
NATIONAL CONSUMER CREDIT PROTECTION AMENDMENT (SMALL
AMOUNT CREDIT CONTRACT AND CONSUMER LEASE REFORMS) BILL
2017

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ASIC	Australian Securities and Investments Commission
Bill	Exposure draft of the <i>National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017</i>
Code	National Credit Code (Schedule 1 to the Credit Act)
Credit Act	<i>National Consumer Credit Protection Act 2009</i>
Credit Regulations	<i>National Consumer Credit Protection Regulations 2010</i>
GST	Goods and Services Tax
Guide	<i>Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers</i>
Report	Final Report of the Review of the Small Amount Credit Contract Laws (released March 2016)
Review	Review of the Small Amount Credit Contract Laws
RRP	Recommended retail price
SACC	Small amount credit contract

Chapter 1

Background

Outline of chapter

1.1 This chapter outlines the context and scope of reforms to SACCs and consumer leases that are contained in the Bill. It also provides a summary of the Regulation Impact Statement for the reforms contained in the Bill, which is also being consulted on as part of this consultation process.

Context of amendments

1.2 The exposure draft of the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017* (the Bill) introduces a range of amendments to the Credit Act to enhance the consumer protection framework for SACCs and consumer leases.¹ The amendments contained in the Bill are to be complemented by amendments to the Credit Regulations, which will be consulted on separately at a later date.

1.3 The new SACC and consumer leasing provisions will promote financial inclusion and reduce the risk that consumers may be unable to meet their basic needs or may default on other necessary commitments. The Bill implements the Government's response to the Review of the Small Amount Credit Contract Laws (the Review) that was conducted by an independent panel chaired by Ms Danielle Press. The Review was publicly released in March 2016.² The Government's response to the Review was released by the Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, on 28 November 2016.³

1.4 The key reforms to be introduced by the Bill include:

¹ All legislative references in these materials are to the Credit Act, unless otherwise specified. General references in the text of these materials to the Credit Act include the Code (which is Schedule 1 to the Credit Act).

² The Review can be found at: https://consumercredit.treasury.gov.au/content/sacc_review.asp.

³ The Government's response to the Review can be found at: <http://kmo.ministers.treasury.gov.au/media-release/105-2016/>.

- imposing a cap on the total payments that can be made under a consumer lease;
- requiring SACCs to have equal repayments and equal payment intervals;
- removing the ability for SACC providers to charge monthly fees in respect of the residual term of a loan where a consumer fully repays the loan early;
- preventing SACC providers and credit assistance providers from making unsolicited invitations to apply for credit and unsolicited credit offers to current or former SACC customers;
- preventing lessors and credit assistance providers from undertaking door-to-door selling of leases at residential homes;
- introducing broad anti-avoidance protections to prevent SACC and consumer lease providers from circumventing the rules and protections contained in the Credit Act; and
- strengthening penalties to increase incentives for SACC providers and lessors to comply with the law.

1.5 Two key reforms that will be implemented via the Credit Regulations are the introduction of the new protected earnings amounts for SACCs and consumer leases for household goods. Under the reforms:

- The existing protected earnings amount for SACCs will be extended to cover all consumers and the portion of income that can be devoted to SACC repayments will be 10 per cent of a consumer's net income. Currently the SACC protected earnings amount only applies to persons who receive 50 per cent or more of their income from Centrelink and the portion of income is 20 per cent of gross income.
- A new protected earnings amount will be introduced for consumer leases for household goods, whereby lessors cannot enter into a contract that would require a consumer to pay more than 10 per cent of their income in rental payments under consumer leases for household goods. Under the protected earnings amount, the total rental payments (including under the proposed lease) cannot exceed 10 per cent of net income in each payment period.

1.6 Note also that the Government intends to amend the Credit Regulations to enable infringement notices to be issued for breaches of several of the new requirements introduced by the Bill. As indicated above, amendments to the Credit Regulations will be consulted on separately.

1.7 The amendments introduced by the Bill, as well as the accompanying amendments to the Credit Regulations, will take effect 12 months after the date of the Royal Assent.

Summary of regulation impact statement

Regulation impact on business

Impact: The amendments to the Credit Act impact SACC providers, consumer lessors and consumers of SACCs and consumer leases.

Main points:

- The Government has been informed of the various reform options by the findings of the SACC Review and subsequent consultation.
- The Review found that the existing laws relating to SACCs and consumer leases are not sufficiently promoting financial inclusion and that additional enhancements to the regulatory regime are required to ensure sufficient consumer protections are in place.
- In its interim report, the Review panel consulted on a range of alternate options, including options to reduce the fees for subsequent SACCs and introduce a prohibition on offering a SACC to a consumer who had had two or more SACCs in the past 90 days. Consultation was also undertaken on various options to cap the costs of consumer leases.
- The Government will commission a review of the SACC and consumer lease laws three years after the reforms come into effect.

1.8 The summary of the Regulation Impact Statement is contained in Chapter 6 of these Explanatory Materials.

Chapter 2

Small Amount Credit Contract Reforms

Outline of chapter

2.1 This chapter sets out the reforms that apply specifically to SACCs.

2.2 The reforms include:

- removing the rebuttable presumption that a SACC is unsuitable if the consumer entered into two or more SACCs in the last 90 days, or is in default under a SACC;
- requiring SACCs to have equal repayments spread over equal intervals;
- preventing SACC providers from charging monthly fees in respect of the residual term of the contract where the contract has been paid out in full early by the consumer; and
- preventing SACC providers from making unsolicited credit invitations and offers to current and previous SACC consumers.

2.3 The purpose of the amendments is to reduce the risk of SACC consumers, who are often lower income consumers in a financially vulnerable position, becoming unable to meet their basic needs or defaulting on other necessary commitments as a consequence of entering into a SACC.

Context of amendments

2.4 The Review was established by the Government to examine and report on the effectiveness of the laws relating to SACCs, in accordance with a statutory requirement under the Credit Act.⁴

⁴ The Bill repeals this statutory requirement, its requirements having been discharged. [*Schedule 1, item 39, section 335A*]

2.5 SACCs are loans of up to \$2,000 where the term of the contract is between 16 days and 12 months.

2.6 As credit contracts, SACCs are subject to the general consumer protections that apply under the Credit Act. In particular, SACC providers must adhere to the responsible lending obligations that require lenders to determine that the credit is not unsuitable for the consumer prior to providing the loan.

2.7 However, SACC providers are not subject to the 48 per cent annual percentage rate cap that applies more broadly to credit provided by lenders who are not Authorised Deposit-taking Institutions. Reflecting the short-term nature of these loans, SACC providers can instead charge a maximum establishment fee of 20 per cent and a maximum monthly fee of 4 per cent of the value of the loan.

2.8 SACCs are generally used by lower income consumers. Given the vulnerable consumer base of SACCs, there are currently a range of further consumer protections that apply when providing a SACC. In particular:

- there is a rebuttable presumption that a SACC is unsuitable if the consumer is already in default under another SACC or has been a party to two or more SACCs in the past 90 days; and
- on default, the consumer cannot be charged more than twice the adjusted credit amount (as defined in subsection 204(1) of the Code), including the amount already repaid but excluding enforcement costs.

2.9 The Review identified that the current consumer protections for SACCs are insufficient and that enhancements to the regulatory regime applying to SACCs are required to ensure it is fit for purpose.

2.10 In its response to the Review, the Government supported the majority of the Review's recommendations.

Summary of new law

2.11 The Bill amends the Credit Act to establish a mechanism for restricting the payments that are allowed under a SACC for all consumers, without the need for the Credit Regulations to specify a class of consumers to whom the restrictions apply, as required under the current law. It is intended that this legislative change will be complemented by

regulations that cap SACC repayments at a maximum of 10 per cent of a consumer’s net income (the protected earnings amount). These regulations will be consulted on separately from the Bill.

2.12 The rebuttable presumption that a SACC is unsuitable if the consumer had entered into two or more SACCs in the past 90 days, or is in default under a SACC, will be repealed. The Review found that the rebuttable presumption has not been effective in addressing problems relating to repeat borrowing and debt spirals, and considered these problems can be more effectively addressed through the reforms restricting SACC payments outlined above.

2.13 SACCs will be required to have equal repayments and equal repayment intervals over the life of the loan, subject to certain limited exceptions. This reform addresses a concern that some SACC providers are artificially extending the life of SACC loans by ‘front-loading’ repayments early in the loan, followed by lower repayments in the later months of the contract. This practice enables the SACC provider to receive additional monthly fees with no benefit to the consumer.

2.14 SACC providers will be prevented from charging monthly fees in respect of the residual term of a loan where a consumer fully repays the loan early.

2.15 SACC providers will also be prohibited from making unsolicited invitations to apply for credit and unsolicited credit offers to current or former SACC customers.

2.16 The Bill also lists certain existing provisions of the Code relating to SACCs as ‘key requirements’ for the purposes of the penalty regime in Part 6 of the Code.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
SACC providers must not enter into a SACC with a consumer if the repayments under the contract do not meet the requirements prescribed in the Credit Regulations. Existing civil and criminal penalties will apply.	SACC providers must not enter into a SACC with a consumer if the consumer is included in a class of consumers prescribed by the Credit Regulations and the repayments do not meet the requirements prescribed in the Credit Regulations.
The rebuttable presumption will be repealed.	It is a rebuttable presumption that a SACC is presumed to be unsuitable

	for a consumer where the consumer has had two or more other SACCs in the past 90 days or is in default under another SACC.
<p>SACCs must have equal repayments and equal payment intervals over the life of the loan, subject to certain limited exceptions.</p> <p>Failure to comply with the requirements relating to equal repayments and equal repayment intervals attracts civil and criminal penalties.</p>	No equivalent requirement.
<p>SACC providers cannot charge a consumer monthly fees in respect of the residual term of the contract where the consumer fully repays the loan early.</p> <p>Failure to comply with the requirements relating to charging monthly fees in respect of the residual term of a SACC attracts civil and criminal penalties.</p>	No equivalent requirement.
<p>SACC providers are prohibited from making unsolicited invitations to apply for credit and unsolicited credit offers to current or former SACC customers.</p> <p>Failure to comply with the requirements relating to unsolicited credit invitations and credit offers attracts civil and criminal penalties.</p>	No equivalent requirement.

Detailed explanation of new law

Affordability of SACCs: reforms to the protected earnings amount

Context of amendments

2.17 The Review found that SACCs can be useful for consumers when they are utilised as an emergency source of funding for one-off expenses; in situations where the high cost of SACCs relative to alternative sources of finance can be justified against the benefits of having access to emergency credit.

2.18 However, consumers who repeatedly enter into SACCs, or have multiple SACCs at the same time, are at greater risk of financial exclusion to the extent that SACC repayments consume a greater portion of the consumer's income and become increasingly unaffordable over time.

2.19 While the Credit Act and Credit Regulations contain protections designed to reduce the risks of SACC consumers entering a debt spiral, these are currently limited to recipients of Centrelink payments and do not apply to other groups who may be at high risk of financial exclusion as a consequence of entering into SACCs.

Current law

2.20 Section 133CC of the Credit Act prevents a SACC provider from offering to enter into a credit contract, or entering into a credit contract, if the consumer who the contract would be with is included in a class of consumers prescribed in the Credit Regulations and the repayments under the contract breaches the requirements prescribed in the regulations. A contravention of this provision attracts a civil penalty of up to 2,000 penalty units and a criminal penalty of up to 50 penalty units.

2.21 Section 133CC is supported by regulation 28S of the Credit Regulations, which caps the total amount of SACC repayments for the class of consumers who receive at least 50 per cent of their gross income from social security payments. The cap is set at 20 per cent of the consumer's gross income in a 'payment cycle period', that is, the period over which the consumer receives the predominant amount of his or her social security payments (typically fortnightly for most social security recipients).

New law

2.22 Current subsection 133CC(1) is repealed and replaced with a general prohibition on a SACC provider entering, or offering to enter, into a SACC with a consumer where the repayments breach the requirements prescribed in the Credit Regulations. This amendment enables the Credit Regulations to set a protected earnings amount on SACC repayments for all consumers, not just specified classes of consumers. [*Schedule 1, item 19, subsection 133CC(1)*]

2.23 Existing civil and criminal penalties continue to apply for a contravention of this provision.

2.24 It is intended that amendments will be made to the Credit Regulations implementing the Review's recommendation that the protected earnings amount be reduced from 20 per cent of a consumer's gross income to 10 per cent of a consumer's net income. The Government

will consult separately on amendments to the Credit Regulations at a later date.

Loss of charges – Entry into a SACC that breaches the protected earnings requirement

2.25 In addition, a SACC provider who contravenes the above prohibition will lose their entitlement to any establishment fee and monthly fees. The SACC provider is therefore not only required to refund the amount of any excess fee, charge or cost (above the protected earnings amount), but cannot retain any amounts that would otherwise be payable under paragraphs 31A(1)(a) or (b) of the Code. The debtor can recover any such amounts as a debt. *[Schedule 1, item 20, subsection 133CC(3)]*

2.26 This provision is based on the equivalent loss of charges mechanism (at subsection 23A(2) of the Code) for entry into a SACC that imposes a liability above the SACC cap on costs.

2.27 The purpose of this provision is to create a greater financial incentive for credit providers to comply with the prohibition. The nature of SACCs means that if credit providers charge amounts in breach of the prohibition they are likely to be relatively low in dollar terms. Allowing a penalty whereby the consumer can recover all establishment and monthly fees that were imposed will therefore encourage stricter compliance.

2.28 The Report specifically identified a contravention of the above prohibition as one of a select number of instances where a loss of charges mechanism of this type is warranted. This is based on the contravention having significant adverse consequences for consumers, the obligation being clear and it being reasonable to expect that a diligent provider would be readily able to ensure compliance.

Requiring or accepting payment above the protected earnings amount

2.29 Separately, the Bill introduces a prohibition on a licensee, or a person prescribed by the regulations, requiring or accepting a repayment by the debtor where that payment exceeds the protected earnings amount. A contravention attracts a criminal penalty of up to 100 penalty units. *[Schedule 1, item 21, subsections 133CD(1) and (2)]*

2.30 In the event of a contravention of this prohibition, the debtor is not liable (and is taken never to have been liable) to make the payment to the licensee (or other prescribed person). The debtor may recover as a debt due the amount of any payment made by the debtor. *[Schedule 1, item 21, subsection 133CD(3)]*

2.31 This provision is based on the equivalent mechanism (at subsection 31B(3) of the Code) in respect of requiring or accepting payment above the SACC cap on costs.

2.32 Again, the purpose of this provision is to encourage strict compliance with the protected earnings requirement, independently of whether the contract terms themselves purport to entitle the SACC provider to amounts above the protected earnings amount. The ability to prescribe other recipient persons allows for flexibility to target avoidance practices.

Removal of unsuitability presumption

2.33 The Bill repeals the provisions in the Credit Act that create a rebuttable presumption that a SACC is unsuitable for the consumer if the consumer is in default under another SACC, or the consumer has had two or more other SACCs in the previous 90-day period. [*Schedule 1, items 5, 7, 13 and 15, subsections 118(3A), 123(3A), 131(3A) and 133(3A)*]

2.34 The SACC Review determined that the rebuttable presumption had proven ineffective and should be replaced by the amendments to the protected earnings amount outlined above.

Requirement for equal repayments and intervals

Context of amendments

2.35 The Report identified a practice by which some SACC providers maximise revenue by entering into SACCs with consumers that involve ‘front-loading’ repayments and extending the overall term of the contract by requiring lower repayments in the later months of the contract. By extending the term of the contract in this way the SACC provider is able to gain additional revenue through the charging of monthly fees without providing any additional benefit to the consumer.

2.36 The Report recommended that this practice be addressed by requiring SACC contracts to have equal repayments over the life of the loan, while noting that there may need to be limited exceptions to this rule (for example, where the total repayments required under the contract cannot be divided equally).

2.37 The Government has opted to extend the Report’s recommendation by also requiring SACC contracts to have equal repayment periods.

Current law

2.38 Currently, there is no restriction on SACCs having unequal repayments or repayment periods.

New law

2.39 A SACC provider must not enter into a SACC with a consumer unless:

- the contract provides for equal repayments;
- the due dates for each payment (that is, the date on or by which a repayment is required to be made) are set at equal intervals over the life of the loan; and
- the interval between the date on which the credit is first provided and the due date of the first repayment is equal to or less than the interval between each repayment.

[Schedule 1, item 21, subsections 133CE(1) and (3)]

2.40 The treatment of the interval between the date on which the credit is first provided and the due date of the first repayment is designed to provide flexibility in meeting the requirement for equal payment intervals where the SACC provides for regular repayments on a fixed day of the week (for example, every Thursday) but credit is first provided on another day of the week (for example, on a Tuesday).

2.41 Flexibility is also provided if repayments are required on a fixed day and a payment day falls on a non-business day (for example a public holiday). In these situations, the repayment intervals will still be considered equal if the affected payment is required on the immediately preceding or succeeding business day. *[Schedule 1, item 21, subsection 133CE(4)]*

2.42 Repayments under a SACC are considered to be equal if each repayment is the same amount, with the exception that a final repayment may be up to 5 per cent smaller than the other repayments or if the repayments meet conditions that are determined by ASIC. These exceptions are designed to provide SACC providers with reasonable flexibility where the total amount to be repaid under a SACC cannot be divided equally or where there are other circumstances in which ASIC deems that unequal repayments are appropriate. *[Schedule 1, item 21, subsections 133CE(2) and (5)]*

2.43 A contravention of the requirement for equal repayments and repayment intervals is subject to a civil penalty of up to 2,000 penalty

units and a criminal penalty of up to 100 penalty units. The criminal penalty is a strict liability offence. [Schedule 1, item 21, subsections 133CE(1), (6) and (7)]

2.44 The imposition of strict liability for this offence is appropriate because of the potentially serious financial impact a contravention may have on an affected consumer. Requiring fault to be demonstrated as part of the offence would undermine deterrence and increase the likelihood of contraventions that could impact negatively on vulnerable consumers. .

Example 2.1 Equal repayments and equal repayment intervals

Vivek enters into a SACC with Carry-on Money to borrow \$600 to be repaid over 6 months, involving 13 fortnightly repayments of \$66.46, including a 20 per cent establishment fee. Vivek's total repayments under the contract are \$864.00. Vivek's contract with Carry-on Money is a complying SACC as it provides for equal repayments and equal repayment intervals.

Example 2.2 Equal repayments and equal repayment intervals

Josie enters into a SACC with Smiths Finance to borrow \$600 to be repaid through 26 fortnightly repayments, including a 20 per cent establishment fee. The contract stipulates that the first 13 repayments are \$58.15 and the subsequent 13 repayments are \$19.38. The effect of 'front loading' the repayment schedule is that the contract is extended from 6 months to 12 months, requiring Josie to pay Smiths Finance total repayments of \$1008.00, including an additional \$144 in monthly fees compared with Vivek's contract. As the contract does not provide for equal repayments over the life of the contract, Smiths Finance is in breach of subsection 133CE(1).

Prohibition on charging monthly fees for the balance of the loan term after early repayment of a SACC

Context of amendments

2.45 Under the Code, a SACC provider may charge a consumer an establishment fee that is capped at 20 per cent and a monthly fee for the term of the loan that is capped at 4 per cent of the first amount of credit provided under the contract. The Report identified that some SACC providers appear to be structuring these fees under a SACC in a way that enables the provider to receive all of the monthly fees that would be payable under the contract even if the loan is repaid by the consumer before the end of the term of the loan.

2.46 Section 29 of the Code prevents a credit provider from requiring the payment of an interest charge at any time before the end of the day on

which the interest charge applies. As SACC providers are not permitted to charge interest and instead charge fees (subject to the fee cap), this prohibition does not apply in respect of SACCs, so that monthly fees may be collected in advance of the month in respect of which the monthly fee applies. In order to bring the protections for SACCs in line with the protections that apply to other credit contracts, the Report recommended that a SACC provider be prevented from charging a monthly fee in respect of any outstanding months of the original term of the SACC after the consumer has fully repaid the balance of the loan and that any such amounts that have been pre-paid should be deducted from the outstanding balance at the time it is repaid. The Government accepted this recommendation.

Current law

2.47 Under section 31A of the Code, a SACC provider's fees in respect of a SACC loan are capped at a 20 per cent up-front fee and a 4 per cent monthly fee for the term of the loan. There is no restriction on SACC providers requiring up-front or early payment of the 4 per cent monthly fee for the term of the SACC.

New law

2.48 A SACC provider is prohibited from charging or requiring payment of an 'unexpired permitted monthly fee' where the consumer fully repays the balance of a SACC before the end of the original term of the loan. An unexpired permitted monthly fee is each capped (or permitted) monthly fee that is in respect of a month covered by the contract that commences after the date of pay out or discharge of the contract. *[Schedule 1, items 42 and 66, subsection 31C(1) and the definition of 'unexpired permitted monthly fee' in subsection 204(1) of the Code]*

2.49 This prohibition is intended to apply to months after the month in which the final repayment is made. That is, the provider may charge a monthly fee (up to a maximum of 4 per cent) in respect the month in which the SACC is paid out or discharged.

2.50 A contravention of this requirement is subject to a civil penalty of up to 2,000 penalty units and a criminal penalty of up to 100 penalty units. The criminal penalty is a strict liability offence. *[Schedule 1, item 42, subsections 31C(1), (3) and (4) of the Code]*

2.51 The imposition of strict liability for this offence is appropriate because of the potentially serious financial impact a contravention may have on an affected consumer. Requiring fault to be demonstrated as part of the offence would undermine deterrence and increase the likelihood of contraventions that could impact negatively on vulnerable consumers. .

2.52 If a credit provider charges a SACC consumer an unexpired permitted monthly fee, the debtor is not liable (and is taken to never have been liable) to make the payment of the unexpired permitted monthly fee to the credit provider and the consumer may recover this amount. The SACC provider must also refund that amount to the debtor as soon as practicable – for example, by deducting the fees from the outstanding balance of the loan at the time of pay out. [*Schedule 1, item 42, subsections 31C(2) of the Code*]

2.53 Amendments to the Code ensure that a debtor or guarantor has a right to pay out a SACC. New subsection 82(3) of the Code specifies the amount required to pay out a SACC, which is the total of the following amounts: the amount of credit; all fees and charges payable by the debtor to the credit provider up to the date of termination (excluding any unexpired permitted monthly fee); reasonable enforcement expenses; and less any payments under the contract and any rebate of premium under section 148. [*Schedule 1, items 44 and 45, subsections 82(2) and (3) of the Code*]

Example 2.3: Treatment of monthly fees for the balance of the loan after early repayment of a SACC

Rebecca borrows \$500 for three months under a SACC entered into with Cut-Price Loans. Under the contract Cut-Price Loans charges a \$100 establishment fee and a monthly fee of \$20 for each month of the contract. The total amount payable by Rebecca is \$660, comprising equal fortnightly repayments of \$110.

Rebecca subsequently decides she wants to pay out the SACC at the end of the second month of the contract, on the fourth repayment date. As Cut-Price Loans is not able to charge Rebecca the monthly fee for the third month of the contract, the total balance of the SACC is now \$640, rather than \$660. Taking into account this adjustment, Cut-Price Loans requires Rebecca to pay \$310 to pay out the SACC.

Unsolicited offers

Context of amendments

2.54 During the Review’s consultations, a number of stakeholders raised concerns about SACC providers making unsolicited approaches to consumers to apply for a SACC. This practice is particularly concerning where the approaches are being made to recent or existing SACC customers who may already be in a precarious financial position and may not be well placed to determine whether a new SACC would be in their best financial interests.

2.55 The Credit Act already prohibits credit card providers from making unsolicited written credit card limit offers unless the consumer has

provided express consent to receive such offers. The Government has introduced legislation into the Parliament to strengthen this prohibition in respect of credit cards by extending it to any form of unsolicited communication with the consumer and removing the exception where consent is given.⁵

2.56 The Report recommended that SACC providers should be prevented from making unsolicited SACC offers to current or previous consumers.

Current law

2.57 There is currently no restriction on SACC providers making unsolicited invitations to apply for a SACC or SACC offers to current or previous consumers.

New law

SACC providers

2.58 A provider is prohibited from making an unsolicited SACC invitation. [*Schedule 1, item 22, subsection 133CF(1)*]

2.59 A credit provider makes an unsolicited SACC invitation if:

- it makes a communication in any form;
- the communication is made to a person who is a current customer of the provider, or who entered into a SACC with the provider in the previous two years, or who the provider knows has a SACC with another provider or had a SACC with another provider in the past two years; and
- the communication makes an offer to apply for or enter into a SACC, or is about a current SACC and a reasonable person would conclude has as a purpose (even if not the only purpose) of encouraging a SACC application.

[*Schedule 1, item 22, subsection 133CF(5)*]

⁵ Available at:

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr5990%22>

2.60 This prohibition is not intended to capture communication that is directed towards consumers at large, such as general advertising of the availability of SACCs or SACC features.

2.61 As a SACC has a maximum term of 12 months, the two-year time limit in relation to invitations directed at past SACC consumers is intended to reflect an appropriate period after which a consumer is less likely to be vulnerable to these types of communications.

2.62 Further provisions for the purposes of determining whether a communication is a third party unsolicited SACC invitation may be included in the Credit Regulations. *[Schedule 1, item 22, subsection 133CF(6)]*

2.63 A contravention of the prohibition on making unsolicited SACC invitations attracts a civil penalty of up to 2,000 penalty units. *[Schedule 1, item 22, subsection 133CF(1)]*

2.64 A contravention of the prohibition also constitutes an offence. A criminal penalty of up to 100 penalty units applies if fault is proven in respect of the offence. A strict liability offence of up to 10 penalty units also applies. *[Schedule 1, item 22, subsections 133CF(2), (3) and (4)]*

2.65 The imposition of strict liability is appropriate because of the potentially serious financial impact a contravention may have on an affected consumer. The ability to seek a penalty without the need to prove fault as a particular element of the offence strengthens deterrence and reduces the likelihood of contraventions that could impact negatively on vulnerable consumers. These offences comply with the requirements of the Guide.

2.66 The guide to Part 3-2C is also updated to reflect this new obligation on SACC providers, as well as the amendments providing that the consumer is not liable to pay certain fees and charges under SACCs in certain circumstances. *[Schedule 1, item 16, the guide to Part 3-2C]*

Loss of charges in relation to unsolicited offers

2.67 In addition, a SACC provider who contravenes the prohibition on unsolicited offers will lose their entitlement to any establishment fee and monthly fees under a SACC which a reasonable person would conclude the consumer entered into as a result of the offer. *[Schedule 1, item 22, paragraph 133CG(1)(a) and subsections (2) and (3)]*

2.68 That is, the SACC provider cannot retain any amounts that would otherwise be payable under paragraphs 31A(1)(a) or (b) of the Code. The debtor can recover any such amounts as a debt. *[Schedule 1, item 22, subsections 133CG(2) and (3)]*

2.69 This also applies when:

- the SACC provider knew that a credit assistance provider or any other person had made an unsolicited offer; and
- a reasonable person would conclude the consumer entered into the SACC as a result of the offer.

[Schedule 1, items 1 and 22, the definition of ‘unsolicited invitation by another person’ in subsection 5(1) and paragraph 133CG(1)(b)]

2.70 The above is based on the equivalent loss of charges mechanism (at subsection 23A(2) of the Code) for entry into a SACC that imposes a liability above the SACC cap on costs.

2.71 Again, the purpose of this mechanism is to create a greater financial incentive for credit providers to comply with the prohibition. The application of the mechanism to circumstances where the SACC provider knows that a third party has made a prohibited communication (and it generates a SACC) is designed as an anti-avoidance mechanism.

2.72 The Report specifically identified a contravention of the prohibition on unsolicited offers as one of a select number of instances where a loss of charges mechanism of this type is warranted. This is based on the contravention having significant adverse consequences for consumers, the obligation being clear and it being reasonable to expect that a diligent provider would be readily able to ensure compliance.

Credit assistance providers

2.73 The prohibition on unsolicited offers that applies to SACC providers is extended to credit assistance providers in similar terms. *[Schedule 1, item 10, section 124C]*

2.74 The guide to Part 3-1 is also updated to reflect this new obligation on credit assistance providers. *[Schedule 1, item 3, the guide to Part 3-1]*

2.75 Note that the Bill does not impose any prohibition on communications made by third parties generally (other than licensees). There is nothing to prevent a person (other than a licensee) making a communication that could be characterised, for example, as an invitation to enter a SACC. However, a SACC provider is exposed to losing its charges if it enters a SACC with the recipient of such a communication (that the person would have been prohibited from making had the person been a licensee) in the way described above. *[Schedule 1, items 1 and 22, the definition of ‘unsolicited invitation by another person’ in subsection 5(1) and paragraph 133CG(1)(b)]*

Extension of Part 6 penalty regime to certain existing SACC requirements in the Code

Context of amendments

2.76 Part 6 of the Code contains a civil penalty regime that applies to certain listed 'key requirements' under the Code, providing extra avenues for penalty and redress against credit providers.

2.77 The Report emphasised that the regime contains some unique features to further encourage compliance. For example:

- the court is directed to consider the effectiveness of a credit provider's compliance systems in determining the size of any penalty (so that the penalty would be expected to be higher for a provider with poor compliance systems); and
- it is likely that a credit provider will be subject to a lower penalty where it commences court action itself in response to a contravention (compared to a situation where a debtor or guarantor takes it to court), as this will be an indicator of actively monitoring and responding to contraventions.

2.78 The Report recommended extending the application of Part 6 to include other obligations applying to SACC providers, in addition to the series of disclosure requirements already listed.

New law

2.79 The Bill lists two existing provisions of the Code relating to SACCs as 'key requirements' for the purposes of the penalty regime in Part 6 of the Code. These are:

- Subsection 23A(1) (but only at the time the SACC is entered into), which relates to prohibited monetary obligations under SACCs; and
- Subsection 31A(1), which relates to restrictions on fees and charges for SACCs.

[Schedule 1, items 40, 41 and 46, the note to subsection 23A(1), note 2 to subsection 31A(1) and paragraphs (111)(1)(ia) and (ib) of the Code]

2.80 This mirrors the existing listing of subsections 23(1), 32A(1) and 32AA(2) of the Code as 'key requirements' for Part 6, which relate to prohibited monetary obligations and the annual cost rate cap under other credit contracts.

Chapter 3

Consumer Lease Reforms

Outline of chapter

3.1 This chapter sets out the reforms that apply specifically to consumer leases.

3.2 The reforms include:

- imposing a cap on lease payments that applies to all consumer leases (referred to as the ‘cap on costs’);
- improving affordability of consumer leases by:
 - introducing obligations for lessors of household goods to obtain and consider 90 days of bank statements before entering into a lease with a consumer; and
 - prohibiting lessors of household goods from entering into leases that do not meet certain requirements prescribed by the Credit Regulations (referred to as the ‘protected earnings amount’);
- prohibiting door-to-door selling of consumer leases for household goods; and
- requiring lessors of household goods to disclose the base price of the goods and the difference between the total payments and the base price.

3.3 The purpose of the amendments is to reduce the risk of consumers, who are often lower income consumers in a financially vulnerable position, becoming unable to meet their basic needs or defaulting on other necessary commitments as a consequence of entering into a consumer lease.

3.4 The Report’s recommendations concerning introducing a new protected earnings amount for leases for household goods (recommendation 15) and imposing restrictions on the early termination fees that lessors of household goods can charge (recommendation 17) will be implemented by amendments to the Credit Regulations.

The Government will consult on amendments to the Credit Regulations at a later date.

Context of amendments

3.5 In addition to examining the laws relating to SACCs, the Review was also tasked with examining the laws relating to consumer leases and whether any of the laws applying to SACCs should also apply to consumer leases.

3.6 Consumer leases are contracts for goods (hired wholly or predominately for personal, domestic or household purposes) for longer than four months where: the consumer does not have the right or obligation to purchase the goods; and the total amount payable exceeds the cash price.

3.7 Consumer leases are not considered to be credit contracts and therefore the obligations in the Credit Code that apply to credit contracts do not automatically apply to consumer leases.

3.8 Note that this Bill removes the exemption from regulation under the Credit Act that currently applies to indefinite-term leases (see Chapter 5 of these materials).

3.9 The *Consumer Credit Legislation Amendment (Enhancements) Act 2012*, amended the laws that apply to consumer leases to ensure that the majority of the obligations that apply to credit contracts, such as the content of the disclosure requirements and liability for conduct such as false and misleading representations, also apply to consumer leases. However, the 48 per cent cap on costs that applies to credit contracts was not extended to consumer leases.

3.10 The Review examined whether the 48 per cent cap on costs should be extended to consumer leases and reached the decision that, due to the inherent differences between leases and credit contracts (such as the costs of servicing the good), that consumer leases should continue to not be subject to the 48 per cent cap.

3.11 Nonetheless, the Review determined that a cap on the cost of consumer leases is required to ensure that consumers are not trapped in unaffordable lease contracts. This cap on costs is to be supported by the introduction of a protected earnings amount for leases for household goods.

Summary of new law

3.12 The Bill introduces a cap on costs that will limit what lessors can charge in respect of a consumer lease. The cap is a multiple of the base price of the good being leased, determined by adding 4 per cent of the base price for each whole month of the lease term to the amount of the base price, for a maximum of 48 months.

3.13 Lessors will be required to collect and consider 90 days of bank statements prior to providing a consumer with a consumer lease for household goods.

3.14 The Bill will enable the Credit Regulations to implement a new 10 per cent protected earnings amount for consumer leases.

3.15 Lessors of household goods will be required to disclose the base price of the goods and the difference between the total payments and the base price.

3.16 Lessors will also be prohibited from undertaking door to door selling of consumer leases for household goods.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
There is a cap on the cost of consumer leases.	No equivalent provision.
When verifying a consumer's financial situation, lessors of household goods must obtain and consider 90 days of bank statements.	There is a general obligation to take reasonable steps to verify a consumer's financial situation.
There will be a specific regulation making power enabling the Credit Regulations to create a new protected earnings amount for consumer leases.	No equivalent provision.
Lessors of household goods are prohibited from visiting a place of residence for the purpose of inducing a person who resides there to apply for or obtain a lease, except by prior arrangement.	Credit providers (but not lessors) are prohibited from visiting a place of residence for the purpose of inducing a person who resides there to apply for or obtain credit, except by prior arrangement.
Lessors of household goods are required to disclose the base price of the goods being leased and the	Lessors are required to disclose the total amount of rental payments under the lease.

difference between the base price and the total repayments.	
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Detailed explanation of new law

Concept of ‘consumer lease for household goods’

3.17 The Bill introduces the concept of a ‘consumer lease for household goods’, defined as a consumer lease where any of the goods under the lease are ‘household goods’. *[Schedule 1, items 1 and 64, the definition of ‘consumer lease for household goods’ in subsection 5(1) of the Credit Act and in subsection 204(1) of the Code]*

3.18 This definition is designed to prevent a lessor avoiding the new obligations this Bill introduces on consumer leases for household goods by including a non-household good in the same lease contract as the primary household good.

3.19 ‘Household goods’ are in turn defined as goods of a kind ordinarily acquired for domestic or household use. For the avoidance of doubt, motor vehicles are explicitly excluded. *[Schedule 1, item 1 and 64, the definition of ‘household goods’ in subsection 5(1) of the Credit Act and in subsection 204(1) of the Code]*

3.20 This definition is designed to avoid the need, in distinguishing between household goods and other goods, for any inquiry into the purposes for which a particular consumer intends to use a particular hired good.

3.21 The Report confined its recommendations about consumer lease reforms (including the combined reforms) to consumer leases for household goods. However, the Government has opted to apply the new cap on costs and the anti-avoidance measures to all consumer leases regulated under the Credit Act.

3.22 As indicated below, consistent with the Report’s recommendations, each of the other consumer lease reforms (including the combined reforms in Chapter 4) apply only to consumer leases for household goods.

Cap on costs

Context of amendments

3.23 The Report recommended that a cap on the total amount of payments made under a consumer lease for household goods should be introduced. This would bring the consumer protections for consumer

leases for household goods more into line with those for SACCs and prevent high cost leases which cause financial harm to some consumers.

3.24 The Report noted that there was evidence that leases have high costs and can result in lease payments taking up a large portion of a consumer's income. These high payments can limit a household's ability to improve their financial position by reducing their capacity to access other forms of finance.

3.25 In its response to the Report, the Government decided to apply the cap on costs to all regulated consumer leases, not just leases for household goods. For example, the cap on costs will apply to a consumer lease for a motor vehicle for personal use.

Current law

3.26 Currently, there is no cap on the total amount of payments that can be made under a consumer lease.

New law

3.27 The Bill introduces a cap (the 'permitted cap') on costs for consumer leases. A lessor must not enter into a consumer lease if the combined total of the total amount payable under the lease and any add-on fees payable by the lessee exceed the permitted cap. *[Schedule 1, items 58 and 64, subsections 175AA(1) and (3) and the definition of 'permitted cap' in subsection 204(1) of the Code]*

3.28 However, permitted delivery fees, permitted installation fees and enforcement expenses that are recoverable in accordance with subsection 179R(1) of the Code are not included in the total amount payable under a consumer lease and thus may be charged in addition to the permitted cap. *[Schedule 1, item 58, subsection 175AA(2) of the Code]*

3.29 The permitted delivery fee must be limited to the reasonable cost of delivery of the goods to the lessee. ASIC may declare by legislative instrument that fees relating to the installation of particular kinds of goods are permitted installation fees. *[Schedule 1, item 58, subsections 175AA(8) and (9) of the Code]*

3.30 For a lease with a fixed-term, the permitted cap is the sum of the base price of the goods hired under the lease and 0.04 multiplied by the base price for each whole month of the consumer lease, to a maximum of 48 months. *[Schedule 1, item 58, subsection 175AA(3) of the Code]*

3.31 For a lease with an indefinite term, the permitted cap is the sum of the base price of the goods hired under the lease and 1.92 multiplied by the base price. This effectively caps the costs on an indefinite-term lease

at an equivalent level to a 48 month fixed-term lease. *[Schedule 1, item 58, subsection 175AA(3) of the Code]*

3.32 The method of determining the base price of the goods under the lease depends on whether the goods are new or second hand. *[Schedule 1, items 58 and 64, subsections 175AA(5) and (6) and the definition of 'base price' in subsection 204(1) of the Code]*

3.33 For goods that are new, the base price depends on whether the RRP of the good is known at the time the lease is entered into.

- Where the RRP is known, the base price of the goods is the lesser of the RRP (excluding GST) and the agreed purchase price. *[Schedule 1, item 58, paragraph 175AA(5)(a) of the Code]*
- Where the RRP is not known, the base price is the lesser of the market value of the goods at the time the lease is entered into (excluding GST) and the agreed purchase price. *[Schedule 1, items 58 and 65, paragraph 175AA(5)(b) and the definition of 'market value' in subsection 204(1) of the Code]*

3.34 The agreed purchase price is the price that is agreed between the lessee and either the lessor, the seller of the goods or the facilitator of the lease, as the case may be. Note that this does not refer to the price at which the lessor purchases a good from a supplier. *[Schedule 1, item 58, subsection 175AA(7) of the Code]*

3.35 For goods that are second hand, the base price of the goods depends on whether the date of manufacture and the RRP at the date of manufacture are known.

- Where the date of manufacture and the RRP at the date of manufacture are known, the base price is the lesser of the agreed purchase price and the RRP at the date of manufacture depreciated by 10 per cent for each year or part year since the date of manufacture to a maximum of 30 per cent; or *[Schedule 1, item 58, paragraph 175AA(6)(a) of the Code]*
- Where the date of manufacture and the RRP at the date of manufacture is not known, the base price is the lesser of the agreed purchase price and the market value of the goods at the time the lease is entered into (excluding GST). *[Schedule 1, item 58, paragraph 175AA(6)(b) of the Code]*

Example 3.1 Application of the permitted cap

Anh enters into a consumer lease with Whitegoods for You to lease a refrigerator (with a RRP of \$1,200.00) for two years. Anh and Whitegoods for You agree that the purchase price (and hence the base

price) for the refrigerator is \$1,000.00. The maximum amount that Anh can be charged over the two-year lease is \$1,960.00, comprising the base price and \$960.00 in monthly fees (\$1,000 x 24 months x 0.04). The lease contract requires Anh to make payments of \$5.00 per month to cover the risk of damage to the goods and \$15.00 per month for a consumer credit insurance policy provided by a third party insurer. As these charges are not a permitted delivery fee or a permitted installation fee, Whitegoods for You includes them within the permitted cap of \$1,960.00 in compliance with subsection 175AA(1).

3.36 A contravention of the prohibition on entering into a consumer lease that breaches the cap on costs attracts a civil penalty of up to 2,000 penalty units and a criminal penalty of up to 100 penalty units. *[Schedule 1, item 58, subsections 175AA(1) and 175AB(1) of the Code]*

3.37 The above prohibition is also listed as a ‘key requirement’ for the purposes of Part 6 of the Code. The significance of this is explained above at paragraphs 2.76 to 2.78. *[Schedule 1, items 47, 58 and 63, paragraph 111(1A)(b), the note to subsection 175AA(1) and subsection 179W(1) of the Code]*

3.38 The maximum penalty that may be imposed under Part 6 for a contravention of a ‘key requirement’ in relation to a consumer lease is an amount not exceeding the difference between the total amount payable by the lessee under the lease and the base price. The tolerances and assumptions in sections 180 and 182 of the Code may apply to the calculation of this amount. *[Schedule 1, items 48 and 49, subsections 114(1B) and (4) of the Code]*

Loss of charges – Entry into lease that breaches the cap on costs

3.39 In addition, a lessor who contravenes the prohibition on entering into a consumer lease that breaches the cap on costs will lose their entitlement to any fees or charges above the base price of the goods hired under the lease. The lessor is therefore not only required to refund the amount of any excess fee, charge or cost (above the permitted cap), but cannot retain any amounts above the base price that would otherwise be payable up to the cap. The lessee can recover any such amounts as a debt. *[Schedule 1, item 58, subsection 175AB(2) of the Code]*

3.40 This provision is based on the equivalent loss of charges mechanism (at subsection 23A(2) of the Code) for entry into a SACC that imposes a liability above the SACC cap on costs.

3.41 The purpose of this provision is to create a greater financial incentive for lessors to comply with the prohibition.

3.42 The Report specifically identified a contravention of the prohibition (on entering into a consumer lease that breaches the cap on costs) as one of a select number of instances where a loss of charges

mechanism of this type is warranted. This is based on the contravention having significant adverse consequences for consumers, the obligation being clear and it being reasonable to expect that a diligent provider would be readily able to ensure compliance.

3.43 As the Report noted, if a lessor charges an amount in excess of the cap, a regime where the lessee can only recover the amount charged above the cap is an insufficient deterrent, as the lessor could still earn the maximum amount lawfully permitted. In the absence of the above loss of charges mechanism, a lessor may therefore consider the financial benefits of exceeding the cap are sufficient to justify the risks of enforcement action.

Requiring or accepting payment above the cap on costs

3.44 Separately, the Bill introduces a prohibition on a lessor, or a person prescribed by the regulations, requiring or accepting a payment by the lessee where that payment exceeds the cap on costs. A contravention attracts a criminal penalty of up to 100 penalty units. [*Schedule 1, item 58, subsection 175AC(1) of the Code*]

3.45 In the event of a contravention of this prohibition, the lessee is not liable (and is taken never to have been liable) to make the payment to the lessor (or other prescribed person). The lessee may recover as a debt due the amount of any payment made by the lessee. [*Schedule 1, item 58, subsection 175AC(2) of the Code*]

3.46 This provision is based on the equivalent mechanism (at subsection 31B(3) of the Code) in respect of requiring or accepting payment above the SACC cap on costs.

3.47 Again, the purpose of this provision is to encourage strict compliance with the cap on costs, independently of whether the contract terms themselves purport to entitle the lessor to amounts above the permitted cap. The ability to prescribe other recipient persons allows for flexibility to target avoidance practices.

Affordability of consumer leases: collecting and considering bank statements

Context of amendments

3.48 To address concerns that lessors are not making sufficient inquiries about a lessee's capacity to pay, the Report recommended that an obligation for lessors to consider 90 days of bank statements before providing a lease for household goods should be introduced, consistent with the existing requirement in relation to SACCs.

3.49 The purpose of this obligation is to ensure that lessors consider information about a consumer's income and expenses before entering into a lease for household goods with that person. This is consistent with existing responsible lending obligations which require credit providers to make reasonable inquiries into a consumer's financial circumstances before entering into a credit contract with that person.

3.50 The obligation for lessors to obtain and use bank account statements will assist lessors in determining whether a consumer is in a suitable position to obtain a lease for household goods.

Current law

3.51 Currently, licensees that provide credit assistance in relation to consumer leases and licensees that are lessors under consumer leases must comply with the general responsible lending obligations. For example, under section 153 of the Credit Act, lessors must make reasonable inquiries about the consumer's requirements and objectives, make reasonable inquiries about the consumer's financial situation and take reasonable steps to verify the consumer's financial situation. There are no requirements for providers of consumer leases to consider specific information such as bank statements in assessing a consumer's financial situation.

New law

3.52 The Bill introduces a requirement that licensees that are lessors under consumer leases in respect of household goods must, in verifying the consumer's financial situation, obtain and consider 90 days of statements for a bank account into which income of the consumer is deposited. The requirement to obtain and consider bank statements does not in any way limit the obligation on the lessor to take reasonable steps to verify the consumer's financial situation, which may involve considering other information. *[Schedule 1, item 32, subsections 153(1A) and (1B)]*

3.53 A similar requirement is also introduced in relation to licensees that provide credit assistance in relation to consumer leases. *[Schedule 1, item 26, subsections 140(1A) and (1B)]*

3.54 These provisions are designed to replicate existing provisions in relation to SACCs and encourage lessors of household goods to make a more accurate assessment of consumers' circumstances, in addition to their responsible lending obligations.

Affordability of consumer leases: protected earnings amount

Context of amendments

3.55 The Report recommended that a protected earnings amount be introduced for leases for household goods, whereby lessors cannot cause lessees to pay more than 10 per cent of their net income in lease payments. This would apply to the lessee's total lease payments under all household leases held by the lessee and is consistent with the reforms to the protected earnings amount that are being introduced in relation to SACCs by this Bill.

3.56 The purpose of this measure is to promote financial inclusion by ensuring that consumers do not enter into unaffordable consumer lease contracts that expend a large portion of their income, while enabling them to continue to access household goods that they need through leases.

Current law

3.57 Currently, there is no protected earning amount requirement for consumer lease providers in relation to a consumer's net income.

New law

3.58 The Bill prohibits licensees from offering to enter into, or entering into, a consumer lease for household goods if the amount to be paid under the lease would not meet the requirements prescribed by the Credit Regulations. [*Schedule 1, item 34, subsection 156A(1)*]

3.59 It is intended that the Credit Regulations would be amended to prescribe the protected earnings amount as 10 per cent of the consumer's net income. As indicated above, the Government will consult separately on amendments to the Credit Regulations.

3.60 A contravention of the protected earnings requirement attracts a civil penalty of up to 2,000 penalty units. A criminal penalty of up to 50 penalty units also applies for offering to enter into, or entering into, a consumer lease contract that breaches the protected earnings requirement. A criminal penalty of up to 100 penalty units applies for requiring or accepting payment in relation to a consumer lease that breaches the protected earnings requirement. [*Schedule 1, item 34, subsections 156A(2) and 156B(1)*]

3.61 The guide to Part 3-4 is also updated to reflect the new protected earnings requirement. [*Schedule 1, item 30, the guide to Part 3-4*]

Loss of charges – Entry into consumer lease for household goods that breaches the protected earnings requirement

3.62 In addition, a lessor who contravenes the above prohibition will lose their entitlement to any fees or charges above the base price of the goods hired under the lease. The lessor is therefore not only required to refund the amount of any excess fee, charge or cost (above the protected earnings amount), but cannot retain any amounts above the base price that would otherwise be payable up to the cap. The lessee can recover any such amounts as a debt. *[Schedule 1, item 34, subsection 156A(3)]*

3.63 This provision is based on the equivalent loss of charges mechanism (at subsection 23A(2) of the Code) for entry into a SACC that imposes a liability above the SACC cap on costs.

3.64 The purpose of this provision is to create a greater financial incentive for lessors to comply with the prohibition.

3.65 The Report specifically identified a contravention of the above prohibition as one of a select number of instances where a loss of charges mechanism of this type is warranted. This is based on the contravention having significant adverse consequences for consumers, the obligation being clear and it being reasonable to expect that a diligent provider would be readily able to ensure compliance.

Requiring or accepting payment above the protected earnings amount

3.66 Separately, the Bill introduces a prohibition on a lessor, or a person prescribed by the regulations, requiring or accepting a payment by the lessee where that payment exceeds the protected earnings amount. A contravention attracts a criminal penalty of up to 100 penalty units. *[Schedule 1, item 34, subsections 156B(1) and (2)]*

3.67 In the event of a contravention of this prohibition, the lessee is not liable (and is taken never to have been liable) to make the payment to the lessor (or other prescribed person). The lessee may recover as a debt due the amount of any payment made by the lessee. *[Schedule 1, item 34, subsection 156B(3)]*

3.68 This provision is based on the equivalent mechanism (at subsection 31B(3) of the Code) in respect of requiring or accepting payment above the SACC cap on costs.

3.69 Again, the purpose of this provision is to encourage strict compliance with the protected earnings requirement, independently of whether the contract terms themselves purport to entitle the lessor to amounts above the protected earnings amount. The ability to prescribe other recipient persons allows for flexibility to target avoidance practices.

Door-to-door selling of consumer leases

Context for amendments

3.70 The Report highlighted concerns that the unsolicited selling of consumer leases for household goods is unfair, given the potentially high cost of consumer lease contracts and has the capacity to cause financial harm irrespective of the target market.

3.71 To address these concerns, the Report recommended that there should be a prohibition on, addressing current unfair practices used to market these goods. However, as there is difficulty in distinguishing between unsolicited selling and marketing of household good leases, the Government is instead specifically prohibiting door-to-door selling of consumer leases for household goods at residential properties.

Current law

3.72 Currently, there is no prohibition on the door-to-door selling of consumer leases for household goods.

3.73 Section 156 of the Credit Code prohibits credit providers from visiting a place of residence for the purpose of inducing a person who resides there to apply for or obtain credit, except by prior arrangement. However, a person who visits another person's residence for the purpose of offering goods or services for sale and who offers to provide or arrange for the provision of credit to finance the sale is not taken to have called for the purposes of inducing a person to apply for or obtain credit.

New law

3.74 The Bill introduces a prohibition on the door-to-door selling at residential properties of consumer leases for household goods by a lessor or a person who provides credit assistance, unless there is a prior arrangement with a person who resides at the property. *[Schedule 1, items 62 and 64, subsection 179VA(1) and the definition of 'credit assistance' in subsection 204(1) of the Code]*

3.75 A contravention of the prohibition on door-to-door selling of consumer leases for household goods attracts a civil penalty of up to 2,000 penalty units. A person also commits an offence for a contravention of this prohibition. A criminal penalty of up to 100 penalty units applies if fault is proven in respect of the offence. A strict liability offence of up to 10 penalty units also applies. *[Schedule 1, item 62, section 179VA of the Code]*

3.76 The imposition of strict liability is appropriate because of the potentially serious financial impact a contravention may have on an

affected consumer. The ability to seek a penalty without the need to prove fault as a particular element of the offence strengthens deterrence and reduces the likelihood of contraventions that could impact negatively on vulnerable consumers. These offences comply with the requirements of the Guide.

Loss of charges in relation to door-to-door sales

3.77 In addition, a lessor who contravenes the prohibition on door-to-door sales will lose their entitlement to any fees or charges above the base price of the goods hired under a lease which a reasonable person would conclude the consumer entered into as a result of the sales visit. *[Schedule 1, item 62, paragraph 179VB(1)(a) and subsections (2) and (3) of the Code]*

3.78 That is, the lessor cannot retain any amounts above the base price that would otherwise be payable up to the cap. The lessee can recover any such amounts as a debt. *[Schedule 1, item 62, subsections 179VB(2) and (3) of the Code]*

3.79 This also applies when:

- the lessor knew that a person who provides credit assistance or any other person had made a prohibited visit; and
- a reasonable person would conclude the consumer entered into the lease as a result of the visit.

[Schedule 1, items 62 and 66, paragraph 179VB(1)(b) and the definition of 'unsolicited visit by another person' in subsection 204(1) of the Code]

3.80 The above is based on the equivalent loss of charges mechanism (at subsection 23A(2) of the Code) for entry into a SACC that imposes a liability above the SACC cap on costs.

3.81 Again, the purpose of this mechanism is to create a greater financial incentive for credit providers to comply with the prohibition. The application of the mechanism to circumstances where the lessor knows that a third party has made a prohibited communication (and it generates a lease) is designed as an anti-avoidance mechanism.

3.82 The Report specifically identified a contravention of the prohibition on door-to-door sales as one of a select number of instances where a loss of charges mechanism of this type is warranted. This is based on the contravention having significant adverse consequences for consumers, the obligation being clear and it being reasonable to expect that a diligent provider would be readily able to ensure compliance.

3.83 Note that the Bill does not impose any prohibition on canvassing or visits made by third parties generally (other than licensees). There is nothing to prevent a person (other than a licensee) visiting a residence in a way that could be characterised, for example, as inducing the resident to obtain a consumer lease for household goods. However, a lessor is exposed to losing its charges if it enters a lease with that resident in the way described above. *[Schedule 1, items 62 and 66, paragraph 179VB(1)(b) and the definition of ‘unsolicited visit by another person’ in subsection 204(1) of the Code]*

Base price disclosure

Context of amendments

3.84 The Report recommended that lessors of household goods be required to disclose the base price of the goods being hired and the difference between the base price and the total amount payable by the lessee under the lease.

3.85 This requirement will enable consumers to better assess the overall cost of a consumer lease for household goods, while also encouraging consumers to seek cheaper alternatives by increasing the visibility of high-cost transactions.

Current law

3.86 Section 174 of the Code specifies the disclosures that lessors must make under consumer leases. Amongst other things, lessors are currently required to disclose the amount of each rental payment, the total number of rental payments and the total amount of rent payable under the lease.

New law

3.87 Lessors must disclose, in relation to consumer leases for household goods, the base price of the goods hired under the lease and the difference between the base price and the total amount payable under the lease. *[Schedule 1, items 54 and 55, subsections 174(1) and (1A) of the Code]*

3.88 ASIC may prescribe by legislative instrument additional information that lessors are required to disclose and the form the disclosure must take. *[Schedule 1, item 55, subsection 174(1B) of the Code]*

3.89 ASIC may also prescribe by legislative instrument information that must be provided before entering into a consumer lease for household goods, including when and how the information is to be provided. *[Schedule 1, item 57, subsections 174(5) and (6) of the Code]*

3.90 A contravention of the new requirement will attract an existing criminal penalty of up to 100 penalty units. *[Schedule 1, item 56, the heading to subsection 174(3) of the Code]*

3.91 The new requirement is also listed as a ‘key requirement’ for the purposes of Part 6 of the Code. See paragraphs 2.76 to 2.78 and 3.38 above for an explanation of the significance of this listing. *[Schedule 1, items 47, 55 and 63, paragraph 111(1A)(a), the note to subsection 174(1A) and subsection 179W(1) of the Code]*

Chapter 4

Combined Reforms

Outline of chapter

4.1 This chapter sets out the reforms that apply to both SACCs and consumer leases for household goods.

4.2 The reforms include:

- restrictions on the use or disclosure of account statements that are received in connection with a SACC or consumer lease;
- requirements on providers of SACCs, leases for household goods and credit assistance to document their assessment that a SACC or consumer lease for household goods is not unsuitable for a consumer;
- requirements for lessors to provide consumers with a warning statement to assist them in making a decision whether to enter into a consumer lease for household goods; and
- explicitly identifying family violence as a reasonable cause of financial hardship.

4.3 A key purpose of the amendments is to ensure that consumers receive all information regarding the cost and financial implications of a SACC or a consumer lease for household goods prior to entering into an arrangement with a credit provider or lessor. The amendments also provide guidance on how family violence is treated when considering matters of financial hardship.

Context of amendments

4.4 In addition to making recommendations aimed specifically at SACCs and consumer leases, the Report also made a number of recommendations that target both SACCs and consumer leases.

4.5 These reforms will complement the reforms outlined in Chapters 2 and 3 of the Explanatory Materials, improving outcomes for consumers and ensuring that the new laws operate as intended.

Summary of new law

4.6 Restrictions are imposed on the use or disclosure of account statements that are received by licensees in connection with assessing unsuitability for a SACC or consumer lease. In particular, account statements can only be used for the purposes of complying with the Credit Act, when the use or disclosure is required or authorised by or under an Australian law or a court or tribunal order, or for the purposes of considering a hardship notice.

4.7 The Bill requires licensees to document in writing their assessment or preliminary assessment that a SACC or a consumer lease for household goods is not unsuitable for a consumer.

4.8 SACC providers and lessors of household goods are required to provide information to consumers as determined by ASIC by legislative instrument. This enables ASIC to create warning statements for SACCs and lessors of household goods to assist consumers to make informed decisions.

4.9 The Bill also amends the hardship provisions of the Code to explicitly identify family violence as a reasonable cause of financial hardship.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Licensees and subsequent third-party recipients may only use or disclose an account statement (or information contained in an account statement) in certain limited circumstances.</p> <p>Civil and criminal penalties apply to a breach of this requirement.</p>	<p>No equivalent requirement.</p>
<p>Licensees must document in writing their assessment that a contract is not unsuitable at the time of making the assessment.</p> <p>Assessments may be given to consumers electronically.</p>	<p>Licensees must prepare suitability assessments as part of their responsible lending obligations.</p>
<p>Licensees must provide information about a SACC or consumer lease for household goods in accordance with requirements determined by ASIC in</p>	<p>Licensees must display a warning statement to prospective consumers of a SACC in accordance with the requirements prescribed in the Credit</p>

a legislative instrument.	Regulations.
For the purpose of the provisions about changes to a debtor or lessee's obligations under a credit contract or consumer lease, family violence, illness and unemployment are explicitly identified as reasonable causes of hardship.	For the purpose of the provisions about changes to a debtor or lessee's obligations under a credit contract or consumer lease, illness and unemployment are explicitly identified as reasonable causes of hardship.

Detailed explanation of new law

Use or disclosure of account statements

Context of amendments

4.10 The Bill introduces restrictions on the use or disclosure of account statements that are received in connection with a SACC or consumer lease for household goods.

4.11 This reform responds to concerns about the misuse of personal information by some providers. The Report identified the risk of information in account statements being misused to market further finance products or even being sold to third parties.

4.12 This reform complements other laws that apply to the handling of personal information and is considered necessary to deter misuse and hold providers accountable for their handling of account statements.

New law

4.13 The new restrictions on the use or disclosure of account statements apply to a licensee that has received an account statement from a consumer in connection with a proposed or actual SACC or consumer lease for household goods. The restrictions also apply to any other person who receives an account statement from such a licensee. [*Schedule 1, item 36, section 160F*]

4.14 An example of another person to whom the restrictions would apply (because the person receives an account statement from the licensee) is a third party software provider engaged by the licensee to process or store account statements.

4.15 The persons described above may only use or disclose an account statement (or information contained in an account statement) received in connection with a proposed or actual SACC or consumer leases for household goods:

- if the use or disclosure is necessary for the person to comply with their obligations under the Credit Act;
- if the use or disclosure is required or authorised by or under an Australian law or a court or tribunal order; or
- for the purposes of considering a hardship notice.

[Schedule 1, items 1 and 36, the definition of 'hardship notice' in subsection 5(1) and section 160G]

4.16 For example, a SACC provider would be able to provide account statements to a third party where this was necessary to comply with their responsible lending obligations. However, the SACC provider would not be able to provide account statement information to a third party for the purposes of establishing a targeted marketing campaign.

4.17 A consumer cannot consent to a contravention of the above requirement. An exception where the consumer consents would be inappropriate given that many consumers do not read mandated disclosures and may be motivated to obtain credit regardless of the terms and conditions.

4.18 A contravention of the above requirement attracts a civil penalty of up to 2,000 penalty units. *[Schedule 1, item 36, subsection 160H(1)]*

4.19 A contravention of the above requirement also constitutes an offence. A criminal penalty of up to 100 penalty units applies if fault is proven in respect of the offence. A strict liability offence of up to 10 penalty units also applies. *Schedule 1, item 36, subsections 160H(2), (3) and (4)]*

4.20 The imposition of strict liability is appropriate because of the potentially serious impact a contravention may have on an affected consumer, both in terms of privacy and implications for future transactions. The ability to seek a penalty without the need to prove fault as a particular element of the offence strengthens deterrence and reduces the likelihood of contraventions that could impact negatively on vulnerable consumers. These offences comply with the requirements of the Guide.

4.21 The guide to Part 3-6A is updated to reflect the new restrictions on the use and disclosure of account statements and information contained in account statements. *[Schedule 1, item 35, the guide to Part 3-6A]*

Documenting suitability assessments

Context of amendments

4.22 Under the Credit Act, SACC providers and lessors under a consumer lease for household goods, and persons who assist a consumer to enter a SACC or consumer lease for household goods (credit assistance providers) are under responsible lending obligations to provide contracts that are not unsuitable for consumers. As part of these obligations they must prepare an assessment as to whether a proposed contract or lease is not unsuitable for a particular consumer.

4.23 In order to improve the transparency and accountability of decisions by SACC providers and lessors that a proposed contract is not unsuitable, the Report recommended introducing a record-keeping requirement.

4.24 The Bill introduces requirements that SACC providers, lessors under consumer leases for household goods and credit assistance providers document their assessment that the SACC or lease is not unsuitable in writing. These requirements strengthen the responsible lending obligations.

New law

SACC providers

4.25 The requirement on a SACC provider is that it must record in writing the assessment that the SACC is not unsuitable at the time the assessment is made and comply with any requirements for that written assessment determined by ASIC. *[Schedule 1, item 12, subsection 129A(1)]*

4.26 ASIC may determine (by legislative instrument) the form and content of the written assessment. *[Schedule 1, item 12, subsection 129A(2)]*

4.27 Note that this amendment does not impose a record-keeping obligation in circumstances where the provider makes an assessment that a SACC is unsuitable for a consumer.

4.28 Failure to comply with this requirement attracts a civil penalty of up to 2,000 penalty units and is an offence, attracting a criminal penalty of up to 50 penalty units. This is an offence of strict liability. *[Schedule 1, item 12, subsections 129A(3) and (4)]*

4.29 The imposition of strict liability is appropriate because of the role of this new record-keeping requirement in promoting compliance with responsible lending obligations more generally. This offence complies with the requirements of the Guide.

4.30 The guide to Part 3-2 is also updated to reflect this new obligation. *[Schedule 1, item 11, the guide to Part 3-2]*

Lessors under consumer leases for household goods and credit assistance providers

4.31 The requirement on SACC providers to record the assessment that a contract is not unsuitable is extended to lessors of consumer leases for household goods and credit assistance providers in similar terms. *[Schedule 1, items 4, 25 and 31, sections 116A, 139A and 152A]*

4.32 The guides to Part 3-1, Part 3-3 and Part 3-4 are updated accordingly. *[Schedule 1, items 2, 23 and 29, the guides to Part 3-1, Part 3-3 and Part 3-4]*

Providing copies of suitability assessments to consumers

4.33 The Bill also inserts new provisions to clarify that SACC providers, lessors and credit assistance providers can provide suitability assessments to consumers in accordance with the *Electronic Transactions Act 1999*. This enables the assessment to be provided in an electronic form (if the consumer consents to receiving information in that way). *[Schedule 1, items 6, 14, 27 and 33, subsections 120(1A), 132A(2A), 143(1A) and 155(2A)]*

Warning statements

Context of amendments

4.34 SACC providers are required to display a warning statement to prospective consumers, with the particulars of warning statements including the specific content and format detailed in the Credit Regulations.

4.35 The Report identified that there were opportunities to improve the effectiveness of warning statements by adopting a more nuanced approach that allowed ASIC the flexibility to mandate requirements which take into account different media for delivery of warnings and to better account for the behavioural biases of consumers. This includes the potential for different warnings to be used depending upon a consumer's characteristics and the ways in which consumers access products.

4.36 The Report also recommended that the new, more flexible approach be extended to consumer leases by introducing a requirement for lessors of consumer leases for household goods to provide consumers with a warning statement to assist them to make better decisions about whether or not to enter a lease contract and to inform them of alternatives.

Current law

4.37 The Credit Act requires SACC providers and credit assistance providers who provide credit assistance in respect of a SACC to display a warning statement to prospective consumers. The details, including specific requirements for content and format, are prescribed in the Credit Regulations. Warning statements must be displayed online, at the provider's place of business and conveyed over the phone.

4.38 There are no requirements for providers of consumer leases for household goods to display a warning statement.

New law

4.39 The existing requirements for a SACC provider to display information as required by the Credit Regulations are repealed and replaced with a requirement for a SACC provider to provide information in accordance with any requirements determined by ASIC in a legislative instrument. Existing civil and criminal penalties continue to apply in respect of a contravention of this requirement. *[Schedule 1, item 18, subsection 133CB(1)]*

4.40 A legislative instrument made by ASIC may specify the information that must be provided by the provider, and how and when the information is to be provided. *[Schedule 1, item 18, subsection 133CB(1A)]*

4.41 The requirement to provide information that applies to SACC providers is extended to credit assistance providers and lessors of consumer leases for household goods in similar terms. *[Schedule 1, items 9, 28 and 34, subsection 124B(1) and sections 147A and 156C]*

4.42 The guides to Part 3-3 and Part 3-4 are updated accordingly. *[Schedule 1, items 24 and 30, the guides to Part 3-3 and Part 3-4]*

4.43 The headings to sections 124B and 133CB are also amended to take into account the changed requirement to provide information. *[Schedule 1, items 8 and 17, the headings to sections 124B and 133CB]*

Family violence as a cause of hardship

Context of amendments

4.44 Section 72 of the Code provides for changes to a debtor's obligations under a credit contract on grounds of hardship. Section 177B of the Code is the equivalent provision for consumer leases.

4.45 Hardship is not defined in the Credit Act and no circumstances in which hardship must be considered are specified. However, the notes to subsections 72(3) and 177B(3) of the Code explicitly identify illness and unemployment as reasonable causes of hardship.

4.46 The Victorian Royal Commission into Family Violence recommended amending the Code to include family violence as a ground for financial hardship.

New law

4.47 To provide clarity that family violence is a reasonable cause of hardship, the Bill amends the two notes mentioned above to explicitly refer to family violence. *[Schedule 1, items 43 and 59, paragraph (a) of the note to subsection 72(3) of the Code and paragraph (a) of the note to subsection 177B(3) of the Code]*

4.48 This amendment applies in respect of all credit contracts and all consumer leases regulated under the Credit Act.

Chapter 5

Anti-avoidance Measures

Outline of chapter

5.1 This chapter sets out the three anti-avoidance measures introduced in the Bill, which are:

- a prohibition on business model avoidance schemes that are designed to prevent a contract being a SACC or consumer lease regulated under the Credit Act;
- a prohibition on internal avoidance schemes that are designed to avoid the application of a provision of the Credit Act that applies only to a SACC or consumer lease; and
- the regulation of indefinite-term consumer leases under the Credit Act.

5.2 The measures are intended to provide a systematic response to avoidance practices, rather than individual responses being developed that address a specific practice after it has come into use in the credit market.

Context of amendments

5.3 The Report noted that the experience under the Credit Act and the predecessor Uniform Consumer Credit Code has been that the introduction of conduct obligations has resulted in some lenders and lessors seeking to avoid these obligations through a range of avoidance practices.

5.4 The introduction of a series of new conduct obligations in the Bill increases the importance of robust anti-avoidance measures. The measures reflect the proposition that the risk of financial harm to consumers should be minimised by anti-avoidance conduct being prohibited before it occurs.

Summary of new law

5.5 The Bill introduces a prohibition on business model avoidance schemes that are designed to prevent a contract being a SACC or consumer lease regulated under the Credit Act. The prohibition applies to any person, and a contravention attracts civil and criminal penalties.

5.6 Specifically, the prohibition applies to a scheme if it is reasonable to conclude that a purpose of the person engaging in the scheme is to prevent a relevant contract being a SACC or consumer lease. That assessment is made with reference to a series of avoidance factors. The more those factors exist, the more it is reasonable to draw the conclusion as to an avoidance purpose.

5.7 The Bill also introduces a prohibition on internal avoidance schemes that are designed to avoid the application of a provision of the Credit Act that applies only to a SACC or consumer lease. The prohibition applies to any person, and a contravention attracts civil and criminal penalties.

5.8 As with the prohibition on business model avoidance schemes, this prohibition is framed in terms of an avoidance purpose, and a series of avoidance factors must be considered.

5.9 In respect of the prohibitions on both business model and internal avoidance schemes, a scheme is presumed (other than for criminal proceedings) to have a relevant avoidance purpose where it is a scheme of a type prescribed by regulations or determined by ASIC.

5.10 ASIC also has a power to exempt, by legislative instrument, a scheme or class of schemes from either prohibition.

5.11 The Bill also extends, as a specific anti-avoidance measure, the operation of the Credit Act to indefinite-term consumer leases. This is achieved by removing the exemption currently afforded to this category of leases.

5.12 The effect of this extension is that all the provisions of the Credit Act that currently apply to consumer leases will also apply to indefinite-term consumer leases, so far as they are capable of applying.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
A person must not enter into or carry out a scheme to prevent a contract being a SACC or consumer lease regulated under the Credit Act. A breach of this requirement attracts civil and criminal penalties.	No equivalent requirement.
A person must not enter into or carry out a scheme to avoid the application of a provision of the Credit Act that applies only to a SACC or consumer lease. A breach of this requirement attracts civil and criminal penalties.	No equivalent requirement.
Indefinite-term consumer leases are regulated in full under the Credit Act, subject to certain constitutional limitations.	Indefinite-term consumer leases are exempt from regulation under the Credit Act.

Detailed explanation of new law

Prohibition of avoidance schemes

5.13 The Bill includes an amendment updating the guide to Part 7-1, reflecting the new prohibition of avoidance schemes. [*Schedule 1, item 37, the guide to Part 7-1*]

Context of amendments

5.14 Anti-avoidance provisions encourage firms to comply with the law, which benefits both firms and consumers. In particular, anti-avoidance provisions aim to:

- avoid a drift to non-compliance where providers who are complying with the Credit Act are losing business to those who are not complying and are therefore under financial pressure to lower their own standards; and
- minimise consumer detriment resulting from businesses which are avoiding compliance with cost caps and additional responsible lending and conduct requirements.

5.15 To that end, the Bill introduces broad prohibitions on business model avoidance and internal avoidance which apply to any person.

Business model avoidance

5.16 As the Report explained, ‘business model avoidance’ occurs where a provider structures products it provides so that they are not regulated by the Credit Act and so are not subject to any of the requirements of the Act.

Prohibition of business model avoidance schemes

5.17 The Bill introduces a prohibition addressing business model avoidance which is designed to prevent a contract being a SACC or consumer lease.

5.18 The prohibition applies to any person. The prohibited conduct is entering into, or carrying out (to any extent), a scheme if it is reasonable to conclude that a purpose of the person doing so is to prevent a relevant contract being a SACC or consumer lease. The prohibition applies whether the person does this alone or with others. *[Schedule 1, item 38, subsection 323A(1)]*

5.19 A scheme is defined as:

- any agreement, arrangement, understanding, promise or undertaking, whether express or implied; or
- any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

[Schedule 1, item 38, subsection 323A(2)]

5.20 A relevant contract is one that is:

- between a consumer and either the person in question or someone else who is or was connected with that person; and
- connected with the scheme.

[Schedule 1, item 38, subsection 323A(1)]

5.21 A relevant contract that is the subject of an apparent scheme is referred to as a ‘contrived contract’. *[Schedule 1, item 38, subsection 323A(1)]*

5.22 As to when it is reasonable to draw the conclusion described, see paragraph 5.25 below.

5.23 A contravention of this prohibition attracts:

- a civil penalty of up to 2,000 penalty units, and
- a criminal penalty of up to 120 penalty units, or two years imprisonment, or both.

[Schedule 1, item 38, subsections 323A(1) and (5)]

5.24 These penalties reflect the potentially serious financial impact that avoidance schemes may have on an affected consumer and are designed to have a strong deterrence effect. The penalties comply with the requirements of the Guide.

Significance of the avoidance factors

5.25 The Bill sets out a series of business model avoidance factors. The more these exist, the more it is reasonable to draw a conclusion that a purpose of a person's engagement in a scheme is to prevent a contract being a SACC or consumer lease. *[Schedule 1, item 38, subsection 323A(1) and paragraph (3)(b)]*

5.26 The avoidance factors are not intended to impose any extra obligations on SACC providers and lessors. Their purpose is only to facilitate an assessment of whether a person has an avoidance purpose.

5.27 The avoidance factors enable this assessment by reference to objective factors, rather than the subjective intentions of the person apparently engaged in the scheme.

5.28 In determining whether it is reasonable to draw a conclusion that a purpose of a person's engagement in a scheme is to prevent a contract being a SACC or consumer lease, regard must be had to the extent to which the avoidance factors exist, but this does not limit the matters which can be considered. *[Schedule 1, item 38, subsection 323A(3)]*

5.29 Given that the avoidance factors are not an exclusive list, such that it is possible to establish the presence of only some (or even none) of the factors and for it to nevertheless be reasonable to draw a conclusion that there is an avoidance purpose. Conversely, it is possible to establish the presence of all of the factors and for it to nevertheless be unreasonable to draw a conclusion that there is an avoidance purpose.

5.30 Consideration of the avoidance factors involves not only an examination of how many of them are present, but also an examination of the extent or depth of their existence.

Content of the avoidance factors

5.31 The avoidance factors seek to balance the need for a broad prohibition on avoidance schemes with the need to prevent excessive uncertainty for SACC providers and lessors. To that end, the factors are set out with a significant degree of specificity.

Artificiality or complexity

5.32 The first avoidance factor relates to the artificiality or complexity of the contrived contract or scheme. This is based on the proposition that artificiality or complexity of legal arrangements can be an indicator that at least one of the parties is attempting to avoid their legal obligations. *[Schedule 1, item 38, paragraph 323A(4)(a)]*

5.33 For example, this factor is relevant to avoidance practices that rely on the use of third parties to charge additional fees or perform unnecessary services.

Charging amounts that would be prohibited

5.34 The second and third avoidance factors relate to the consumer being charged amounts that a SACC provider or lessor would be prohibited from charging them under a regulated SACC or consumer lease. *[Schedule 1, item 38, paragraphs 323A(4)(b) and (c)]*

5.35 The prohibited amounts identified in the second factor are amounts charged in excess of the cap on costs for SACCs and consumer leases.

5.36 The prohibited amounts identified in the third factor are amounts charged in excess of a consumer's protected earnings amount under a SACC or consumer lease.

5.37 The inclusion of these factors in the amendments reflects that people are considered more likely to engage in business model avoidance practices to avoid the cap on costs and the protected earnings requirement than many other obligations.

Conduct that would breach responsible lending obligations

5.38 The fourth factor relates to the person (or a connected person) engaging in conduct that would amount to a breach of certain responsible lending obligations had the contract been regulated as a SACC or consumer lease. *[Schedule 1, item 38, paragraph 323A(4)(d)]*

5.39 The inclusion of this factor in the amendments reflects that people are considered more likely to engage in business model avoidance practices to avoid responsible lending obligations than many other obligations.

Security over consumer's property

5.40 The fifth factor relates to the person (or a connected person) taking security over certain property of the consumer, either because the consumer would likely only be able to meet their financial obligations under the contract by selling that property or because the person did not make reasonable inquiries as to whether this was the case. [*Schedule 1, item 38, paragraph 323A(4)(e)*]

5.41 This is intended to describe situations where, for instance, an unregulated lender takes security over a borrower's property because the lender expects the borrower to be unable to make the repayments, or as a means of the lender avoiding the need to examine the borrower's capacity to make the repayments.

5.42 The presence of the factor can be established whether the consumer's financial obligations arise under the contrived contract or under another element of the scheme.

Representations to consumers for whom contract would be unsuitable

5.43 The sixth factor relates to the person (or a connected person) making representations to a consumer that the person (or a connected person) could provide credit or finance or hire goods to the consumer where it is likely that the consumer would be unable to comply with the consumer's financial obligations under a SACC or consumer lease, or could likely only comply with substantial hardship. [*Schedule 1, item 38, paragraph 323A(4)(f)*]

5.44 This is intended to describe situations where, for instance, an unregulated lender targets a vulnerable consumer (or a vulnerable class of consumers) with an offer of a loan when it is unlikely the consumer could afford the repayments.

5.45 The presence of this factor can be established with respect to an individual consumer or a targeted class. In this context, the targeted class is one in which the members of the class are more likely than non-members to be unable to comply with their financial obligations under a notional SACC or consumer lease, or to only be able to comply with substantial hardship. This draws in part on the characterisation of a targeted class (in a different context) in paragraphs 180A(4)(b) and (c).

5.46 Establishing the presence of this factor involves only a partial examination of unsuitability of a comparable contract, limited to the aspects in paragraphs 123(2)(a), 133(2)(a), 146(2)(a) and 156(2)(a). For example, the likelihood that the comparable contract would not meet the consumer's requirements or objectives does not need to be considered.

Suggestions to consumer to give inaccurate information

5.47 The seventh factor relates to suggestions made to a consumer that the consumer give inaccurate information relating to a matter relevant to determining whether the contrived contract is a SACC or consumer lease. *[Schedule 1, item 38, paragraph 323A(4)(g)]*

5.48 This is intended to describe situations where, for instance, an unregulated lender pressures or encourages a consumer to give inaccurate information so that the lender can claim the loan does not meet the definition of a SACC.

Changes to business practices coinciding with changes in the law

5.49 The eighth factor relates to changes in business practices that coincide with changes in the law. *[Schedule 1, item 38, paragraph 323A(4)(h)]*

5.50 This is based on the proposition that, where a person changes business practices after changes in the law that introduce obligations making those practices more burdensome, this can indicate the person has changed the business practices to avoid the new obligations.

Advertising of the scheme

5.51 The ninth factor relates to advertising or promotion that indicates a regulated SACC or consumer lease is being offered. *[Schedule 1, item 38, paragraph 323A(4)(i)]*

5.52 This reflects how evasive business models may generate a significant difference between the way in which a scheme is advertised or promoted and its legal operation.

5.53 The tenth factor relates to the person (or a connected person) advertising or promoting the scheme in circumstances where they do not offer SACCs or consumer leases in the ordinary course of business. *[Schedule 1, item 38, paragraph 323A(4)(j)]*

5.54 This is based on the proposition that it is less likely that a provider would consider it worthwhile to engage in avoidance if it ordinarily offered SACCs or consumer leases.

Inappropriate persons

5.55 The eleventh factor relates to the person (or a connected person) being an inappropriate person, as defined in regulation 3 of the Credit Regulations. *[Schedule 1, item 38, paragraph 323A(4)(k)]*

Presumption of avoidance for certain schemes

5.56 A scheme is presumed, other than for criminal proceedings, to have the relevant avoidance purpose where it is a scheme of a type prescribed by regulations or determined by ASIC (by legislative instrument). *[Schedule 1, item 38, subsections 323A(6) and (8)]*

5.57 This approach provides greater regulatory consistency in respect of particular avoidance techniques by allowing for the onus to be placed on the providers of the scheme, rather than ASIC positively having to establish the purpose in respect of each provider for similarly structured schemes.

5.58 However, the presumption does not apply if the person proves that, having regard to the avoidance factors, it would not be reasonable to conclude that there was a relevant avoidance purpose. *[Schedule 1, item 38, subsection 323A(7)]*

5.59 ASIC also has a power to, by legislative instrument, exempt a scheme or class of schemes from the prohibition on business model avoidance schemes (or part of the prohibition). ASIC may impose any conditions on such an exemption. *[Schedule 1, item 38, section 323D]*

Prohibition of avoidance schemes does not affect specific exclusions in the Credit Act

5.60 The prohibition of avoidance schemes does not apply to:

- a scheme connected with a contract for the provision of credit of a category exempted by section 6 of the Code;
- a scheme connected with a contract for the provision of credit that is exempted by ASIC or by regulations (under sections 203A and 203B of the Code respectively);
- a scheme connected with a contract that is exempted from being a regulated consumer lease by section 171 of the Code;
- a scheme connected with a contract that is exempted by ASIC or by regulations from being a regulated consumer lease (under sections 203A and 203B of the Code respectively);

- conduct by a person if ASIC or the regulations exempt the person (under sections 109 and 110 respectively) from the prohibition at subsection 29(1) on engaging in credit activities without the relevant licence; or
- conduct by a person if it would be a regulated credit activity (were a contract connected with the scheme a SACC or consumer lease) but ASIC or the regulations exempt the credit activity (under sections 109 and 110 respectively) from the prohibition at subsection 29(1) on engaging in credit activities without the relevant licence.

[Schedule 1, item 38, section 323B]

5.61 The above is intended to exclude from the prohibition contracts that are unregulated because they satisfy the requirements for an existing exemption in the Credit Act.

5.62 For example, short term consumer leases (which have a fixed term of four months or less) are exempt from the operation of the Credit Act under subsection 171(1) of the Code. If a person offers a consumer lease with a term of three months, the above is intended to prevent the prohibition applying to a scheme connected with that lease.

Internal avoidance

4.49 As the Report explained, ‘internal avoidance’ occurs where the provider offers a regulated credit contract or a consumer lease but structures the contract, or includes certain terms, to avoid requirements of the Credit Act.

Prohibition of internal avoidance schemes

5.63 The Bill introduces a prohibition addressing avoidance of provisions of the Credit Act that:

- apply to a consumer lease but not to a credit contract; or
- apply to a SACC but not to other credit contracts or a consumer lease.

[Schedule 1, item 38, subsection 323C(1)]

5.64 The prohibition applies to any person. The prohibited conduct is entering into, or carrying out (to any extent), a scheme if it is reasonable to conclude that a purpose of the person doing so is to avoid the application of a provision of the type identified above that would apply in

relation to the person or a connected person. The prohibition applies whether the person does this alone or with others. [*Schedule 1, item 38, subsection 323C(1)*]

5.65 See paragraph 5.19 in relation to the meaning of a scheme. [*Schedule 1, item 38, subsection 323C(2)*]

5.66 As to when it is reasonable to draw the conclusion described, see paragraph 5.69 below.

5.67 A contravention of this prohibition attracts:

- a civil penalty of up to 2,000 penalty units, and
- a criminal penalty of up to 120 penalty units, or two years imprisonment, or both.

[*Schedule 1, item 38, subsections 323C(1) and (5)*]

5.68 These penalties reflect the potentially serious financial impact that avoidance schemes may have on an affected consumer and are designed to have a strong deterrence effect. The penalties comply with the requirements of the Guide.

Significance of the avoidance factors

5.69 Similarly to business model avoidance, the Bill sets out internal avoidance factors. The more these exist, the more it is reasonable to draw a conclusion that a purpose of a person's engagement in a scheme is to avoid the application of a provision of the type identified above (at paragraph 5.63). [*Schedule 1, item 38, subsection 323C(1) and paragraph (3)(b)*]

5.70 In determining whether it is reasonable to draw the conclusion, regard must be had to the extent to which the avoidance factors exist, but this does not limit the matters which can be considered. [*Schedule 1, item 38, subsection 323C(3)*]

5.71 See paragraphs 5.26 and 5.30 above for further explanation of the significance of the avoidance factors which applies equally to internal avoidance.

Content of the avoidance factors

Practice of changing the operation of contracts

5.72 The first avoidance factor relates to the person or a connected person having a practice of changing or altering the operation or effect of a credit contract or consumer lease after, or at the time, it has been entered

into, and the extent to which the effect of that practice is disadvantageous to the consumer. *[Schedule 1, item 38, paragraph 323C(4)(a)]*

5.73 This is intended to describe, for instance, the practice of lessors deliberately providing finance through leases rather than as a credit contract to avoid the caps that apply to credit contracts.

5.74 To establish the presence of this factor, it is also necessary that the person or a connected person has made the change or alteration:

- unilaterally; or
- without reference to, or consideration of, the consumer's financial situation.

[Schedule 1, item 38, subparagraph 323C(4)(a)(iii)]

5.75 This is intended to distinguish between changes or alterations made as a matter of course and changes or alterations made as genuine responses to a consumer's particular situation.

Factors prescribed by regulations

5.76 Further avoidance factors may be prescribed by regulations. *[Schedule 1, item 38, paragraph 323C(4)(b)]*

5.77 The above explanation of the significance of the avoidance factors is equally applicable to any factors prescribed by the regulations.

Presumption of avoidance for certain schemes

5.78 A scheme is presumed, other than for criminal proceedings, to have the relevant avoidance purpose where it is a scheme of a type prescribed by regulations or determined by ASIC (by legislative instrument). *[Schedule 1, item 38, subsections 323C(6) and (8)]*

5.79 This approach provides greater regulatory consistency in respect of particular avoidance techniques by allowing for the onus to be placed on the providers of the scheme, rather than ASIC positively having to establish the purpose in respect of each provider for similarly structured schemes.

5.80 However, the presumption does not apply if the person proves that, having regard to the avoidance factors, it would not be reasonable to conclude that there was a relevant avoidance purpose. *[Schedule 1, item 38, subsection 323C(7)]*

5.81 ASIC also has a power to, by legislative instrument, exempt a scheme or class of schemes from the prohibition on internal avoidance schemes (or part of the prohibition). ASIC may impose any conditions on such an exemption. *[Schedule 1, item 38, section 323D]*

Regulation of indefinite-term consumer leases

Context of amendments

5.82 The Bill effects the regulation of indefinite-term consumer leases under the Credit Act. This specific anti-avoidance measure complements the general prohibition of avoidance schemes.

5.83 As these products are currently exempted from the consumer protections in the Credit Act, providers are not required to hold an Australian Credit Licence or meet responsible lending obligations. This has resulted in opportunities for regulatory arbitrage and has been relied on by fringe providers to avoid regulation.

5.84 This measure regulating indefinite-term consumer leases reflects the specific risk that the introduction of a cap on the maximum amount that can be charged under a consumer lease will create financial incentives for some lessors to offer unregulated products where there is no cap.

5.85 Importantly, this reform seeks to regulate indefinite-term consumer leases rather than prohibit them. The intention is to appropriately address avoidance risks while not unduly restricting business practices.

Extension of the operation of the Credit Act to indefinite-term consumer leases

5.86 Subsection 171(1) of the Code currently excludes consumer leases with an indefinite term from regulation under the Credit Act.

5.87 The Bill removes that exclusion and therefore extends the operation of the Credit Act to indefinite-term consumer leases. *[Schedule 1, items 50 and 51, subsection 171(1) of the Code]*

5.88 However, the extension only applies to a lease that:

- otherwise satisfies the definition of a consumer lease established by section 169 of the Code – that is, a contract for the hire of goods by a natural person or strata corporation under which that person or corporation does not have a right or obligation to purchase the goods;

- is otherwise a consumer lease to which Part 11 of the Code applies – that is, each of the following is true when the lease is entered into:
 - the goods are hired wholly or predominantly for personal, domestic or household purposes;
 - a charge is or may be made for hiring the goods and the charge together with any other amount payable under the consumer lease exceeds the cash price of the goods; and
 - the lessor hires the goods in the course of a business of hiring goods carried on in this jurisdiction or as part of or incidentally to any other business of the lessor carried on in this jurisdiction;⁶ and
- is not excluded by the constitutional limitation explained below.

[Schedule 1, items 50 to 53, subsections 171(1) of the Code]

Constitutional limitations

5.89 The extension of the operation of the Credit Act to indefinite-term consumer leases is confined by constitutional limitations.

5.90 The extension applies where:

- the lessor under the lease is a constitutional corporation;
- the lease was entered into in the course of constitutional trade and commerce; or
- the lease was entered into using postal, telegraphic, telephonic, and other like services (within the meaning of paragraph 51(v) of the Constitution).

[Schedule 1, items 52 and 64, subsection 171(1A) of the Code and the definitions of ‘constitutional corporation’ and ‘constitutional trade and commerce’ in subsection 204(1) of the Code]

5.91 In any other case, the extension does not apply and the lease continues to be excluded from regulation under the Credit Act.

⁶ See subsection 170(1) of the Code.

5.92 The application of the extension where the lease was entered into using postal, telegraphic, telephonic, and other like services is intended to regulate indefinite-term consumer leases entered into by lessors operating online, including where, for instance, the lessor is a natural person or partnership operating within the boundaries of one State.

5.93 In addition, the Bill introduces a prohibition on a lessor using postal, telegraphic, telephonic, and other like services (within the meaning of paragraph 51(v) of the Constitution) to enter into an indefinite-term consumer lease unless the lessor is a constitutional corporation. [*Schedule 1, item 53, section 172A of the Code*]

5.94 This prohibition is intended to ensure the comprehensive regulation of indefinite-term consumer leases entered into online throughout the term of the lease (and even afterwards where relevant), rather than just at the point of entry into the lease.

Effect of regulating indefinite-term consumer leases under the Credit Act

5.95 The effect of the extension of the operation of the Credit Act to indefinite-term consumer leases is that all the provisions of the Credit Act that currently apply to consumer leases will also apply to indefinite-term consumer leases, so far as they are capable of applying.

5.96 To enable the cap on costs for consumer leases to apply to indefinite-term consumer leases, the permitted cap is set at the sum of the base price of the goods under the lease and 1.92 multiplied by the base price (see also paragraph 3.31 above). [*Schedule 1, item 58, subsection 175AA(3) of the Code*]

5.97 The Bill also makes consequential amendments to section 179 of the Code so that it applies to termination of both fixed-term and indefinite-term consumer leases. This means that:

- a lessee under an indefinite-term consumer lease can terminate it at any time and in the same way as under a fixed-term consumer lease; and
- the amount payable by a lessee on the termination of an indefinite-term consumer lease is calculated in the same way as for a fixed-term consumer lease; and
- principles affecting that calculation can also be prescribed by regulations.

[*Schedule 1, items 60 and 61, section 179 of the Code*]

Chapter 6

Regulation impact statement

6.1 On 28 November 2016 the Government announced that it would make a number of amendments to the laws applying to small amount credit contracts and consumer leases. In taking this decision and subsequent decisions on the details of the reforms package, the Government was informed of the regulatory impacts of various reforms options by the findings of the independent Review of the Small Amount Credit Contract Laws (the Review).

6.2 The reform package was announced by the Minister for Revenue and Financial Services and forms the Government's response to the Review.

6.3 Treasury has certified that the Review and associated consultation is a process and analysis equivalent to a Regulation Impact Statement (RIS).

6.4 The Australian Government Guide to Regulation identifies seven questions that a RIS should address. Following is a summary of the analysis of those questions that occurred as part of the review and stakeholder consultation process.

Problem

6.5 On 7 August 2015 the Government established the Review to examine the effectiveness of the laws applying to Small Amount Credit Contracts (SACCs) and consider whether any of the provisions which apply to SACCs should be extended to consumer leases.

6.6 The Review identified that a key objective of the law applying to SACCs and consumer leases should be to facilitate financial inclusion.

6.7 The Review Panel noted that it did not consider that access to finance, irrespective of the cost, means that a consumer is financially included. Financial inclusion is a broader and more complex concept that takes into account the relationship between high charges and broader social consequences, such as financial hardship, insecurity in housing tenure and adverse impacts on the consumer's health, and is concerned

with improvement in the consumer's situation, rather than it deteriorating or remaining unchanged.

6.8 This reform package is designed to increase financial inclusion, particularly through the proposals to introduce a cap on costs for consumer leases and to introduce a new protected earnings cap for both consumer leases for household goods and SACCs.

6.9 The intention of these proposals is to reduce the risk that consumers may be unable to pay for basic needs or default on other necessary commitments. Mitigating these outcomes can be expected to improve a consumer's financial position through, for example, smoothing expenditure, limiting shortfalls in paying utilities or rent, creating a modest level of savings and reducing dependency on higher cost forms of finance.

6.10 In relation to SACCs, the Review identified that there are high levels of repeat borrowing. While SACCs can be useful for consumers as an emergency, one-off source of funding, when consumers engage in repeat borrowing this can put them on a path to financial exclusion. This is because when a consumer takes out more than one SACC, the repayments consume a greater portion of their income and can become increasingly unaffordable.

6.11 When a large portion of a consumer's income is being devoted to SACC repayments, more credit may be needed to cover living expenses. This leads to the consumer being trapped in a debt spiral and inhibits the consumer's capacity to improve their financial situation over time.

6.12 In relation to consumer leases, the review noted that consumer leases are high cost products and tend to be accessed by vulnerable consumers who were routinely facing difficulties meeting their lease payments. The review noted that unlike other consumer credit products, there is currently no cap on the cost of a consumer lease.

Need for Government action

6.13 The problems identified in the Review are the result of gaps in the regulatory framework. Government action is required to ensure that the law is designed in a way that promotes financial inclusion and protects consumers from descending into a spiral of financial exclusion.

Policy options and likely net benefits of options

6.14 The review panel consulted on a range of options to address the problems identified in the SACC and consumer lease sectors in its Interim Report, which was released in December 2015.

6.15 In relation to addressing the consumer harm associated with repeat borrowing of SACCs, the interim report outlined three options:

- reducing the establishment fee for subsequent loans for a returning customer from 20 per cent to 10 per cent;
- replacing the rebuttable presumption that a SACC is unsuitable if a consumer has had two or more SACCs in 90 days with a bright line test banning the provision of SACCs to consumers who have had two or more SACCs in the past 90 days; and
- extending the protected earnings amount for Centrelink recipients, where total SACC repayments cannot exceed 20 per cent of gross income, to all consumers and lower the protected earnings amount to no more than 10 per cent of net income.

6.16 Following consultation, the third option was identified as the option most effective way to mitigate the harm associated with repeat borrowing. The first option would be impractical to implement and the second would stop consumers who can afford multiple SACCs from accessing SACCs that they require.

6.17 The selected option of lowering the protected earnings amount and applying it to all consumers directly targets the harm associated with repeat borrowing by removing the possibility of a consumer entering into a debt spiral and was thus recommended as the preferred option.

6.18 In relation to addressing the harm associated with consumer leases, the interim report raised the prospect of introducing a cap on costs and a protected earnings amount and sought feedback on the merits of these proposals and flagged different options for how they could be implemented.

Consultation

6.19 The Review Panel undertook a comprehensive consultation process in preparing its final report.

6.20 The Panel released an initial consultation paper on 17 September 2015 and received more than 40 submissions. During the first consultation period, the Panel held four stakeholder roundtables that included a range of industry participants (from larger providers to smaller entities) as well as consumer groups.

6.21 The Panel released an interim report on 22 December 2015. The interim report set out the Panel's initial observations in key areas and canvassed potential policy options. The consultation on the interim report was an opportunity for stakeholders to comment on the observations and provide additional information.

6.22 During the second consultation period, the Panel held a series of separate meetings with a wide variety of stakeholders. This too included both small and large industry participants as well as consumer groups.

6.23 In its meeting with stakeholders, the Panel also met with some consumers who provided first-hand insights into their experiences in using SACCs and consumer leases.

6.24 Following the release of the final report, the Government undertook one month of public consultation, to inform the Government's response to the Review.

Agreed option

6.25 On 28 November 2016 the Minister for Revenue and Financial Services announced that the Government would accept in full or in part the vast majority of the recommendations of the final report. In particular the Government agreed to:

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

- Require SACCs to have equal repayments over the life of the loan.
- Prohibit SACC providers from charging monthly fees for a month after the SACC is discharged.
- Prohibit SACC providers from making unsolicited offers to current or previous consumers.
- Introduce a cap on the total payments that can be made under a consumer lease.
- Introduce a protected earnings amount requirement for consumer leases for household goods, whereby lessors cannot require consumers to pay more than 10 per cent of their net income in rental payments.
- Prescribe that the maximum amount that a lessor can charge on termination of a consumer lease for household goods must be based on an appropriate and reasonable estimate of the lessors' losses from early repayment.
- Ban the door to door selling of consumer leases for household goods.
- Prohibit SACC providers and lessors from utilising information obtained from bank statements for purposes other than compliance with responsible lending obligations.
- Require lessors to consider 90 days of banks statements before providing a consumer lease for household goods.
- Require SACC providers and lessors of household goods to document in writing their assessment that the proposed SACC or lease is not unsuitable.
- Require lessors to provide consumer with a warning statement before providing a consumer lease for household goods.
- Provide ASIC with the ability to modify the content of SACC and consumer lease warning statements.
- Require lessors of household goods to disclose the base price of a lease and the difference between the base price and the total cost of the lease.

- Enhance the penalties associated with breaching the laws relating to SACCs and consumer leases to encourage compliance.
- Introduce an anti-avoidance provision for the SACC and consumer lease provisions of the Credit Act.

6.26 The introduction of the reforms will result in compliance costs to industry of \$18.4 million per year. This includes the up-front costs to SACC providers and lessors to update their IT systems, policies and procedures, training staff and updating disclosure documents. It also includes the ongoing costs of meeting the new obligations, such as documenting suitability assessments and complying with the protected earning amounts.

Table 1: Regulatory Burden estimate table

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$18.4	\$0	\$0	\$18.4

Implementation and Evaluation

6.27 These reforms will be implemented 12 months after the Bill receives royal assent. The Australian Securities and Investments Commission (ASIC) will have responsibility for the ongoing enforcement of the new provisions.

6.28 The Government will conduct a further review of the SACC and consumer lease laws within three years from the commencement of the reforms.

