



**Submission by the
Financial Rights Legal Centre**

SACC Review Panel

Review of the small amount credit contract laws:
Final Report, March 2016

May 2016

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the Credit & Debt Hotline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 26,000 calls for advice or assistance during the 2014/2015 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

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Introduction

Thank you for the opportunity to comment on Final Report of the review of the small amount credit contract laws.

The Financial Rights Legal Centre continues to believe that that the simplest approach to dealing with the dangers of small amount credit contracts and consumers leases is to ensure that they are all subject to a 48 per cent Annualised Percentage Rate (APR) cap.

We strongly believe a 48 per cent cap would be easier to enforce, the best means of protecting consumers from predatory lending, and still maintain viability of those loan providers whose lending model does not rely on financial hardship and repeat borrowing to be profitable.

There is no reason for lessors not to be subject to the 48 per cent cap that applies to credit contracts in general and should apply to all types of consumer leases, including car leases.

All cases where a consumer pays more for the goods than their retail value should be treated as a regulated credit contract an subject to a 48 per cent cap. This would be the least complicated and most effective way to address the problems in the market.

With respect to the Final Report, Financial Rights provides the following comments on the Review Panel's recommendations:

Small Amount Credit Contracts (SACCs)

Recommendation 1 – Affordability

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

Financial Rights supports this recommendation.

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.

While Financial Rights have previously submitted that the applicable percentage of earnings should be reduced to 5 per cent, Financial Rights supports this recommendation and believes it should be implemented immediately to limited ongoing damage to financially vulnerable consumers. .

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

Financial Rights supports this recommendation.

Recommendation 2 – Suitability

Remove the rebuttable presumption that a loan is presumed to be unsuitable if either the consumer is in default under another SACC, or in the 90-day period before the assessment, the consumer has had two or more other SACCs. This recommendation is made on the condition that it is implemented together with *Recommendation 1*.

Financial Rights supports removing the rebuttable presumptions under s. 131(3A) of the Credit Act which have failed to protect consumers. We agree with the reviewers that Recommendation 1 will be more effective at protecting borrowers from unsustainable loans. Recommendation 1, will not however, prevent back-to-back lending, leaving many consumers in a position of perpetual debt.

The small amount credit providers will likely contact the borrower following the completion of one loan and push another loan on them through marketing that avoids falling within the definition of unsolicited marketing (via say an opt-in marketing box ticked during the sign up on the first loan.) Given what we know of common borrowing behaviours and low levels of financial literacy, we believe that this will lead to a significant cycle of repeat borrowing

We strongly support Consumer Action’s proposal that a cooling off period of 60 days be introduced to ensure that this repeat borrowing cycle is broken. The cooling off period would prevent borrowers from taking out another SACC within 60 days of repaying their previous loan. SACCs are sold as assistance in one-off emergencies rather than ongoing debt problems. If they are being used over and over again this will mean that vulnerable consumers are being effectively provided with ongoing credit at high cost rates. Financial Rates also notes that the Consumer Financial Protection Bureau is currently considering a similar proposal in the US.

Recommendation 3 – Short term credit contracts

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

Financial Rights supports this recommendation.

Recommendation 4 – Direct debit fees

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

Financial Rights supports this recommendation.

Recommendation 5 – Equal repayments and sanction

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

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

While Financial Rights supports this recommendation in order to prevent lender manipulation of repayment structures to maximise fees and charges, we also maintains that all loans and consumer leases in Australia be subject to a 48 per cent Annualised Percentage Rate (APR) cap, as argued above.

Recommendation 6 – SACC database

A national database of SACCs should not be introduced at this stage. The major banks should be encouraged to participate in the comprehensive credit reporting regime at the earliest date

Financial Rights supports this recommendation.

Recommendation 7 – Early repayment

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

Financial Rights supports this recommendation.

Recommendation 8 – Unsolicited offers

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

Financial Rights supports this recommendation.

Recommendation 9 – Referrals to other SACC providers

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

Financial Rights supports this recommendation.

Recommendation 10 – Default fees

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

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

Financial Rights supports this recommendation.

Consumer Leases

Recommendation 11 – Cap on cost to consumers

A cap on the total amount of the payments to be made under a consumer lease of household goods should be introduced. The cap should be a multiple of the Base Price of the goods, 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 lease with a term of greater than 48 months, the term should be deemed to be 48 months for the purposes of the calculation of the cap.

While Financial Rights supports the introduction of a cap on the maximum amount a lessor can charge we maintain that this cap should be the same 48 per cent interest cap that applies to all non-SACC loans as leases go over longer periods than SACCs.

We believe that the proposal put forward here is excessive. The recommendation leads to annual percentage rates of between 68-82 per cent and in cases of longer term leases the consumer ends up paying almost three times the cost of a basic good that low income Australians rely on. Leases can be distinguished from pay day loans on the basis that they are a significantly longer term commitment. There is no justification for the distinction in the price cap between leases and other longer terms loans.

Recommendation 12 – Base Price of goods

The Base Price for new goods should be the recommended retail price or the price agreed in store, where this price is below the recommended retail price.

Further work should be done to define the Base Price for second hand goods

Financial Rights does not support the recommendation that the Base Price of a good be set at the recommended retail price (RRP). The problem here is that retailers always include a retail margin in the supply of goods and that this will now present an opportunity for a lessor to inflate the RRP even higher knowing that the permitted monthly fee can be charged on top of that. This is particularly the case with respect to their own branded goods since they are the only business that supply them and there is no obvious comparison point to confirm that the RRP is appropriate.

We propose the following formula:

- (a) Start with the “market value” as defined in s204 National Credit Code; then
- (b) Depreciated the goods in accordance with the ATO recommended guidelines.

Determining the cash price of second-hand goods has been particularly challenging for consumer advocates and caseworkers. Nevertheless, a workable proposal is to go through (a) and (b) above, then take off a further 10 per cent to account for the fact the goods have been used by someone else. We believe this additional depreciated amount appropriately

acknowledges the declined value of items that have been previously used without creating much additional administrative burden on lessors.

Recommendation 13 – Add-on services and features

The cost (if any) of add-on services and features, apart from delivery, should be included in the cap. A separate one-off delivery fee should be permitted. That fee should be limited to the reasonable costs of delivery of the leased good which appropriately account for any cost savings if there is a bulk delivery of goods to an area.

Financial Rights supports the recommendation to include add-on services and features in the cap. Financial Rights also supports the recommendation that the delivery fee be limited, capped at a maximum amount appropriate for delivery to a remote area or over a certain distance. However the fee must also be clearly disclosed in the contract and cannot be subject to interest charges.

Recommendation 14 – Consumer leases to which the cap applies

The cap should apply to all leases of household goods including electronic goods.

Further consultation should take place on whether the cap should apply to consumer leases of motor vehicles.

Financial Rights reiterates its position put previously that the consumer lease cap should apply to *all leases*, not only leases for low-value household or electronic goods. If this cap does not apply to all consumer leases we submit regulatory arbitrage will be inevitable. Unaffordable car leases are a major problem for the same borrowers and such higher-value leases would not be caught by a cap that was limited to low-value items

We also believe that the payment cap should not extend beyond 36 months rather than the mooted 48 months. We do not think consumers should be paying to lease household goods for longer than the period over which the goods would be totally depreciated at ATO rates – this would suggest a period of 3 years or less. We also note that the most common lease terms are between 12-36 months.

Recommendation 15 – Affordability

A protected earnings amount requirement be introduced for leases of household goods, whereby lessors cannot require consumers to pay more than 10 per cent of their net income in rental payments under consumer leases of household goods, so that the total amount of all rental payments (including under the proposed lease) cannot exceed 10 per cent of their net income in each payment period.

While Financial Rights supports the principal of capping a consumer lease repayment arrangement to a percentage of a consumer's net income we strongly believe that the level of 10 per cent is too high for an arrangement that could continue for four years or more. 10 per

cent is a substantial amount of a consumer's income. While SACC's typical run for shorter periods of say 3 months, taking 10 per cent of a low income Australian's income for 48 months or more will cause significant harm, leaving them with insufficient funds to live on for an extended period of time. This recommendation will lead to further financial exclusion for already financially vulnerable Australians.

Financial Rights recommends that the 10 per cent limit be decreased to 5 per cent for leases. Keeping in mind that the affordability caps for leases and SACCs do not appear to be cumulative, and many consumers have both, Financial Rights believes a combined commitment of 20 per cent of income is too high

Recommendation 16 – Centrepay implementation

The Department of Human Services consider making the caps in **Recommendations 11** and **15** mandatory as soon as practicable for lessors who utilise or seek to utilise the Centrepay system.

Financial Rights supports this recommendation although has recommended different levels described above.

Recommendation 17 – Early termination fees

The maximum amount that a lessor can charge on termination of a consumer lease should be imposed by way of a formula or principles that provide an appropriate and reasonable estimate of the lessors' losses from early repayment.

Financial Rights supports prescribing the maximum amount that can be charged on early termination of a contract. As detailed in our previous submission, we suggest a formulation along the lines that termination fees must be:

- a. The lessor's reasonable costs incurred by reason of the termination or
- b. Two months rental under the contract;
whichever is the lesser amount.

There should be no termination fee payable at all if the consumer returns the goods because they are faulty or have been misrepresented.

Recommendation 18 – Ban on the unsolicited marketing of consumer leases

There should be a prohibition on the unsolicited selling of consumer leases of household goods, addressing current unfair practices used to market these goods.

Financial Rights supports this recommendation.

Combined recommendations

Recommendation 19 – Bank statements

Retain the obligation for SACC providers to obtain and consider 90 days of bank statements before providing a SACC, and introduce an equivalent obligation for lessors of household goods.

Financial Rights supports this recommendation.

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

Financial Rights supports this recommendation.

ASIC should continue its discussions with software providers, banking institutions and SACC providers with a view to ensuring that ePayment Code protections are retained where consumers provide their bank account log-in details in order for a SACC provider to comply with their obligation to obtain 90 days of bank statements, for responsible lending purposes.

Financial Rights supports this recommendation. As an interim measure Financial Rights recommends that consumers at the very least be warned about the risks of providing password information to a third party. Payday lenders must offer an alternative service to privately access bank statements and print that information without providing confidential passwords. Payday lenders must not store any confidential passwords. ASIC should develop guidance on best practice on this point.

Recommendation 20 – Documenting suitability assessments

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

Financial Rights supports this recommendation.

Recommendation 21 – Warning statements

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

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

Financial Rights supports this recommendation but reiterates that consumer testing be conducted to ensure that the warning produced is effective.

Recommendation 22 – Disclosure

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

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

Financial Rights strongly supports both these recommendations.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



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