Money3 Submission to Treasury in response to SACC review

Consumer Credit
The Treasury
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4th June 2016

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Attention: James Kelly +61 2 6263 3798.

The question for government is whether the Credit Enhancement Bill introduction in March 2013 saw sufficient improvement in access and protection for consumers requiring small amount lending?

The answer is an overwhelming YES.

What worked well for Consumers:

- **Fewer and larger more compliant companies met the increasing demand. Smaller less efficient operations became unviable at the 20% and 4% caps for SACCs, plus the overall regulatory burden.**
- **The Protected Earnings Amount at 80% of income ensured consumers had sufficient cash to meet other expenses.**
- **The Caps on fees for SACCs at 20% establishment and 4% monthly, protected consumers from price gouging and balanced this against the need for lenders to be commercially viable, in light of the high cost of regulatory compliance and inherent bad debt levels without security.**
- **The cap on total repayments at 200% of cash advanced stopped debt spiral.**
- **The collection and analysis of 90 days bank statements gave transparency to lenders in meeting responsible lending obligations.**

What didn't work well for consumers:

- **Rebuttable presumption disadvantages consumers in forcing larger longer term loans on them which is more expensive. The number of prior loans has no relevance to a consumer's suitability for a loan. What is important is meeting Responsible Lending Obligations by considering all prior loans in the assessment.**

Dear James,

As Company co-founder, former managing director and a continuing major shareholder and now consultant to Money3 (MNY) l want to explain my view of the damaging consequences of some of the SACC review panels' recommendations. Both sides of parliament by voting for the Credit enhancement Bill (2012) believe the community is better served by providing credit options to all Australians and not just the fortunate 75% who, for whatever reasons, have access to financial and social opportunities that our client base have been denied or have limited access to. The JPC and Senate committee reviews prior to the Bills introduction on 1st March 2013 was the most widely canvassed research into this industry.

The SACC review commissioned for 2 years after the commencement of the Bill was clearly defined. The terms of reference for the review (Appendix 1) require the Panel to consider a number of specific issues and in doing so to take into account:

- 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.

Some of the recommendations of the review strayed from purpose and considered data which was collected prior to 1st March 2013(commencement date) and was based on an assumption not in the mandate "It is the Panel's view that a key objective of the laws applying to SACCs and consumer leases should be to facilitate financial inclusion." While I am committed to financial and social inclusion it is not within their mandate and without the thoroughness of the JPC process will and has harmed their impartiality.

I am a strong believer in the small amount lending of MNY. The pressure on small amount lenders, brought about in no small part by the current substantial regulatory burden, no doubt influenced the board of MNY from 22nd July 2015 to 30th January 2016 to decide to move away from small amount lending which:

1. contributes less than 25% of EBIT to MNY;
2. has caused the withdrawal of Westpac from banking MNY; and
3. has institutional fund managers being influenced by their investors to not invest in the demonised "payday lending" industry.

These outcomes from guerrilla activism by a well coordinated group of consumer advocates(activists) is troubling to a well constructed democratic system providing legal products and services in a civil society. It is important that their actions in influencing media, ASIC, banks, the prior MNY board and the SACC review Panel is seen for what it is. A well oiled PR machine designed to prop up and fund their inefficient and costly organisations.

The research and enquiry informing the Credit Enhancement Bill(2012) was extensive and detailed and the outcome was balanced in that each of the "sides" so to speak were equally unhappy; the mark of a truly appropriate compromise. Many small players have exited the industry unable to function profitably under the caps and regulatory requirements, and up until the board change in January MNY was going to exit small amount loans.

Even though consumer complaints are as low as .05% and genuine compliments from customer are far more prevalent, the relentless press and misrepresentation of the small amount credit industry as "payday lending" by consumer activists ably assisted by ASIC with at least 20 references to the term "Payday" in their March 2015 review rather than the government defined "small amount credit" is a witchhunt to demonise a legitimate industry with huge demand.

1. <u>THE CONCERN</u> – WHY DO PEOPLE SEEK SMALL AMOUNT CREDIT?

Extensive research on the topic uncovers the obvious reasons like, car repairs, utility bills, household necessities, celebrations like weddings, christenings and even funerals.

But why do **you** use credit? Is it the "thing" you spend the borrowed money for like the shopping at Safeway paid by credit card or did you have to use the credit card because you spent your savings on the kids school?

The fact is the shortfall of cash between what you earn and what you spend is the reason **we all use credit**. And the small amount credit users are the same it's just that they may have made poor choices in their life or haven't had the same opportunities others have had or haven't used them well. Albeit the amount of credit is generally less and to fill a short term need

Any way we look at it there are 4.5M Australians who have credit defaults against them, 3.9M Australians who have less than 1 weeks saving in the bank, there are about 2.9M Australians who are financially and often socially excluded and of them 54% cannot access $3,000 for an emergency. Using ABS statistics FY14 it states that over 25% of Australian households receive the majority of their income from Centrelink and out of a total adult population at the time of 11.5 million, 4.6 million people - 40% - were receiving a government payment. The perjorative descriptions of customers who receive unemployment or welfare benefits is clearly inappropriate and misguided in today's society. These are not people who are victims who must be saved from themselves.

The WHY is simple. Life is complex and wants and needs and feeling secure and able often comes from having access to credit. Many customers feel a sense of worth when they can be like others who make their own way, often by borrowing. The SACC customer generally doesn't own their home and are delighted to borrow to pay the bond on a rental or furnish the kids bedroom! To buy a $6k car and avoid catching 2 buses to get to work was a real time saver for a couple in Geelong. It helped their self esteem also.

Often times people don't take the education in school and may not receive orders well from authority and one thing for sure they are many and varied and have wants and needs and must be treated as able participants in society.

"He who has a **Why** to live for can bear almost any **How.**" **(**"Man's search for meaning" written by Victor Frankel."

2. THE CONCERN – INDUSTRY BEHAVIOUR

Fifteen years ago there was negligible controls over "payday" lending with each state's consumer affairs monitoring haphazard rules. Practices were unregulated and greed saw excessive charges and debt spirals common.

The Victorian Government review of 2006 introduced regulation including membership of external dispute resolution (EDR) and responsible lending obligations (RLO) and interest rate caps with flexible establishment fees. In 2002, and further strengthened in 2005, NSW and ACT oversaw draconian introduction of the 48% APR which created industry compliance models which were sometimes not in the interests of consumers. The advocates in tandem with the NSW Government effectively were driving prohibition of small amount loans or causing compliant workarounds.

While the workarounds may not have been in the spirit of the legislation they were a better option compared to the **unpleasant black market supplying the demand**.

The Credit Enhancement Bill(2012) embraced and improved protection mechanisms for consumers, many put forward by industry and set interest/credit charges at a barely viable level. Evidence of the slim margins are the exit of the smaller participants and the compliance models and excessive default charges by some industry participants to make ends meet.

Fortunately for consumers many of the recalcitrant companies with poor practices including The Cash Store have been taken over by Money3 and much improved standards applied.

3. THE CONCERN – THE IDEOLOGICAL POSITION AGAINST SACCS

In Victor Frankel groundbreaking book entitled "Man's search for Meaning" retelling his experience in Auschwitz and the importance of respecting man's drivers, it becomes clear that others cannot save man from himself and in fact "those held in highest esteem are neither great artists, sportsmen nor statesmen but those who master a hard lot with their heads held high".

Instead of focussing on providing options and training to further enable the human spirit in SACC customers, consumer activists focus on their ideological position that it is wrong that consumers have access to SACCs.

Exacerbating the consumer advocates ideological position is the lack of impartiality from the regulator, ASIC. In their recent review, ASIC bias was evidenced in their use of the provocative, emotive term "Payday" over 20 times when the legislation and the Minister's office officially describe SACC industry. Further to that, ASIC in dealing with industry enquiry including MNY, lead with letters of accusation and presumption which once dealt with through legal process are reversed.

The Public Relations exercise by the consumer activists including rehashing pre-Credit Enhancement(2012) Regulation breaches is stunning in its contempt and brilliant in its effectiveness was equally as difficult for ASIC in catching it unawares of some industry bad behaviour exposed on 4Corners. The strategists at the consumer activist campaign have successfully demonised a legitimate industry.

4. THE CONCERN – THE SOLUTION (DO WE WANT ONE?)

In ending hunger the world wide organisation "The Hunger Project, (thp.org) sees the hungry as the solution not the problem. They create an environment where people who want to end their own hunger come up with the solutions.

As Victor Frankel also said, it is not the circumstances one finds themselves in it is how they manage them. Few in Australia suffer the conditions of Auschwitz or third World poverty and neither they should. It is a matter of society providing options to people and empowering them to increase their capacity to manage those options. This is best achieved by having them discover their "Why".

MNY and others have invited the Not for Profits to partner with profit companies to provide a full range of options for these consumers including thinking, budgeting, financial counselling and a full suite of credit options from short term, consolidation, vehicle and home finance. It is working together with all our resources and having the consumer front of mind that will deliver sustainable options to an empowered group of consumers.

This solution requires altruistic capitalism and open mindedness and empowering people to think for themselves.

The short term profit view of capitalists and the righteous view of ideologues currently driving this debate is self serving and once again neglects the very consumers who are unable to access traditional credit.

To Change Your World Change The Conversation - Money3 Breakthrough Training and launch of "Centres for Financial and Social Inclusion"

As my tenure at Money3 was concluding we ran the first training program for staff and customers to incubate the concept "Centres for financial and social inclusion". The event at its core has Breakthrough training to have people start Thinking for themselves and would be followed up with seminars at each region. In the lead up to the event we produced the following clip to enrol people in the value of managing their conversation.

https://www.youtube.com/watch?v=dH9O9QwSkxI&feature=youtu.be

About 170 staff, partners, financial counsellors and customers participated.
The clip below is 4 minutes of customer/staff expectation and results from the event. Interestingly one of the customers interviewed is now employed with Money3. Once self esteem and confidence is improved people will find the options to pursue financial and social mobility.

https://www.youtube.com/watch?v=j-aCZEfsMyI&feature=youtu.be

Following is the Money3(MNY) response to the recommendations relevant to MNY

SACC Review Panel Recomendations

Recommendation 1 – Affordability

Extend the protected earnings amount regulation to cover SACCs provided to all consumers.

MNY response:

The PEA is working as designed for consumers on >50% of some government benefits. An improvement would be to include all government benefits within this category. To include consumers whose income is derived from commercial industry/employment seems overprotective and counterproductive to independence. Currently MNY apply a general rule of 35% maximum of income to be used for loan repayments other than SACC loans. As a rule to be introduced to SACC loans for consumers with < 50% from government benefits the 35% rule would not impinge on the consumers ability to access.

Reduce the cap on the total amount of all SACC repayments (including under the proposed SACC) from 20 per cent of the consumer's gross income to 10 per cent of the consumer's net (that is, after tax) income.

MNY Response:

The logic for this change is based on a Centrelink payment arrangement whereby the provider has access to Centrepay. No SACC provider has such access. It also forces a higher cost of borrowing on consumers to borrow the same amount of credit for a longer period of time. It violates RLO in that the purpose of a loan may be for a short time/until a payment comes in etc.or an emergency need. 10% of net in payment pushes the loan to longer term and most likely not in the customers best interest. The assumption is this cap would encourage financial inclusion but its impact would be the opposite.

Commercially, this change to a 10% PEA on net income would remove consumers ability to access SACCs to overcome obstacles and would make it unviable for many SACC loans to be advanced. This simply drives lenders out of the market and **forces borrowers to use the black market**.

Subject to these changes being accepted, retain the existing 20 per cent establishment fee and 4 per cent monthly fee maximums.

MNY Response:

Without the change in the MNY board, the company would have already exited the SACC space. See table below for the lower returns on the unsecured portion of MNY business. The establishment fee needs to be raised to 25% for a satisfactory return.

Table below is MNY FY2015 number of loans and EBIT

Loan Type	no. of Loans	% of Loans	$ Cash Out (Millions)	% of $ Cash Out	Duration of Loan
SACC* < $500	101,791	51.33%	$21.6	11.80%	2 mths 20% + 8%
SACC* $501 - $1000	57,573	29.03%	$36.1	19.66%	4 mths 20% + 16%
SACC* $1001 - $2000	19,127	9.65%	$24.5	13.36%	8 mths 20% + 32%
AOC* / MACC*	10,750	5.42%	$29.9	16.32%	2 yrs <48% APR +$400 Application
Secured loans*	9,066	4.57%	$71.3	38.87%	3 years <48% APR
GRAND TOTAL	198,307	100%	$183.5	100%	

SACC* Small Amount Credit Contract
MACC* Medium Amount Credit Contract
Secured/AOC* All other Credit

		9,066 loans	189,241 loans
EBIT FY2015	Total $23,442,257	Secured $17,365,853	Unsecured $6,076,404

Recommendation 2 – Suitability

- Remove the rebuttable presumption that a loan is presumed to be unsuitable if either the consumer is in default under another SACC, or in the 90-day period before the assessment, the consumer has had two or more other SACCs.

MNY Response:

The Rebuttable presumption disadvantages consumers by forcing larger longer term loans on them which is more expensive. The number of prior loans has no relevance to a consumer's suitability for a loan. What is important is meeting Responsible Lending Obligations by considering all prior loans in the assessment.

This recommendation is made on the condition that it is implemented together with ***Recommendation 1***.

Recommendation 3 – Short term credit contracts

Maintain the existing ban on credit contracts with terms less than 15 days.

MNY Response:

Agreed

Recommendation 4 – Direct debit fees

Direct debit fees should be incorporated into the existing SACC fee cap.

MNY Response:

Already the SACC fee caps have caused the exit of many players and the direct debit fees of external providers only can be on top of SACC fees and should remain that way.

Recommendation 5 – Equal repayments and sanction

In order to meet the definition of a SACC, the credit contract must have equal repayments over the life of the loan (noting that there may need to be limited exceptions to this rule).

MNY Response:

Agree with this recommendation.

Where a contract does not meet this requirement the credit provider cannot charge more than an annual precent rate (APR) of 48 per cent.

MNY Response:

We need more information to fully understand this

Recommendation 6 – SACC database

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.

MNY Response:

Agreed

Recommendation 7 – Early repayment

No 4 per cent monthly fee can be charged for a month after the SACC is discharged by its early repayment. If a consumer repays a SACC early, the credit provider under the SACC cannot charge the monthly fee in respect of any outstanding months of the original term of the SACC after the consumer has repaid the outstanding balance and those amounts should be deducted from the outstanding balance at the time it is paid.

MNY Response:

Agreed

Recommendation 8 – Unsolicited offers

SACC providers should be prevented from making unsolicited SACC offers to current or previous consumers.

MNY Response:

Disagree. This violates a consumer's ability to think for themselves, and violates the legitimate right of lenders to market their products.

Recommendation 9 – Referrals to other SACC providers

SACC providers should not receive a payment or any other benefit for a referral made to another SACC provider.

MNY Response:

Disagree. Different SACC providers have different criteria and product offerings and referrals are therefore important to fulfil customers' needs.

Recommendation 10 – Default fees

SACC providers should only be permitted to charge a default fee that represents their actual costs arising from a consumer defaulting on a SACC up to a maximum of $10 per week.

MNY Response:

Agreed - provided it is a genuine pre-estimate of average costs, otherwise it creates a draconian obligation to calculate exact costs on every contract. This is consistent with how the legislation approaches limits on other fees, such as establishment fees and termination fees (s.78)

The existing limitation of the amount recoverable in the event of default to twice the adjusted credit amount should be retained.

MNY Response:

Agreed

Combined recommendations

Recommendation 19 – Bank statements

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.

MNY Response:

Agreed

Introduce a prohibition on using information obtained from bank statements for purposes other than compliance with responsible lending obligations.

MNY Response:

We need more information to properly consider this.

ASIC should continue its discussions with software providers, banking institutions and SACC providers with a view to ensuring that ePayment 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.

MNY Response:

Agreed

Recommendation 20 – Documenting suitability assessments

Introduce a requirement that SACC providers and lessors under a consumer lease are required at the time the assessment is made to document in writing their assessment that a proposed contract or lease is suitable.

MNY Response:

Innovation requires the use of technology to complement human involvement (writing)

Recommendation 21 – Warning statements

Introduce a requirement for lessors under consumer leases of household goods to provide consumers with a warning statement, designed to assist consumers to make better decisions as to whether to enter into a consumer lease, including by informing consumers of the availability of alternatives to these leases.

MNY Response:

The warning statements are irrelevant and an insult to consumers and businesses alike. Disagree

In relation to both the proposed warning statement for consumer leases of household goods and the current warning statement in respect of SACCs, provide ASIC with the power to modify the requirements for the statement (including the content and when the warning statement has to be provided) to maximise the impact on consumers.

Recommendation 22 – Disclosure

Introduce a requirement that SACC providers and lessors under a consumer lease of household goods be required to disclose the cost of their products as an APR.

MNY Response:

This is an old argument that the Credit enhancement Bill (2012) dealt with well. A loan less than 12 months can not give a meaningful or accurate APR. example: $100 loan paid back with $1 fee after 1 day is 365% APR. Please see NCPA submission for other examples of misrepresentation and misleading information from loans repaid in under 12 months calculating APR

Introduce a requirement that lessors under a consumer lease of household goods be required to disclose the Base Price of the goods being leased, and the difference between the Base Price and the total payments under the lease.

Conclusion

As stated earlier: This solution requires altruistic capitalism and open mindedness and empowering people to think for themselves.

The short term profit view of capitalists and the righteous view of ideologues currently driving this debate is self serving and once again neglects the very consumers who are unable to access traditional credit.

There is a large portion of neglected Australians being lectured to by well meaning bureaucrats and advocates about what they should be doing rather than being included in a dialogue to determine what they themselves want and get benefit from.

To quote Robert Kyosaki from "the Conspiracy of the Rich", money is knowledge. The key to shifting the behaviour of these neglected Australians is to give them more options and while they are there provide education.

Yours sincerely,

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