, banking institutions and SACC providers with a view to ensuring that ePayment (sic) Code protections are retained where consumers provide their bank account log-in details in order for a SACC provider to comply with their obligation to obtain 90 days of bank statements, for responsible lending purposes.
- 3) **Recommendation 24:** The Government should amend the Credit Act to regulate indefinite term leases, address avoidance through entities using business models that are not regulated by the Credit Act, and address conduct by licensees adopting practices to avoid the restrictions on the maximum amount that can be charged under a consumer lease of household goods or a SACC, or any of the conduct obligations that only apply to a consumer lease of household goods or a SACC.

The ABA also wishes to provide its views on the Government's consideration of whether the recommendations in the Final Report relating to consumer leases should apply to all regulated consumer leases (including motor vehicles) rather than only leases of household goods, and how second hand goods should be treated.

Recommendation 6 – comprehensive credit reporting

The ABA supports the Panel's view that the establishment of a SACCs national data base would be premature while up-take of Comprehensive Credit Reporting (CCR) is progressing and that time is required for utilisation of CCR to be optimised.

There remain issues to be resolved regarding the reporting of credit facilities under which consumers are experiencing financial difficulties and there is the further possibility of recommendations being made by the Productivity Commission in its inquiry into Access and Use of Data which is due to report by the end of 2106.



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These are factors which industry needs to take into account as part of the growth in the take-up of CCR. Suggestions that take-up of CCR should be mandated, if implemented, could have a counter-productive impact on take-up while industry pauses to understand and assess the nature of this intervention.

Recommendation 19 – SACCs providers to obtain and consider 90 days of bank statements

The ABA supports this recommendation and the proposed extension of an equivalent requirement regarding bank statements of account to consumer leases of household goods by SACCs providers.

The Panel observed that obtaining a customer's bank statements is one way of satisfying some of a credit provider's responsible lending obligations which include making reasonable inquiries into the customer's financial situation. The ABA is concerned that some of the detailed explanation appears to include a reference to credit providers other than SACCs providers. There is a suggestion that the restrictions recommended in Recommendation 19 should be extended generally.

However, the Panel has noted that this review concerns only SACCs providers which, in the context of this review, the bank account statement provisions are a mandatory requirement for SACCs providers.

The provision of bank account statements alone does not in and of itself ensure responsible lending by a SACCs provider. There are a number of additional aspects which the SACCs provider should be required to take into account to understand the consumer's financial circumstances and satisfy a responsible lending obligation. This includes whether a customer may have multiple accounts and how joint accounts are to be treated. Further, the provision of bank account statements showing an account is overdrawn, reveals dishonoured payments or just nominal cash flows and balances would not satisfy the responsible lending requirements of a SACCs provider. The SACC's provider would be required to make further inquiries about these irregularities and ensure they are properly taken into consideration. ASIC has consulted industry on the risks faced by consumers in giving up their protection under the e-Payments Code where third party service providers acquire a consumer's bank statements for the purpose of compliance with the law by the SACCs provider.

The ABA is looking forward to ASIC releasing guidance on how the consumer can be protected. We will take the opportunity to have further discussions with ASIC and suggest that ASIC establishes a working group of key stakeholders to assist with reaching an early outcome.

Recommendation 24 – anti avoidance provision

The ABA is concerned about this recommendation noting it falls outside the Panel's terms of reference.

In its October 2015 submission to this review, the ABA referred to a similar proposal in 2013 about which we had expressed serious reservations to Treasury in its consultation on a possible general anti-avoidance provision for inclusion in the Credit Act.

A key concern was the breadth of the proposed provision and the potential for such a provision to capture not unusual circumstances associated with customer preferences for their credit facilities.

The Panel's recommendation appears to raise again the prospect of a broad anti-avoidance provision that would apply not just to avoidance practices associated with SACCs providers but to regulate credit facilities generally.

There may be evidence of avoidance practices in the SACCs sector. There appears to be no evidence in the mainstream credit industry to warrant such a measure. Such a measure would serve only to create uncertainty and operate to inhibit innovation in mainstream credit providers' ability to deliver credit services to their customers efficiently and responsively according to their customers' preferences.

Government's further consultation

The ABA also wishes to provide its views on the Government's consideration of whether the recommendations in the Final Report relating to consumer leases should apply to all regulated



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consumer leases (including motor vehicles) rather than only leases of household goods, and how second hand goods should be treated.

The Panel's Recommendation 14, provides that the SACCs cap should apply to all leases of household goods including electronic goods. Further consultation should take place on whether the cap should apply to consumer leases of motor vehicles.

The ABA notes that the Panel's recommendation did not include that the cap should apply to all other regulated consumer leases.

Further, it is noted that the Panel had not the opportunity to consult with motor car lease providers and other relevant stakeholders, and considered further work should be undertaken with key stakeholders before any reforms relevant to consumer leases for motor vehicle leases are considered.

The ABA is most concerned about this second stage review by the government that could result in the extension of the SACCs regime to all regulated consumer leases, including those leases provided by mainstream credit providers such as banks and other authorised deposit taking institutions.

It is unclear on what regulatory basis such an extension could be warranted and whether to do so would be in accordance the government's commitment to best practice regulation principles.

The ABA considers the government should provide sound reasons that such an extension is necessary based on clear evidence of substantial market failure and identify the alternatives to regulatory intervention which might be available.

At this point, the ABA is unable to support further regulatory intervention over and above those measures to which the Panel has given its careful, expert and considered opinions.

The ABA would welcome an opportunity to discuss this with Treasury and to better understand the drivers behind the possible need for extending the SACCs regime.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Gilbert', is written over a light grey circular stamp or watermark.

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