Financial Rights
LEGAL CENTRE

Submission by the

Financial Rights Legal Centre

Treasury

Review of the small amount credit contract laws, September 2015

October 2015

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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 25,000 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 the review of the small amount credit contract laws. The 2013 laws relating to small amount credit contracts (SACCs) and comparable consumer leases have been in place for nearly three years, but in that time consumer advocates have not seen the reduction in consumer harm that the new laws were intended to effect. The Financial Rights Legal Centre urges this review to now take the reform steps necessary to bring about sustainable and enforceable consumer protections from predatory lending practices.

Throughout this submission we will reference a consumer report which was recently commissioned jointly by the Consumer Action Law Centre, Melbourne, Good Shepherd Micro-Finance and the Financial Rights Legal Centre, Sydney. The report has been provided by Digital Finance Analytics (DFA), which completed its analysis using insights from the DFA household survey, which is an omnibus that engages with 26,000 households a year about their finances.

This report draws on quantitative and qualitative survey data collected by DFA over the past 10 years. The report reviews detailed data from the 2005, 2010 and 2015 surveys as a means to dissect and analyse the longitudinal trends. The data results are averaged across Australia to provide a comprehensive national picture of the financial behaviour of Australians, with a particular focus on the role and impact of payday lending.

The DFA survey is based on consumers responses to a telephone survey, and is limited in so far as those answers are not verified. Further consumers may misinterpret some questions. However, given its longitudinal nature, we believe the overall trends are reliable. Further, in our experience, consumers are more likely to understate their use of pay day lending rather than overstate it (through embarrassment or an element of self-delusion about their level of reliance) making it likely the results are quite conservative.

This submission also draw on the substantial casework experience of the Financial Rights Legal Centre who has advised and acted for customers of pay day lenders for over 15 years and is in a good position to comment on the effectiveness of the reforms in reducing harm in the SACC customer base.

Summary of Submissions

Financial Rights Legal Centre submits that the SACC regime under the National Consumer Credit Protection Act 2009 (“The Credit Act”) has failed to protect consumers from the harm inherent in pay day lending and other high cost short term contracts. While there has been some containment of costs, it has been insufficient to stop extensive financial damage to vulnerable consumers. Worse, harmful repeat borrowing has increased significantly against the stated intention of the amendments which came into force in 2013. This form of financially detrimental lending is also spreading into wider demographics, effectively undermining extensive efforts at increasing financial literacy by normalising borrowing for consumption purposes. We recommend to the Review that strong action must be taken to address these issues.

Based on our extensive casework experience with the payday lending industry we believe these loans should be banned. The payday lending industry has repeated and systemically demonstrated that:

- it has a culture of avoidance of the law

- it relies on repeat borrowing

- there is systemic non-compliance with the responsible lending laws

We have no confidence that the industry will ever comply with the law in any meaningful way so consumers are adequately protected.

In these circumstances, the only effective way to protect consumers is to ban the industry through an interest rate cap (as has been enacted in a number of countries and states in the USA). This would be achieved by applying an all-inclusive cost cap of 48% or less and enacting adequate avoidance provisions.

Major Recommendations

- All credit facilities in Australia should be capped at an interest rate of 48% (or less) with no establishment fee allowed (and default fees limited to the reasonable cost of recovery). This would negate the need for the complicated SACC regime.
- ASIC must be provided with more adequate and more stable funding than it receives now.
- There should be an automatic remedy of a refund of all fees and charges for any substantive breach of the Act.

As an alternative to the first recommendation above:

- There should be a hard limit of only two permissible SACCs per 12 month period.
- The Henderson Poverty Index (HPI) plus a minimum margin should be required as the universal benchmark for all SACC providers.
- There should also be a ban on concurrent SACCs, refinancing a SACC, and increasing the limit on a SACC.
- The costs cap should be further reduced to 10% establishment fee and 2% monthly fee.
- The protection for consumers who receive 50 per cent or more of their income under the *Social Security Act 1991* should be changed to a cap at 5% of a Centrelink recipient's gross income.
- The Credit Act should include a broad anti-avoidance provision, including the ability to take preventative steps rather than only react after harm has occurred.
- SACCs providers must be required to disclose an APR comparison rate in advertising and contractual disclosure.

- That ASIC either ban the advertising of payday loans or, at the very least, introduce strict and specific regulations established for payday loan advertising on television, radio, social media and online.

- SACCs providers should be prohibited from directly marketing to their customer base because of the high risk of dependency on these types of loans.

In relation to consumer leases:

- All consumer leases the meet the definition of 'finance lease' should be considered comparable with credit contracts and there should be greater consistency in the regulatory requirements. All finance leases and be subject to a 48% interest cap. Otherwise, as a second best option, a specific SACC regime for comparable leases should be enacted with effectively similar protections, with the 48% cap applying to all other contracts, similar to the credit regime.

- There should be additional disclosure requirements for all consumer leases including the purchase price of the leased good, the amount the consumer will pay in excess of the purchase price, the APR, and the cost of other services financed through the rental payments.

There are other recommendations contained throughout this document.

General Comments

What has worked in the legislation to some extent

The limit on the amount that can ultimately be recovered under a SACC has been successful in preventing those cases where consumer owed many multiples of the amount borrowed. This is a definite improvement over the pre 2013 situation.

There has been a reduction in direct refinancing of pay day loans, although borrowing again because repayments have left the borrower short continues to be rife.

The caps on cost have been relatively effective in reducing the cost of these types of loans compared to previously, however, this has been insufficient to reduce the harm and avoidance tactics continue. Details of these problems are provided throughout this submission. We submit there should be tighter caps and anti-avoidance provisions introduced.

The cap on the level of repayments than can be required from Centrelink recipients has been relatively successful from a compliance perspective, but again has failed to prevent the harm to these borrowers because it is not uncommon for Centrelink recipients to have 90-100% of their income already committed to essential living expenses, in fact they often have a budget deficit.

The warnings have had some effect in so far as we receive some calls from consumers as a result. More research is needed to determine whether they are fulfilling their objective and whether they could be more effective.

What has not worked at all

The general responsible lending regime introduced in 2010/2011 has been relatively successful in other lending segments but not in relation to SACCs. The presumptions introduced to enhance responsible lending in relation to SACCs in particular by targeting repeat borrowing have utterly failed to have any real impact and much stronger measures are required.

Irresponsible lending is systemic in the industry.

In many of our cases, consumers are provided loans they simply cannot afford to repay. Consumers present to Financial Rights Legal Centre when they are in difficulty. We then analyse their situation to determine whether their difficulties are the result of a change in circumstances or a failure of responsible lending in the initial granting of the loan. For other types of loan, responsible lending breaches are the exception rather than the rule, although some types of credit contract are more likely to reveal systemic lending issues than others. Pay day lending is the only segment where responsible lending breaches are almost invariably the root cause of the problem rather than subsequent changes of circumstances (although these may have exacerbated the problem in some cases).

ASIC's REPORT 426: Payday lenders and the new small amount lending provisions ("ASIC Report 426")[1] supports this conclusion, with the report finding that lenders are still failing to comply with basic record keeping and information-gathering requirements, and are structuring credit contracts to avoid regulation. The report also demonstrates that the presumptions of unsuitability have not effected any real behavioural change in the industry. 'Bright line' enforcement rules, rather than 'presumptions', are likely to be more effective.

Case study

Our client suffered financial difficulty after suffering an injury. She could not work in her usual occupation of aged care for a period, and then when she returned to work, she experienced problems getting rostered on for sufficient hours to cover her expenses. She obtained a series of 18 loans from the same SACCs provider over an 18 month period. The recorded purpose for the latest loan was temporary cash shortfall. The client says she is not good with money generally and she kept going back to the SACC provider to pay living expenses or earlier loans, often in the hope that her hours would increase before the next loan fell due. She obtained a loan from a different SCC provider once in the same period.

The SACC provider calculated her actual income and expenses from her bank account statements to verify these figures, revealing an average net income as $4056.37 per month and average expenses as $4,530.23. They then approved a loan with $744 per fortnight repayments, despite her already being in deficit by almost $500 per month based on her account statements. The form itself noted an 89% discrepancy between the client's nominated expenses and the expenses as revealed by the bank statement, but the loan was still approved.

Full details are provided in Appendix 1, Case Study 2

[1] ASIC Report 426 (2015), 'Payday Lending and the small amount lending provisions', available at: http://download.asic.gov.au/media/3038267/rep-426-published-17-march-2015.pdf

Case study

Our client is a 46 year old male who has been on Centrelink payments for the past seven years – either Newstart or the Disability Support Pension. He currently does a small amount of part-time work with through a disability service, but receives most of his income from Centrelink. He has a history of schizophrenia, depression and anxiety.

When he presented on the Financial Rights Credit and Debt Hotline he owed money to three different SACC providers, having had 14 SACCs in the preceding 18 months. He had used the money for living expenses – including cigarettes and alcohol. He began to drink more heavily in late 2014 after moving to NSW from interstate, struggling to find any work and having problems with his psychologist.

When seeking help he reported that he could no longer keep up with all the payments. He would pay off the money he owed and then get further offers of credit, which he found impossible to resist.

Full details are provided in Appendix 1, Case Study 1

Payday lending is still harming consumers.

Our advice and casework experience strongly suggests that many consumers are still stuck in a harmful cycle of debt. Research has found that payday loans are often taken out to cover day-to-day living expenses rather than 'one off' expenses.[2] Consumers already struggling to make ends meet simply cannot afford to make repayments, and are caught in a harmful cycle of repeat borrowing. For our clients there has been no change in this situation since the amendments to the legislation were introduced in 2013. The 'presumptions' of unsuitably have failed to break this cycle. ASIC recently reported that approximately 62% of the 288 files[3] it had reviewed indicated that the payday lender had entered into a loan with a consumer who triggered one of the presumptions of unsuitability and only a very small number had recorded any reason why the presumption could be rebutted.

The DFA report annexed to this submission compares data from 2005, 2010 and 2015. The report found that lending in the SACC sector is larger than ever since the new laws were enacted, in number of loans and value of pay day loans outstanding. DFA research shows the percentage of users with more than one payday loan in the last twelve months has increased from 17% in 2005 to 38% in 2015.[4] Further there has been notable growth in both the number and percentage of consumers taking out more than one SACC in a 12 month period in every

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[2] The Caught Short report was published in 2012, before the 2013 regulations were introduced. The Hanover report in 2014 said that participants identified car expenses (27 %), food and groceries (25%) and housing related expenses (22 %) as the main purposes for taking out loans. Caught Short: http://www.uq.edu.au/swahs/news/CaughtShortFinalReport.pdf; Hanover Report: https://www.hanover.org.au/homelessness-research-reports/taking-the-stress-out-of-managing-money/

[3] ASIC Report 426 (2015), 'Payday Lending and the small amount lending provisions', available at: http://download.asic.gov.au/media/3038267/rep-426-published-17-march-2015.pdf

[4] Digital Finance Analytics, *The Stressed Finance Landscape Data Analysis*, October 2015. Sec 3.2, Table 11.

category from 2 loans to 10 or more.[5] There has been a smaller but similar increase in the number of borrowers with multiple SACCs at any one time.

For these low income and vulnerable customers SACCs can be very detrimental and the industry's business model seemingly depends on this detriment to survive. According to the attached research from DFA, the average income of payday borrowers has changed very little over the past 10 years. In 2005 the average income was $35.459 and by 2015 it has only increased to $35,702[6] which has not even kept pace with inflation. This level of income is still very low compared to the general Australian population where full-time earnings average $75,603 a year.[7]

In its recently released report on "Trends in the Australian small loan market" the Australian Centre of Financial Studies observes that

> *"A common characteristic of all small loan business models is that, because start-up costs are high and margins low, SACC revenue lines only tend to become profitable after the second or third loan. A lender's start-up costs include establishing a clear risk profile for each customer, developing an agreed method for checking a customer's credit history, and meeting the initial administration costs required to comply with regulations. In general, profits appear to be derived from chronic borrowers–and the international industry is built around maximising repeat business. SACC firms in Australia have adopted a range of models that take different approaches to minimising default risk, encouraging repeat borrowing, sourcing new customer groups, leveraging value from customer interactions, and instituting administrative and compliance efficiencies."*[8]

In so far as the legislation was intended to curb the particular harm created by repeat borrowing it has categorically failed. Similarly where the legislation was intended to ensure that SACC providers lend responsibly (in relation to each individual loans) our casework experience is that the legislation has also failed. The net result of this is customers who are going without essentials, paying pay day lenders over other creditors, and turning to repeat and multiple concurrent borrowing to feed a cycle of unsustainable debt.

Case study

Our client is 80 years old, entirely dependent on Centrelink and a tenant of the Department of Housing. He has been a habitual user of pay day loans for 10 years, predominantly for car repairs, but also for food and bills at times. In January 2015, with two other pay day loans already outstanding, he obtained a third loan to pay his car registration. Despite relatively low repayments over a twelve month period, this loan was the straw that broke the camel's back and he could not afford the repayments.

Full details are provided in Appendix 1, Case Study 4

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[5] Ibid. Sec 3.2.
[6] Ibid.. Sec 3.5, Table 26.
[7] Average Salary in Australia: http://www.livingin-australia.com/salaries-australia/
[8] Banks, Marcus, De Silva, Ashton & Russel, Roslyn "Trends in the Australian small loan market" Australian Centre for Financial Studies, School of Economics, Finance and Marketing, RMIT University, October 2015, p. 6-7. Available at:http://australiancentre.com.au/sites/default/files/NewsDocs/Commissioned%20paper%20-%20Trends%20in%20the%20Australian%20small%20loan%20market.pdf

Case study

Client has been in receipt of the Disability Support Pension since January 2013. This is her sole income. She was granted a total of 12 loans from the same SACC provider between 20 June 2013 and 18 August 2014. The amounts borrowed varied from $110 to $600. Our client was 21 years old at the time she took out the first loan. She has a child but does not have full time care of her child and she has been diagnosed with Borderline Personality Disorder.

Between June 2013 and August 2014, our client also obtained a personal loan through her bank, a loan from another pay day lender as well as several advances on her Centrelink Income. She had authorised direct debit facilities to allow for repayments to be made from her bank account. There were multiple occasions where her repayments were dishonoured as she did not have enough money left in her bank account.

Full details are provided in Appendix 1, Case Study 6

Case study

Our client works in retail. She took a voluntary demotion when she found the stress of a management position too difficult to cope with and then found herself short of income. Her income was $517 per week, and her rent alone was $200 per week.

She began to use pay day loans because she was embarrassed to admit to her partner that she had lost income. Her use of pay day loans soon spiralled out of control, severely exacerbating her problems. She obtained loans when she was in default of other loans but did not admit to this when asked.

One week in May 2015 the client has $429.47 in SACC repayments come out of her account, which with $250 towards rent in $56 dollar in groceries pushes her account into the red. Her next salary payment of $485.70 is instantly reduced to $320.85 as a result of the overdrawn account. Three days and two more loan repayments later she has $23 left in her account and is granted yet another SACC.

Full details are provided in Appendix 1, Case Study 8

The payday lending industry is booming.

The 2013 regulations haven't seen the death of the industry. In fact, ASIC recently reported that the number of lenders leaving the credit industry has been declining, with 89 cancellations for payday lenders in the 2013–14 financial year, down from 115 in the previous year.[9] Applications for credit licenses continued to be received from new entrants to the market, despite a number of large operators acquiring smaller licensees. These large operators have reported 'record breaking' lending performance. For example, Money3 announced a profit

[9] ASIC Report 426 (2015), 'Payday Lending and the small amount lending provisions', available at: http://download.asic.gov.au/media/3038267/rep-426-published-17-march-2015.pdf

before tax of over $10 million for the half year to 31 December 2014, a 126% increase on the prior year.[10]

Research from the Australian Centre for Financial Studies has found that regardless of new regulations there has been a twenty-fold increase in demand for short term, small amount loans in the last decade.[11] Research from DFA similarly confirms that there has been a dramatic increase in the number of Australians using payday loans (in the last 3 years), increasing from 356,097 in 2005 to 643,087 in 2015[12]. The report also estimates a continuing upward trajectory for the size of the pay day lending market[13].

We have also seen huge growth in online lending. Research by RMIT University in May 2014 found that payday loans were directly available through 65 websites.[14] Traditional shop front lenders are also seeing growth in online business. For example, in February 2015 Cash Converters reported that growth of the online personal loan business in Australia continues to be very strong with the value of loans written increasing to $31.3 million, up 65.2% on the previous corresponding period.[15] DFA research confirms this dramatic change with nearly 70% of payday loans being accessed online, when less than 1% were accessed online in 2005.[16]

Pay day lending expanding into a new demographic

While the average income of pay day borrowers has not changed dramatically[17], our experience is that there are new categories of borrower. While we still see largely Centrelink recipients with multiple difficulties, we are also seeing low income, working borrowers, with problems created rather than exacerbated by pay day lending. The considerable presence of pay day lending in mainstream media, and particularly online, has made it both appear more normalized and able to be accessed anonymously. These loans are now being marketed to a wider audience, irresponsibly suggesting that payday loans can be used to pay everyday expenses like utility bills, rounds of drinks, and presents. This seems to be leading to people borrowing for less desperate reasons and then becoming caught in a cycle of borrowing when they cannot afford to repay their loans (see for example Case Studies 8 & 2 in Appendix 1).

Research from DFA similarly confirms that there has been a dramatic increase in the number of Australians using payday loans, but also shows that there has been a shift in the mix of household segments using these services. [18] When the population is divided into financially stressed and financially distressed households, with the latter being those in more dire

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[10] Money 3, 'Media Release December 2014 Half Year Results', available at: http://www.asx.com.au/asxpdf/20150226/pdf/42wx5lyft7styg.pdf

[11] Banks, Marcus, De Silva, Ashton & Russel, Roslyn "Trends in the Australian small loan market" Australian Centre for Financial Studies, School of Economics, Finance and Marketing, RMIT University, October 2015, p. 5. Available at: http://australiancentre.com.au/sites/default/files/NewsDocs/Commissioned%20paper%20-%20Trends%20in%20the%20Australian%20small%20loan%20market.pdf

[12] Digital Finance Analytics, *The Stressed Finance Landscape Data Analysis*, October 2015. Sec 3.1, Table 11.

[13] Ibid. Sec 3.8, Figure 14.

[14] Banks and Ali (2015), 'Into the Mainstream: The Australian Payday Loans Industry on the Move', The Finsia Journal of Applied Finance

[15] 'Cash Converters (2015), 'Cash Converters Half-Year Result', available at: https://www.cashconverters.com/Investors/AsxAnnouncements

[16] Digital Finance Analytics, *The Stressed Finance Landscape Data Analysis*, October 2015. Sec 3.1, Figure 7.

[17] Ibid. Sec 3.5, Table 26.

[18] Ibid. Sec 3.2, Table 11.

financial straits, payday lending has decreased by a modest 5% in the distressed category since 2010 but exploded in the stressed category.[19] In 2005 around 350,000 financially distressed households were using payday loans, and only about 7,000 financially stressed households. By 2015 the number of distressed households using payday loans has increased slightly to over 375,000, but troublingly the number of financially stressed households has increased almost 40 times to over 250,000.[20]

The explosion in online lending discussed above has serious implications for future growth in the industry.[21] The research states "the increased penetration of payday lending amongst financially stressed households appears to be linked to the rise of mobile technologies and the ease and convenience of online originated loans."[22] In addition, we submit that the failure of the legislation to require SACC providers to disclose an APR is contributing to this growth and giving the SACC industry an unfair advantage over their competitors – to the great detriment of consumers.

Payday loans continue to be excessively expensive

Competition between large lenders has failed to reduce fees and charges.

The vast majority of payday lenders, including Nimble, Cash Converters and Payday 247, are charging the maximum amount permitted by legislation, indicating that price competition does not work in this market. [23]

Annualised interest rates for payday loans often exceed 240%. For a borrower already struggling to make ends meet, repayment of these excessive fees and charges can leave the borrower with another shortfall and encourage them to return to the lender.

Case study

Our client was granted 13 loans by the same SACC provider between 10 January 2014 and 3 January 2015.

The assessment provided by the lender states the purpose of the loan was "temporary cash shortfall" and we note the recent decision in *ASIC v The Cash Store (in liquidation)* [2014] FCA 926 which found such a purpose was not sufficient in identifying the purpose of the loan when assessing suitability. We submit that having a "temporary cash shortfall" on 12 successive occasions in a year is indicative of a person in chronic financial difficulty and unable to afford the loans which were granted.

Full details are provided in Appendix 1, Case Study 7

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[19] Digital Finance Analytics, *The Stressed Finance Landscape Data Analysis*, October 2015. Sec 3.2, Table 11.
[20] Ibid. Sec 3.2, Table 11.
[21] Ibid. Sec 3.1, Figure 7.
[22] Ibid. Sec 3.8, Figures14 and 15.
[23] Credit Corp released a product called Wallet Wizard with a 15% establishment fee and 2% per month fee. Available at: http://www.walletwizard.com.au/costs/. Fair Loans fast Community Finance charge the establishment fee but no monthly fee on a SACC. Available at http://www.fairloans.org.au/personal-loan-repayments.

All loans in Australia should be subject to a 48% interest cap

The Financial Rights Legal Centre has always advocated for a flat interest rate cap across all lending. We strongly believe a 48% 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. We strongly submit that it is not possible to effectively protect vulnerable consumers from harm with the current SACC legal regime and that the conflicting goals of the review – to maintain the viability of the industry and protect consumers from excessive harm are mutually exclusive.

By setting a standard interest rate cap for all loans Australia would be joining an ever growing group of jurisdictions who have chosen to protect consumers over the payday lending industry. Fourteen American states are considered 'restrictive states' which either do not permit payday lending or have price caps low enough to eliminate payday lending in the state. This rate cap is often 36 percent Annual Percentage Rate (APR). Generally, payday loan storefronts are not found in these states.[24] In 2006 Canada's criminal laws were changed to allow Provinces to regulate payday lending. New provincial rules tend to include a ban on concurrent loans from a single lender, ban on rollover lending, and interest rate caps between 17-30% on principal and fees.[25]

We acknowledge that a shift to a 48% interest cap would make some current SACC loans unviable. This would be a very positive outcome for consumers. We understand that there is consumer desire for access to small amount loans, but expensive loans, provided to people who clearly cannot repay them do not address the core problems, which are inadequate income and/or other complex issues. Expensive loans only shift problems forward in time; they do not address them and in the majority of cases make them worse.

A 48% interest cap may affect the viability of some parts of the industry, or some types of loan, but we believe most of the big SACC providers would adapt quickly to a new regime and still remain viable. The current interest rate and fee limits have done nothing to slow the growth of this industry down despite considerable assurances to the contrary prior to the enactment of the current regime[26].

Enforcing responsible lending provisions and resolving disputes in the SACC sector is resource intensive for consumer advocates, EDR schemes and the regulator. Where there are so many contracts involved within such a short period of time, conducting analysis and presenting evidence that each one does not comply with the law taking into account the individual circumstances of the borrower is time consuming and a significant drain on resources. The

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[24] "State Payday Loan Regulation and Usage Rates", Pew Safe Small-Dollar Loans Research Project, 2012 and the National Conference of State Legislatures, 2012. Available at: http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/~/media/data%20visualizations/interactives/2014/state%20payday%20loan%20regulation%20and%20usage%20rates/report/state_payday_loan_regulation_and_usage_rates.pdf

[25] Ali, P, McRae, C & Ramsay, I 2013, 'The Politics of payday lending regulation in Australia', Monash University Law Review, vol 39, no. 2, pp. 411-51. Available at: https://www.law.unimelb.edu.au/files/dmfile/201421.pdf

[26] see Ali, P, McRae, C, Ramsay, I, The Politics of Payday Lending Regulation in Australia Monash University Law Review (Vol 39, No 2) and industry website www.nocap.com.au)

significant amount of energy expended by the regulator on policing this sector could also be usefully spent dealing with other misconduct, given the competing demands on limited public resources. An effective interest rate cap would be easier to enforce, provided it was backed up with anti-avoidance provisions, because it can be enforced systematically based on contractual documents alone.

The Australian Centre of Financial Studies recently observed that lowering fee caps "may have the unintended consequence of encouraging illegal lending activity, and so other policy initiatives should be trialled [instead]." [27] We submit that it is never appropriate to avoid stricter regulations or more beneficial consumer protections simply because some rogue actors might begin engaging in illegal activity. Australia would never avoid regulating other dangerous products in the market place (like guns for example) simply because illegal sales might then increase. If setting a flat 48% interest rate cap on all lending in Australia encourages some lenders to circumvent the law those lenders should be prosecuted, not catered to.

Australian currently has a two tier system – a cost cap that is considered appropriate for most of the population and another that is higher for the most vulnerable segment of the population. Worse, we have a more or less effective system of responsible lending for most of the population and a completely ineffective one for those most in need of protection.

There are still a variety of options for low income consumers to access small amounts of lending or once-off financial support including the No Interest Loan Scheme, Centrelink advances, pay-by-instalment contracts and emergency relief. These ethical alternatives are available across Australia and do not cause the type of financial harm that is rife among payday lending. These alternatives could be more widely available, and we support all efforts to extend their reach, but they will never fully replace the current pay day lending sector. This is for the simple reason that the majority of SACC loans are made irresponsibly, for day–to-day consumption instead of asset or capacity building, and to people who cannot afford to repay them. Such loans would never be approved by ethical lenders and should not be encouraged in the commercial realm.

Medium Amount Credit Contracts (MACCs)

It is noted that MACCs are not being examined as part of this Review, however, we contend that this is an oversight as many payday lenders offer both SACCs and MACCs. Any changes to SACCs may directly impact MACCs with credit providers moving to MACCs to avoid SACCs which may mean consumers are lent more money than they wanted or needed. Further, the MACC concept was introduced at the last minute in the legislative process in 2012, without any prior consultation with consumer representatives. The 48% cap in some states had been working relatively effectively in relation to loans over $2,000 for some years prior to this.

We contend that regulatory arbitrage is a real risk that needs to be considered in this review. To prevent this problem, we believe that MACCs should be subject to a 48% p.a. interest rate

[27] Banks, Marcus, De Silva, Ashton & Russel, Roslyn "Trends in the Australian small loan market" Australian Centre for Financial Studies, School of Economics, Finance and Marketing, RMIT University, October 2015, p. 7. Available at: http://australiancentre.com.au/sites/default/files/NewsDocs/Commissioned%20paper%20-%20Trends%20in%20the%20Australian%20small%20loan%20market.pdf

cap with no establishment fee permitted in addition to the cap. The major banks in Australia offer personal loans at rates well below the 48% p.a. interest rate cap including any establishment fee. It send a confusing signal to consumers (and does not make sense as a matter of public policy) that mainstream personal loans are capped at 48% p.a. and fringe personal loans (MACCs) are provided at 48% p.a. plus an establishment fee. Leaving this structure in place leaves a clear incentive for avoidance which should be stopped.

Case study

In August 2013, our client obtained a $2000 loan to be repaid over a period of 52x fortnights (2yrs) at $60.17 per fortnight yet our client defaulted after the first 3 payments. There were numerous direct debit dishonours as our client could not afford the repayment amounts. The total amount to be repaid was $3,128.05. By about July 2015 (almost 2 yrs later) our client had paid approximately $2635 but still owed another $1103.

On or about 15 May 2014 the same client entered into another loan contract with a different company giving security over his car for a loan of $1610 with establishment fee of $416 bringing the total amount to $2026 to be repaid over a period of 26x fortnights). Repayments were set at $98.38 per fortnight yet our client defaulted after the first 2 payments. After a further 2 direct debit dishonours he had his repayment amounts changed to $50 per fortnight and still owes $1682 after 17 months. At the time this loan was granted, our client was already making repayments on at least 2x SACCs through the same and a consumer lease through another company. He was also making repayments on the 1st MACC above.

Appendix 1, Case Study 12

RECOMMENDATION

All credit facilities in Australia should be capped at an interest rate of 48% with no establishment fee allowed.

Default fees should be limited to the reasonable cost of recovery.

Responses to Discussion Questions

Question 1: Competing objectives

- *How is the need to protect consumers balanced with the need to ensure that the industry remains viable and consumers can still access credit?*

As we have discussed above, the ongoing consumer harm, systemic irresponsible lending and continued growth of the industry clearly demonstrate that Australia has not struck the right balance between the need to protect consumers with a viable small amount lending industry. We submit that much stronger protections are required. The suggestion above in relation to effectively banning some loans by extending the 48% interest cap applicable to loans above

$5,000 across the board is the simplest way of achieving this. In the alternative, the numerous complex regulations currently in place in the SACC segment are not only necessary but are in need of serious enhancement.

Before turning to the nature of the enhancements required, we submit that if the SACC distinction is maintained then SACC providers must be required to disclose an APR:

Requirement to Disclose an APR

While many traditional pay day lending clients do not respond to APRs because they perceive rightly or wrongly that they have no alternatives, pay day lending is moving into new demographics. The introduction of the licensing regime and more generous cap for SACCs has seemingly lent the industry a measure of legitimacy, which coupled with a large online presence, has seen a measure of acceptance of this type of borrowing among more mainstream populations. The industry also promotes lending for seemingly frivolous purposes – a night out with friends, a party, a phone bill that got a bit out of hand – at odds with all wisdom in relation "good lending" (asset/capacity building) and bad lending ("day to day consumption"). This is directly undermining government initiatives in relation to financial literacy by spreading the opposite messages with a bigger budget and less constraints.

The DFA report indicates that very few borrowers knew the effective APR on their loan and our anecdotal experience suggests that some borrowers are confusing the 20% per month establishment fee and 4% per month fees with a 24% APR when pay day loans in fact range from about 100% to over 400% depending on the term when charged at the maximum rate and with regular repayments.

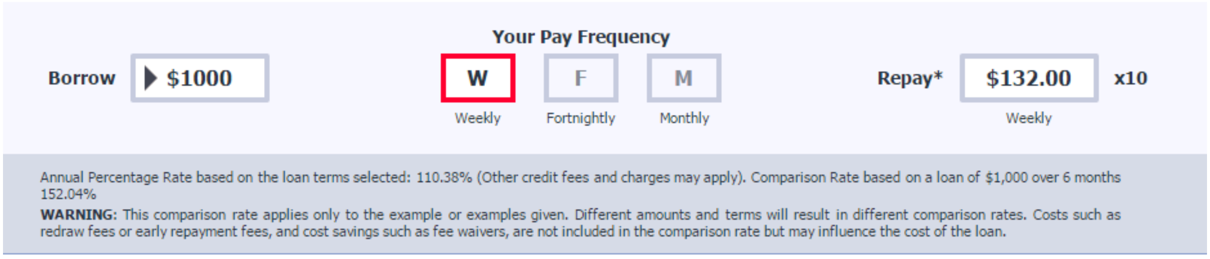
The failure to require disclosure of an APR is also at odds with decades of truth in lending. SACCs providers are argue that an APR is misleading because the loan is over a short term – comparable to quoting the price of a taxi to Perth when you are only heading from the city to the suburbs. This argument does not hold water for a number of reasons:

- If you charge an expense to your credit card and pay it off within two months you are only charged a daily interest rate for as long as the amount is outstanding. On $200, for example, this would amount to about $6-7 at 20% per annum.[28] The equivalent charge for a SACC of $200 over two months would be $48. Clearly the latter is more expensive and the higher APR of the SACC is relevant information.

- A significant number of borrowers have many SACCs in any given 12 month period, in some cases back-to-back, making the annualised rate completely appropriate – there borrowers are paying taxi rates all the way to Perth.

[28] Assuming there is no interest free period available.

It is noted some payday lenders do disclose a comparison or APR rate on their website[29]. It is possible, and can be achieved. For example, Cash Train:



It is imperative that SACCs providers are required to disclose an APR in all advertising and contractual disclosure and it should not be left to individual providers selectively disclosing APR's for some but not all loans..

RECOMMENDATION
SACCs providers must be required to disclose an APR comparison rate in advertising and contractual disclosure.

Question 2: Complexity

- *Could the current regulatory regime be simplified in a way that provides consumers with the same, or a higher level of, protection while reducing the regulatory burden on industry?*

Yes, the current regulatory regime could be greatly simplified simply by replacing the current SACCs regime of permissible fees and additional rules in relation to responsible lending and disclosure with the 48% cap applicable across other NCCP regulated loans.

The current regulatory regime is far too complex and has failed to achieve its objective. SACC providers are adept at avoiding the rules, or applying them in ways which negate their intent, and ASIC cannot effectively enforce the regime because the avoidance and the non-compliance are too extensive. Non-compliance is the norm rather than the exception.

If the Panel does not support our recommendation of a 48% cap for all regulated lending, then we advocate at least a return to the original legislative proposals in 2012[30] which had the potential to provide both a higher level of protection to consumers and greater simplicity and certainty for SACC providers:

- A ban on concurrent SACCs

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[29] www.cashtrain.com.au
Annual Percentage Rate based on the loan terms selected: 110.38% (Other credit fees and charges may apply). Comparison Rate based on a loan of $1,000 over 6 months152.04%
WARNING: This comparison rate applies only to the example or examples given. Different amounts and terms will result in different comparison rates. Costs such as redraw fees or early repayment fees, and cost savings such as fee waivers, are not included in the comparison rate but may influence the cost of the loan.
[30] Exposure Draft: National Consumer Credit Protection Amendment (Enhancements) Bill 2011: small amount credit contracts

- A ban on limit increases to SACCs
- A ban on refinancing a SACCs
- A Tighter interest and fee caps – 10% establishment fee and a 2% monthly establishment fee

However, in our view this is not enough. We elaborate on this further under the questions regarding repeat borrowing below.

NOTE: The remainder of this submission assumes that the SACCs regime will be retained in some form. Some of these measures may not be necessary if the regime was abandoned and the 48% cap on consumer lending extended to all loans regardless of amount and term.

Question 3: Sanctions

The Credit Act imposes three types of sanctions - civil penalty breaches, criminal breaches and infringement notices.

- *Is the current sanctions regime working?*

No, the current sanctions regime is not working, but not because the types of sanctions are wrong. The sanction regime does not work because it relies on frequent and consistent enforcement action by ASIC which is not adequately resourced. Enforcement can take many years, and is often reactionary after the harm has been done. Also there is an almost bottomless pit of potential enforcement opportunities, meaning that important issues cannot be pursued because they are not considered priorities.

Infringement notices

Since the SACC laws and related provisions of the NCCPA came into effect ASIC has issued 13 infringement notices totalling approximately $120,000 in response to ASIC concerns regarding their compliance[31].

In our experience, ASIC's ability to deal with issues of compliance can be hampered by a number of factors.

- Willingness of consumers to participate as witnesses;
- Consumers settling the debt on terms where pursuing infringement for wrong doing is expressly excluded because the consumer cannot report the matter.

We also refer to Case Study 11 in Appendix 1 where in ASIC ceased to pursue a strict liability offence matter involving the failure to provide documents within time limits because the substantive responsible lending matter had since been settled. The settlement in that case did not preclude our client's co-operation with ASIC. While we appreciate that failure to provide documents is relatively minor breach in the scheme of things, these provisions constitute the

[31] Paragraph 13 REPORT 426: Payday lenders and the new small amount lending provisions

mechanism by which more serious disputes and offences can be pursued. It is important that the regulated population gets the message that infringements will be pursued.

Civil Penalties

To date ASIC has commenced proceedings against 7 companies where they have identified systemic non-compliance with the law seeking civil penalties[32]. Including successful determinations against The Cash Store Pty Ltd and Assistive Finance Australia Pty Ltd[33] and Fast Access Finance[34]

This only represents sanctions against a tiny fraction of an industry that has been found to be systemically breaching the SACC laws and responsible lending obligations. ASIC has clearly stated that it does not have the resources to enforce the SACC laws or impose sanctions. "ASIC can only achieve what it is resourced to do. Funding levels should be set by reference to Government and community expectations of what ASIC should deliver and, as a result, what level of resilience they want in the financial system." [35]

Also in the Final report of the Senate Committee Inquiry into the performance of ASIC:

> "For the health of the financial system it is clearly necessary that ASIC receives an amount of funding that enables proactive regulation and meaningful law enforcement. … In any case, the issue is not limited to the quantum of funding; it is also apparent that the current model for funding ASIC is outdated and does not promote efficient outcomes." [36]

Personal remedies by individual consumers

There have been very few court or Ombudsman decisions recommending sanctions against payday lenders.[37] A related problem arises when a payday lender is involved in a dispute against a consumer who alleges that the SACC laws or responsible lending provisions of the NCCPA have been breached and the payday lender settles the dispute on confidential terms including a non-disparagement clause. As consumer advocates we have seen this scenario occur dozens of times. This tactic allows the payday lender to continue systematically avoiding its legal obligations with minimal risk of sanction, and only the occasional cost of settling an individual dispute. Very few disputes escalate to determinations in Court or the Ombudsman schemes.

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[32] Paragrapgh 15 REPORT 426: Payday lenders and the new small amount lending provisions
[33] **ASIC v The Cash Store (in liquidation [2014] FCA 926**
[34] Australian Securities and Investments Commission v Fast Access Finance Pty Ltd [2015] FCA 1055
[35] ASIC Submission to Senate Standing Committee on Economics during Inquiry into the Performance of ASIC 2014, *Submission 45.2*, p. 11. – Final Report available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ASIC/Final_Report/index
[36] Final Report from Senate Standing Committee on Economics Inquiry into Performance of ASIC, Chapter 25, Paragraph 25.58. Final Report available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ASIC/Final_Report/index
[37] We are only aware of e in the Credit & Investments Ombudsman, and in the Financial Ombudsman Service Australia 14 disputes lodges against 2 of their members who are lenders known to provide payday loans, and the table shows all disputes lodged resolved by agreement. No determinations made. See FOS comparative Table https://www.fos.org.au/publications/comparative-tables/comparative-tables-20132014/ and http://www.cio.org.au/cases/determinations/

Many of our cases are settled on the basis that the consumer is refunded an amount up to the total amount of fees and charges. Given the volume of lending and the relatively small amounts involved in any particular dispute, this provides no commercial deterrence for systemic non-compliance. The lenders rely on "getting away with it" for most loans, and settling on others.

For many affected consumers to access personal redress requires representation by a community legal centre or financial counsellor to navigate the complex regulatory landscape. Many of the most vulnerable consumers are unlikely to dispute the loans as they are seen to be the only source of funds or "friends". Those consumers who do, often have their complaint treated as "financial hardship" and not the responsible lending dispute that it is.

With limited resources in community legal centres and financial counsellors, and limited resources for ASIC, many consumers are on their own.

Adequacy of the remedy in Court

In the recent case of Australian Securities and Investments Commission v Fast Access Finance Pty Ltd [2015] FCA 1055, after finding that the model was a sham concealing the reality of the provision of credit, in discussing remedy Dowsett J made the following observation:

> "Each customer has had the benefit of the advance or advances. He or she should pay the price for it, to the extent that the law allows. In this case, any orders pursuant to s 180 should ensure that no customer has paid, or will pay more to the relevant FAF entity than the sum of the amount paid to that customer by DCH plus interest at the maximum rate permitted by law. The evidence suggests that these transactions would have been unprofitable if an interest rate of 48% per annum were charged. That proposition might be a reasonable guide to the appropriate interest rate. However it may be that not all of the customers could have borrowed at that rate. There is no evidence indicating the rates at which other borrowers were lending, nor as to their lending policies. Nonetheless, I am willing to infer that it is more probable than not that each customer could have borrowed elsewhere at the maximum lawful interest rate."

With no disrespect to Her Honour, the revision of interest to the "maximum applicable" under the law in circumstances of an elaborate sham to avoid may not be deterrent in its operation.

Also add in the Fast Funds Pty Limited v Coppola; Coppola v Hall [2010] NSWSC 470 decision, the remedy for a breach of the NSW cap was that the interest was revised to 48%.

The reality is the borrowers who attended FAF, would be unlikely to find a loan and may instead have been able to:

- Use a NILS or Good Shepherd Loan;
- Lay-by;
- Negotiated a repayment arrangement with a telecommunication or utility provider (rather than proceed with a loan).

It does not necessarily follow that a fair remedy would be they could borrow at 48%.

Are there any enhancements that could be made to the sanctions regime to make it more effective?

There should be a legislatively imposed remedy of a full refund of any fees and charges where offenders have been found breaching the Credit Act or attempting to circumvent its application. This would provide a better incentive for consumer's to be involved as witnesses where required, and provide some measure of disincentive for poor conduct.

Brighter line rules would also assist the regulator. The current regime of presumptions and vaguely defined concepts (substantial hardship) leaves the regulator at risk of investing considerable resources in matters which may ultimately not succeed in the Courts.

Further there is an argument that ASIC will soon have exhausted all the low hanging fruit in terms of systemic issues with record-keeping and purpose statements which can be addressed with relative efficiency – many lenders are already adapting their systems to look more like they comply with Court decisions and ASIC Guidance – without necessarily improving their decisions in any individual lending case.[38]

RECOMMENDATION
ASIC must be provided with more adequate and more stable funding than it receives now.
There should be an automatic remedy of a refund of all fees and charges for any substantive breach of the Act.

Question 4: Obligation to obtain and consider bank account statements (TOR 1.1)

The law currently requires SACC providers to consider a consumer's bank account statements for at least the preceding 90 days.

- *Is the requirement to obtain and consider bank account statements necessary given the broader responsible lending obligations?*

Yes, this requirement is absolutely still necessary. Financial Rights believes 90 days of bank statements are still the best way to get reliable information about a consumer's recent income and expenses.

Unfortunately we are concerned that many payday lenders who ask for bank statements do not look at them very closely if at all, and only retain them in order to later prove compliance with responsible lending obligations[39].

[38] More detailed records of suitability assessment with lots of words and little substance, more concrete loan purposes.
[39] 94% of the reviewed filed contained account statements Paragraph 26 REPORT 426: Payday lenders and the new small amount lending provisions, but at paragraph 190-199 found inconsistent approaches and insufficient verification.

We refer the Panel to SACC case studies in Appendix 1. In the majority of the SACC cases we have obtained most of our information from the same loan statements provided to the lender. These statements are a vital source of highly relevant information.

– *Are there more effective ways to obtain information about the financial situation of a SACC customer? If so, specify the alternative ways for obtaining information and whether the alternative is simpler, cheaper, or provides more useful information.*

No, we submit that bank statements are the most effective way to obtain information about a SACC customer's financial situation; what is lacking is the interrogation or critical review of the information provided. However, we also believe SACC providers should be using the statements to complement standard inquiries in relation to living expenses and other loan commitments. As outlined in paragraph 190-199 of the ASIC Report 426, the 90 day statement alone is insufficient unless inquiries are made where account statements:

- Clearly show there is no income;
- Indicate there is more than one bank account;
- show large withdrawals of cash and no detail of expenditure;

The requirement to obtain statements was intended to enhance other modes of credit assessment, not replace them.

In appropriate cases additional enquiries are required to clarify discrepancies between the consumer's responses, bank statements and any other evidence.

Case Study

For our client with 18 loans in 18 months from the one provider, the SACC provider obtained bank statements revealing an average net income as $4056.37 per month and average expenses as $4,530.23. They then approved a loan with $744 per fortnight repayments, despite her already being in deficit by almost $500 per month based on her account statements. The form itself noted an 89% discrepancy between the client's nominated expenses and the expenses as revealed by the bank statement, but the loan was still approved without further inquiries.

Full details are provided in Appendix 1, Case Study 2

Case Study

Our client who took a voluntary demotion appears from the bank statement retained by the lender to have an additional bank account – there are transfers to and from another account and loan repayments are sometimes noted as being taken from the account without any evidence of loan proceeds being paid in. Again there does not seem to have been any further enquiries about this.

Full details are provided in Appendix 1, Case Study 8

Third Party Providers enabling access to bank account details

Some SACCs providers are using 3rd party service providers to access the client's bank account details electronically. This process requires the customer to provide their account and log in details to the 3rd party provider.

Two issues arise:

1. the accuracy of the software;
2. the safety of the information.

ASIC Report 426 highlighted concerns in relation to the misinterpretation of account entries via this process, specifically where deposits from other loans (including other SACCs) were misinterpreted as income. This is a serious concern.

As highlighted by paragraph 203 of ASIC report 426, it is not clear what the interaction between the third party software providers and the e-Payments Code. Customers are placing themselves in breach of the terms and conditions of their transactions account by providing log in details to a third party party, rendering them vulnerable to bearing losses in the event of unauthorised access to their accounts.

ASIC Report 426 also noted the inconsistency in approach between providers as to warnings. If Third Party Software is to be used, warnings ought to be consistent and mandatory.

- *Is it appropriate for SACC providers to use bank account statements for purposes other than complying with the responsible lending obligations, such as for marketing?*

Using a consumer's bank statements for any purpose other than what was consented for would be a breach of the Privacy Act. Financial Rights also notes that the data that is by online lenders in rejected applications is on-sold to other lenders willing to take on the risk. According to the Trends in the Australia small loan market report: "One leading online industry stakeholder estimates that the lead-generation market is now larger in Australia than the small loan market."[40]

We also don't think it is appropriate for payday lenders to be on-selling consumer information for any purpose.

RECOMMENDATION
SACC providers must still be required to obtain and consider a consumer's bank account statements of at least the preceding 90 days. SACC providers should still be required to retain evidence of making additional enquiries about a customer's living expenses and other debts that may not show up on his or her bank statements, and to clarify discrepancies raised by bank statements.

[40] Banks, Marcus, De Silva, Ashton & Russel, Roslyn "Trends in the Australian small loan market" *Australian Centre for Financial Studies, School of Economics, Finance and Marketing, RMIT University*, October 2015, pp. 36-37. Available at: http://australiancentre.com.au/sites/default/files/NewsDocs/Commissioned%20paper%20-%20Trends%20in%20the%20Australian%20small%20loan%20market.pdf

SACC providers must not use bank statements for purposes other than complying with the responsible lending obligations.

Consumers should be warned about the risks of providing password information to a 3rd 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.

Question 5: Restrictions on repeat borrowing (TOR 1.2)

There is a presumption that a SACC is unsuitable if either the consumer is in default under another SACC or in the 90-day period before the assessment the consumer had two or more other SACCs.

- *How do SACC providers determine whether a prospective customer has a SACC with another SACC provider or is in default under another SACC?*

Currently the best way for a SACC provider to determine whether a prospective customer has a SACC with another SACC provider or is in default is to look at their bank statements and to simply enquire of the customer. SACC providers can also obtain a copy of the customer's credit report.

However, Financial Rights cannot confirm that SACC providers actually take these two basic steps, and our experience assisting SACC customers with disputes is that providers rarely enquire about a customer's other liabilities or whether the customer is in default on any loans. We have several cases where it is apparent on material available to the lender that the prospective borrower has other SACCs and they either simply ignore the fact or reason it away upon a flimsy basis. In most of the SACC case studies provided in Appendix 1 the lender obtained bank statements revealing all of the applicant borrower's other commitments, or sufficient commitments to warrant declining the loan, but decided to grant the loan in any event.

- *Is a restriction on repeat borrowing necessary to protect consumers?*

Repeat borrowing causes the most detriment for consumers of SACCs. Previous research has found that payday loans are often taken out to cover day-to-day living expenses rather than 'one off' expenses. The DFA data in Appendix 2 supports this with 35.6% of pay day loans being used for emergency cash for household expenses, and a further 16.7% paying utility bills, including telecommunications, energy and water. This is also consistent with the experience of our clients. Consumers already struggling to make ends meet simply cannot afford to make repayments, and are caught in a harmful cycle of repeat borrowing.

The DFA report also found that number of loans and value of pay day loans outstanding has increased in the last ten years, with the percentage of users with more than one payday loan in the last twelve months increasing from 17% in 2005 to 38% in 2015.[41] The number and

[41] Digital Finance Analytics, *The Stressed Finance Landscape Data Analysis*, October 2015. Sec 3.2, Table 11.

percentage of consumers taking out more than one SACC in a 12 month period has also increased from 9.8% in 2005 to 29.4% in 2015.[42]

The case studies in Appendix 1 of this report also show a pattern of harmful repeat borrowing, with multiple instances of 15-20 or more loans in a relatively short period, with loans being taken to cover accounts overdrawn by previous repayments. The vast majority of loans were taken out for general consumption.

- *Is a rebuttable presumption or a bright-line test (e.g., an outright ban or a limitation on the number of SACCs that a consumer can take out in a certain period of time) more effective?*

A bright-line test would be far more effective at limiting the number of SACCs a consumer can take out in a certain period of time. The rebuttable presumption regime has proven to be ineffective. Lenders systematically ignore it or completely misunderstand its intention and relevance. A bright-line test would create much better outcomes for consumers and reduce compliance complexity for SACC providers, and make enforcement easier.

ASIC recently reported that approximately 62% of the 288 files it had reviewed indicated that the payday lender had entered into a loan with a consumer who triggered one of the presumptions of unsuitability:[43]

> "The majority of files reviewed indicated that each consumer had taken out two or more small amount loans with the same payday lender within the review period. Some consumers had as many as five or six loans with the same payday lender."[44]

In our casework we see consistent evidence that clients are given SACCs in circumstances where the presumptions have been triggered, and we see little evidence that any further enquiries have been made. We note that the presumption in relation to having more than 2 SACCs previously in a 90 day period were clearly triggered in case studies 2, 3,4,5,7,8 and 10, often repeatedly. In those cases where there is evidence lenders have turned their minds to the issue at all, their reasoning is wholly unsatisfactory and fails to comprehend the harm the presumption is intending to prevent.

Case Study

Our 67 year old client has Parkinson's disease, Diabetes Type II (on insulin), short term memory problems and other physical issues. She lives in Government Housing. She has a disability and needs assistance to go anywhere. Her financial counsellor advises that she sometimes does not buy medicine in order to pay loans and bills.

In the period from October 2013 to April 2015 she has had 5 SACCs.

[42] Digital Finance Analytics, *The Stressed Finance Landscape Data Analysis*, October 2015. Sec 3.2.
[43] Direct quote from a capacity to repay assessment provided for a client by a SACCs provider.
[44] ASIC REPORT 426: Payday lenders and the new small amount lending provisions, Paragraph 163. Available at: http://download.asic.gov.au/media/3038267/rep-426-published-17-march-2015.pdf

It is also apparent from the lenders own document that she has at the time of the loan below one SACC that has just finished a couple of weeks previously (City Finance)[45], and two other concurrent SACCs (cash Converters and Loan by Phone). She also has a consumer lease and is repaying a lump sum to Centrelink.

Despite this the Suitability Assessment document provided says only:

"The Borrower has submitted bank statements showing 90 days of transactions for the institutional account in which the Borrower's income is deposited. We have assessed the statements and the Borrower's income details and expenses;

The Lender has performed an income and expense analysis based upon the information and details provided and discussed this with the Borrower."

Full details are provided in Appendix 1, Case Study 5

In some cases SACCs providers appear to conflate the two separate presumptions to the effect that it is OK to have already had two SACCs in the previous 90 days as long as the borrower is not currently in default:

> "…we established that he did have 2 other sort term loans with Cash Train and Nimble, however [borrower name] has no listed defaults, and confirmed he did not have any overdue loans with competitors so we established he was up to date with these loans."

We submit that it would be more costly for SACC providers to collect and retain evidence to properly rebut the presumption that a consumer should not be given another SACC than it would be for them to comply with a simple ban on lending. Some SACC providers are already taking this approach[46] , although in our view 8 loans per year, which is effectively what a limit of 2 loans per 90 days implies, is too high.

We have come across a number of occasions where clients have had 2 or less SACCs in 90 days (8 in a 12 month period) and are still in a harmful cycle of repeat borrowing. We refer to case studies 1, 5 and 6 in Annexure 1 in which the clients had 2 SACCs or less in most 90 days period and yet were in serious financial difficulty.

The industry has long promoted SACCS as being extremely useful (and not at all harmful) when used to deal with one off emergencies. We submit that such one-off emergencies cannot be classified as "one off" when they occur 8 or more times per year.

We strongly submit that consumers should be strictly limited to only entering into two SACCs per 12 month period. This is a similar restriction as the limits for Centrelink advances.[47]

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[45] There are possibly two of these but it is unclear.
[46] ASIC REPORT 426: Payday lenders and the new small amount lending provisions, Paragraph 50(a). Available at: http://download.asic.gov.au/media/3038267/rep-426-published-17-march-2015.pdf
[47] Centrelink recipients have a choice of 1, 2 or 3 advances in the 12 months but must not add up to more than the max. For Newstart etc it is one max in one or two instalments in any 12 month period. Available at: http://www.humanservices.gov.au/customer/enablers/advance-payment

- *Would the objective of limiting a debt spiral through repeat borrowing be assisted by requiring SACC providers to rely on a recognised prescribed benchmark, such as the Household Expenditure Measure or Henderson Poverty Index (with or without an added margin)?*

Yes, Financial Rights believes a clear benchmark to rely on would help SACC providers ensure they do not put their customers in unsuitable loans. This would not only assist in preventing repeat borrowing, but also one-off loans which are simply beyond the client's means. We note that consumers are often very poor at estimating their own expenses accurately and are often surprised when their every day commitments are tallied. In circumstances where they are desperate for cash (a common circumstance they may also have an incentive to understate their expenses, in order to secure a loan). A clear benchmark would also help consumer advocates and dispute resolution schemes when assisting a SACC customer after the fact; and provided greater enforcement certainty for the regulator.

Currently the SACC providers we have dealt with do not use any kind of *recognised* benchmark to inform their responsible lending assessments. .

Cash Converters, for example, apply a standard 15% of income to estimate living expenses above rent and loan repayments. This practice results in the assumption that a person on Centrelink receiving $1886 per month, for example, has living expenses of only $278 per month, being approximately $70 per week (See case study 5 in Appendix 1). This is a ludicrously low amount to cover food, travel, energy and water alone, without telecommunications, clothing, medical expenses etc. This flawed assumption allows them to calculate borrowers have uncommitted income to meet their Cash Converters loan even when in reality they may have a budget deficit.

Another interesting take on responsible lending is that taken by Dollar Direct, whereby the loan proceeds are included in the amount available to repay the loan for suitability assessment purposes – see Appendix 4.

Financial Rights supports using the Henderson Poverty Index (HPI) as the universal benchmark for all SACC providers. We believe the HPI serves as a better benchmark than the Household Expenditure Measure (HEM) for several reasons:

1. HPI is run out of a university whereas HEM is privately funded;
2. HPI is more generous for singles adults which in our experience is the demographic using payday loans more often and tends to be more disadvantaged than couples;
3. HPI is a poverty line which serves as a better indicator for whom payday loans are unsuitable;
4. HPI uses a clear division between working and unemployed consumers.

HEM is being used more often by mainstream lenders which we believe is appropriate, but for payday lenders, the HPI is a better standard of measurement.

However, the HPI is a *poverty line*, not a recommended amount to live on. The Credit Act benchmark should incorporate a margin above the poverty line which reflects an appropriate balance between facilitating access credit and ensuring an adequate standard of living.

We submit that a benchmark should not replace the requirement to ask about actual expenses. For example, a consumer might have enough income to put them nominally above a benchmark such as the HPI after rent and repayments, but if they have extra medical expenses, or are supporting family members which are not classified as dependents, these expenses should also be taken into account by SACC providers. For this reason SACC providers should be required to enquire about actual expenses as part of the loan application process, and use the greater of the applicant's estimate or the benchmark.

It should also be noted that when we refer to the use of the HPI we are referring to the after housing expenses measure. Housing costs are highly variable depending on the borrower's circumstances and location, ranging from those who are living rent free to those who are paying extremely high city rental payments. Lenders should always obtain actual costs for housing and other loan/lease commitments and use the HPI to benchmark other day to day living expenses which are prone to being understated.

- *How should a benchmark be used? For example, should the use of a benchmark replace the need to make inquiries about a consumer's expenses or the rebuttable presumption?*

As noted above, nothing should replace the need for a SACC provider to make inquiries about a consumer's expenses; lenders should be required to take the higher of the consumer's estimated expenses and the appropriate benchmark. If a customer's disposable income after rent, other set commitments, and the loan repayment falls below the benchmark, or their stated expenses, they should not be given a SACC.

Using a benchmark does not negate the need for the presumptions either. The rebuttable presumptions were introduced to address the particular harm caused by repeat borrowing. We submit that the presumptions should be replaced with bright line rules about the number of SACCs a person obtains in a given period. Both protections are required. Each loan (even if it the consumer's only loan in a given period or ever) should still meet the responsible lending criteria, including in our view the use of an appropriate benchmark.

Case Study

Our client suffered from a traumatic brain injury as a result of a head injury. As a result she is cognitively impaired. Unfortunately, due to her vulnerability she became a victim of an on-line romance scam. She was unduly influenced by a man purporting to be a US Army Officer based in Nigeria to send him money which she believed would allow him to come to Australia to marry her. She relies on a Disability Support Pension.

She borrowed $450 from one SACC provider on 2 March 2015 and 10 days later borrowed $600 from another SACC provider on 12 March 2015. She sent the money to the overseas scammer. She didn't have any prior SACC that we are aware of. She defaulted on both loans, not having made any payments at all.

Full details are provided in Appendix 1, Case Study 9

– *What is the likely cost or saving of requiring SACC providers to use benchmarks?*

Although we cannot comment on the precise cost savings of requiring SACC providers, Financial Rights submits that benchmarks will give greater compliance certainty, being easier to apply and enforce, and produce beneficial outcomes for consumers. It may also save the industry a considerable amount in avoiding complaints and disputes. A large proportion of our casework currently involves demonstrating that consumers are left with less than the HPI on which to live once loan repayments are factored in.

RECOMMENDATION

There should be a hard limit of only two permissible SACCs per 12 month period.

The Henderson Poverty Index (HPI) plus a minimum margin should be required as the universal benchmark for all SACC providers.

SACC providers must continue to be required to make inquiries about a consumer's expenses.

There should also be a ban on concurrent SACCs, refinancing a SACC, and increasing the limit on a SACC.

Question 6: Ban on short term credit contracts (TOR 1.3)

The Credit Act prohibits loans with a term of 15 days or less.

- *Has the prohibition on short-term lending been effective in preventing lenders from offering loans with a term of 15 days or less?*

We are not aware of any breaches of this provisions. This part of the *Credit Act* demonstrates how much more effective bright-line restrictions can be on unsuitable lending.

- *Has the prohibition on short-term lending had any unintended consequences that mean it should be changed? If so, please provide examples of these consequences.*

Financial Rights is not aware of any unintended consequences from the prohibition on short-term lending.

Question 7: Warnings (TOR 1.4)

The Credit Act requires SACC providers to provide a specific warning statement to consumers.

- *Are the warning statements effective? Could the statements be improved? When responding, please consider: the content of the warning; and the manner in which it is displayed.*

We cannot comment on the effectiveness of the warning statements in the shop or online.

The warning statements to our knowledge have never been consumer tested. We would recommend that the purpose of the warning statement and its effectiveness should be informed by behavioural economics to design an effective intervention and be consumer tested to that end.

Our comments are derived from our experience as a first line receiver as we are the operator of the 1800 007 007 hotline in NSW.

We often receive calls from people who have obtained our number from a SACC provider via the warning, however these calls would only represent a tiny fraction of the number of customers that frequent SACC providers. Our experience is these callers are often confused about the services we can provide. In most cases, the call is in response to a **rejection** rather than in response to the warning - that is the consumer is not having second thoughts as to proceeding with a SACC transaction or seeking an alternative prior to borrowing.

The most common inquiries are from customers who think we can help them qualify for a payday loan, or some other type of credit.

Our staff of financial counsellors and solicitors need to identify how the caller got our number (our number appears on default notices, utility bills, referrals from Ombudsman, Law Access and a number of other sources) and try to engage and advise the caller, who may be very confused about who we are and what we do.

In our experience, the responses vary from a positive engagement with consumers about their circumstances and the alternatives that might be available (e.g. NILS, emergency relief, the provision of financial counselling referrals, and legal assistance), to the other extreme of consumers being frustrated, irritated we cannot lend to them or tell them who will and hanging up.

Example

A solicitor in our service answered a call from a lodger in NSW. She recently left the boarding house she lived in and owed $600 in rent. She was in receipt of Newstart and was not eligible for a Centrelink advance for a further 8 weeks. The former landlord was calling the client repeatedly, and getting more threatening including physical threats of violence. The caller was looking for a way to get the landlord and his associates off her back. The solicitor was able discuss the situation and refer the caller to: a Tenancy Service for advice on her rights about the bond; the police for the threats of violence; and also provide practical advice about dealing with creditors until she was eligible for her Centrelink Advance. It is unknown whether she resorted to a payday loan.

Example

On the same day as the above case study, the same solicitor spoke to a caller from regional NSW. She was seeking to refinance her existing three payday loans. She instructed the solicitor she was a single mother with three dependents, she had obtained the three loans to pay living expenses including utilities and telecommunications. The Solicitor advised her about the cost of this course of action (further borrowing) when it seemed the client could never really afford them in the first place. The solicitor offered to review the loans to ensure they were compliant with the law and to possibly negotiate a settlement. The caller declined assistance.

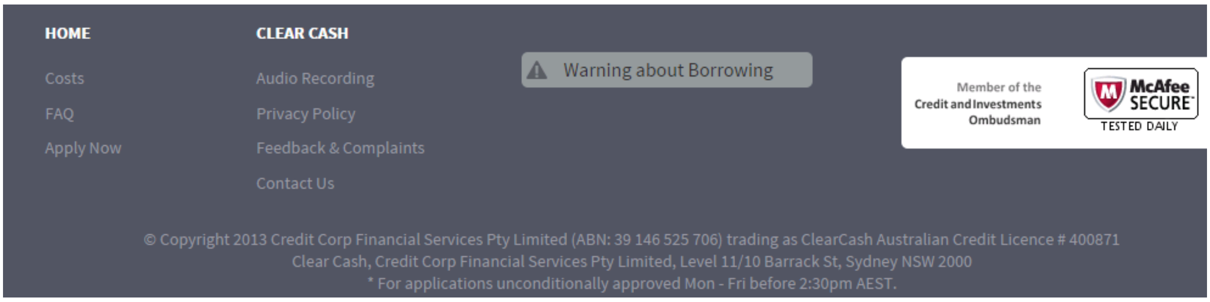
A great number of the case studies provided in this report are likely the consequence of the consumer seeking assistance by calling the number provided in the warning. Although the harm has often already been done, it does provide a pathway to advice and assistance.

We would not advocate that the warning be changed or removed, but we cannot comment on its effectiveness unless it has been tested on consumers.

The resourcing of the pathways from the referral is also important. Services such as the state based hotlines need to have the staff, the skills, the referral options to assist the consumers who are in anxious states.

Location and prominence of the warning online

Some websites have the warning on their home page, right down the bottom near the other legal information, for example: (AK found Clear Cash, Wallet Wizard, Cash Train all in this location)



Others do not appear, although possibly does once an application is made.

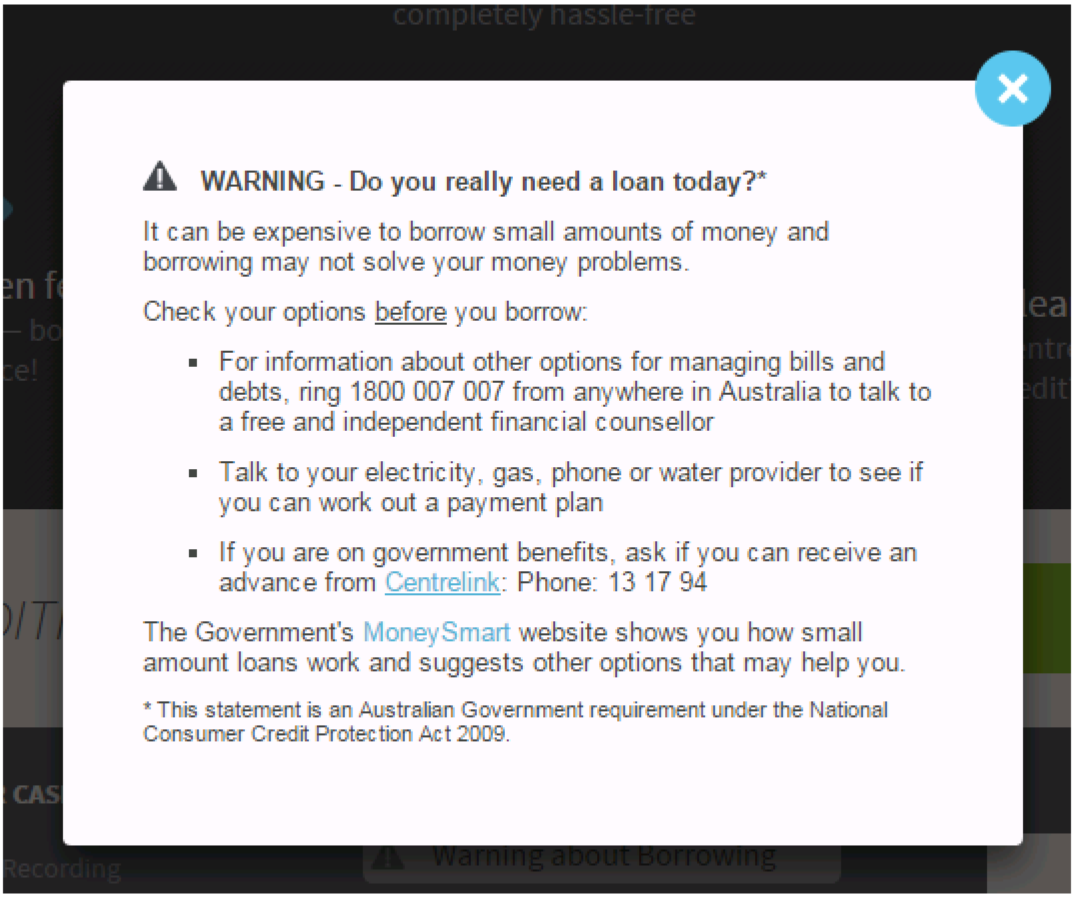
For there to be any recommendation made about the location warnings, robust consumer testing should be undertaken.

- *Should SACC providers be required to include a hyperlink to the MoneySmart website when warnings are displayed on webpages?*

In our view, there is no real cost to such an amendment and no discernible detriment. The findings in ASIC Report426 suggest that this is also a successful strategy.

Compare the following[48]:

[48] http://www.clearcash.com.au/



WARNING - Do you really need a loan today?*

It can be expensive to borrow small amounts of money and borrowing may not solve your money problems.

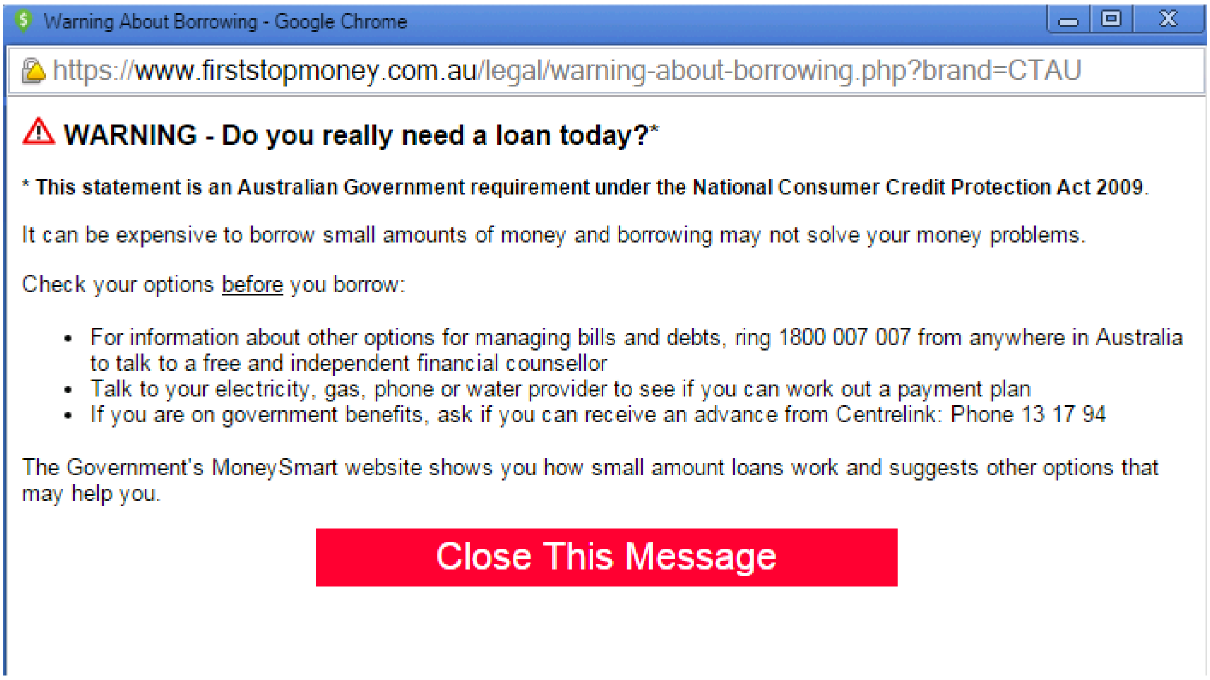
Check your options before you borrow:

- For information about other options for managing bills and debts, ring 1800 007 007 from anywhere in Australia to talk to a free and independent financial counsellor
- Talk to your electricity, gas, phone or water provider to see if you can work out a payment plan
- If you are on government benefits, ask if you can receive an advance from Centrelink: Phone: 13 17 94

The Government's MoneySmart website shows you how small amount loans work and suggests other options that may help you.

* This statement is an Australian Government requirement under the National Consumer Credit Protection Act 2009.

With an example without a link:



Warning About Borrowing - Google Chrome

https://www.firststopmoney.com.au/legal/warning-about-borrowing.php?brand=CTAU

WARNING - Do you really need a loan today?*

*** This statement is an Australian Government requirement under the National Consumer Credit Protection Act 2009.**

It can be expensive to borrow small amounts of money and borrowing may not solve your money problems.

Check your options before you borrow:

- For information about other options for managing bills and debts, ring 1800 007 007 from anywhere in Australia to talk to a free and independent financial counsellor
- Talk to your electricity, gas, phone or water provider to see if you can work out a payment plan
- If you are on government benefits, ask if you can receive an advance from Centrelink: Phone 13 17 94

The Government's MoneySmart website shows you how small amount loans work and suggests other options that may help you.

Close This Message

RECOMMENDATION

The warnings should be consumer tested to maximise their effectiveness in both diverting consumer from high cost lending and providing a pathway for advice and assistance.

Question 8: Caps on costs (TOR 1.5 & 1.6)

The Credit Act currently caps establishment fees at 20 per cent of the credit amount, monthly fees at 4 per cent of the credit amount and the total fees payable in default to twice the credit amount.

- *The policy intention in respect of the rate at which the cap on cost was set was to provide adequate protection to consumers and continue to allow the SACCs industry to operate. Do stakeholders think the cap has broadly met this objective?*

No, we do not think the current cap on cost provides adequate protection to consumers.

We strongly advocated for a uniform cap of 48% on all Credit Act regulated loans instead of the current regime. Alternatively, we suggest a further tightening of the current fee regime to the 10% establishment fee and 2% per month fee originally proposed in the first exposure draft. If this approach is adopted, or the current cap regime maintained, all SACC and MACC providers must be compelled to disclose an estimated APR.

The current cap on costs has not only allowed the industry to operate, it has flourished at the expense of vulnerable consumers. The use of payday loans among financially stressed households has exploded since 2005.[49] It is clear the competition is not working in this industry as almost every single SACC provider, with only two exceptions[50] we are aware of, charges the maximum cost cap allowed under the law.

  - *When providing a submission, please provide data, such as evidence that it is not viable for businesses to operate or evidence as to how the amount of the cap is causing financial hardship to consumers.*

The industry is clearly able to operate under the current cost cap because it has grown dramatically in the last ten years. DFA research estimates that under the current regulatory regime the overall value of the payday lending sector in Australia to exceed $1 billion by 2018.[51]

Financial Rights submits that viability of the payday lending industry should not be the starting point of a discussion about cost caps. Ensuring that consumers are able to access safe and suitable financial products should be starting point of this discussion and business viability should be a secondary consideration.

RECOMMENDATION
The costs cap should be further reduced to 10% establishment fee and 2% monthly fee.

[49] Digital Finance Analytics, *The Stressed Finance Landscape Data Analysis*, October 2015. Sec 3.2, Table 11.
[50] Credit Corp released a product called Wallet Wizard with a 15% establishment fee and 2% per month fee. Available at: http://www.walletwizard.com.au/costs/
[51] Digital Finance Analytics, *The Stressed Finance Landscape Data Analysis*, October 2015. Sec 3.8

– *ASIC Class Order 13/818 granted temporary exemption from the cap for certain medium amount credit contracts (MACCs) and allowed small amount credit contracts (SACCs) providers to exclude fees charged for direct debit processing from the caps. Should the temporary exemptions provided by Class Order 13/818 be made into regulation?*

We support the submissions of the Consumer Action Law Centre on this issue.

Question 9: Protection for Centrelink customers (TOR 1.7)

The Credit Act caps the amount of the repayment for consumers who receive 50 per cent or more of their gross income from Centrelink payments to 20 per cent of the consumer's gross income.

- *Is the protection for consumers who receive 50 per cent or more of their income under the Social Security Act 1991 working effectively?*

Financial Rights has not seen any clear examples of consumers who receive 50 per cent or more of their income from Centrelink with more than 20% of their income going to payday lenders. We believe this benchmark is being complied with relatively well, and is a good example of a bright line rule that has been effective.

Nevertheless, 20% of a Centrelink recipient's income is a very generous benchmark. We support changing the rule from a cap at 20% of the consumer's gross income to a cap at 5% of a Centrelink recipient's gross income. For most of our Centrelink clients more than 80% of their Centrelink is already committed on essentials, plus other obligations such as repayment Centrelink advances, and is not available for loan repayments.

- *Do any additional groups of consumers need to be subject to specific protection in relation to SACCs? For example, should the provisions be extended on a similar basis to persons whose income is less than a specified amount or recipients of payments under the Veterans' Entitlements Act 1986?*

RECOMMENDATION

The protection for consumers who receive 50 per cent or more of their income under the *Social Security Act 1991* should be changed to a cap at 5% of a Centrelink recipient's gross income.

Question 10: National database (TOR 2.1)

The review is required to consider whether a SACC database would enhance the capacity of SACC providers to meet the responsible lending obligations by providing them with access to more comprehensive and accurate information.

- *Is there sufficient information currently available for a SACC provider to meet the responsible lending obligations?*

We submit that SACC providers have a considerable amount of information already to enable compliance with the responsible lending obligations and they fail to make adequate use of this information. While it is true that there may be gaps in the available information, where clients have multiple bank accounts for example, the majority of breaches we have identified involved ignoring available information, or applying a flawed interpretation, rather than from relevant information not being available.

As noted previously, the case studies in Appendix 1 reveal numerous examples of where lenders have ample evidence in the bank statement or their own records of the consumer having had 2 SACCs already in a ninety day period and approving a loan for a 3, 4^{th} or higher number. These cases also demonstrate a consumer in default who is seeking their 6^{th} SACC in a 90 day period and yet being granted the loan.

Case study

Our client's account statements for the 90 days leading up to a seventh loan granted on 29/05/2015 for $800 were made available to the lender. It is clear that there were five previous SACCs granted in the 90 days prior to the granting of the seventh loan (a sixth was granted prior to the commencement of the 90 days but its repayments appear in the statements). There is also a dishonoured payment to a SACC followed by the granting of another loan shortly thereafter. All of this is apparent to the SACC provider for the seventh loan and yet no alarm bells are triggered. On the contrary there is a rather shorthand, incomprehensible note at the bottom of the statement headed "Affordable, suitable and low risk debt spiral".

Full details are provided in Appendix 1, Case Study 8

- *If not, would a database or alternatives such as comprehensive credit reporting be a more effective way to meet the responsible lending obligations?*

  Database

The Financial Rights Legal Centre does not support the creation of a separate payday lending database. Not only would a new database come with privacy and accuracy concerns, it would be very difficult to enforce or audit regularly.

Payday lenders already provide substantial enforcement challenges. It is likely monitoring their use of a dedicated database will also provide significant resources. As this discussion paper points out, a new database would require answers to numerous difficult questions including: How will it be funded? What information should be included? Who would manage a new database? How would it work in relation to other parallel databases? Could consumers dispute inaccuracies? All of these unanswered questions make us believe that the creation of a functioning payday lending database has too many obstacles to overcome for it to be a viable solution to helping SACC providers meet their responsible lending obligations.

Finally, a database that is limited to only information about SACCs would not be enough to satisfy providers' responsible lending obligations. SACC providers would still need to inquire and verify whether a customer had other liabilities (credit cards, personal loans, mortgages), and ask about additional living expenses that affect his or her ability to afford a new credit facility.

Credit Reporting - the existing regime.

Financial Rights does believe that having some form of consistent and reliable data about how many SACCs each consumer has taken out in a certain period of time is an important piece of the *Credit Act* requirements. Without some reliable source of this data it will be more difficult for ASIC to enforce a bright line limit on how many loans a consumer can have within a certain period of time.

Requiring SACC providers to use the existing credit reporting regime is one viable alternative to a special payday lending database.

There are pros and cons for consumers of both options. A SACCs database would enable consumers to more easily resume borrowing in the mainstream after a period of financial difficulty, because these loans would not appear on their "main" credit record. On the other hand, other lenders would not have access this information when conducting responsible lending suitability assessments unless they checked both systems. Finally, to lend responsibly SACCs providers also need to know what other loans a consumer may have, which would not be available from the dedicated database alone.

Consumer advocates have consistently advocated that use of the credit reporting system should not be mandatory; however an exception could be made for the payday lending industry. No other type of lending is subject to restrictions and cost caps as payday lenders because no other type of lending has proven to be as systemically harmful for consumers. Further, as non-compliance with responsible lending is closer to the rule than the exception in the pay day lending industry, there is further justification for making mandatory credit reporting compulsory in that sector alone.

If SACC providers are required to report all SACCs to all three credit reporting bodies (CRBs) then any SACC provider could order a consumer's credit report from any of the CRBs and be able to determine whether or not providing a new SACC to a customer is suitable. Ordering a credit report would also give a SACC provider necessary information about its customer's other liabilities as well as default history. Such information is not completely sufficient to meet a SACC's responsible lending obligations, but it could form an important part of getting an accurate overall picture of the applicant's financial circumstances.

Under this new requirement SACC providers would not have to provide repayment history information (RHI), only the second tier of CCR information ('partial') including: all of customer's open accounts and age of accounts; all current account limits or potential exposure; the nature of credit; and the date each account is closed. [52]

Unlike a new payday lending database, the credit reporting regime already exists, has protections in place for privacy and accuracy concerns, is controlled by a national regulator

[52] http://www.aminstitute.org.au/AMI/files/19/19956c8a-0a6f-49e5-b178-d244860fb4ad.pdf

(although ASIC would be preferable) and is funded. We are also aware that some of the larger SACC providers are using the existing regime currently, so it is clearly a viable possibility.

RECOMMENDATION
SACC providers should be required to use the existing credit reporting regime including providing 'partial' tier information to all three credit reporting bodies and accessing credit reports for all customers.

Question 11: Additional provisions for SACCs (TOR 2.2)

The terms of reference require consideration of whether any additional provisions relating to SACCs should be included in the Credit Act.

- *Are there any additional provisions relating to SACCs that should be included in the Credit Act taking into account the objective of the legislation? For example, are there any provisions that have been effective in other jurisdictions that could be introduced?*

Ban on payday loans for gambling

Financial Rights strongly submits there should be a bright line restriction on payday loans that are going to be used for gambling. If a payday lenders knows or is reckless as to whether a SACC is going to be used for gambling purposes, they should not be permitted to grant the loan. This restriction should not be able to be overcome by the customer signing a statement saying they are not going to use the funds for gambling.

We are particularly concerned about the relationship between payday lending and gambling.

We refer you to the recent report by the NSW Select Committee on Gambling Safety (Gambling Report) where we raised our concern about the rise in online payday lending offering access to "instant cash". The Gambling Report made recommendations that further work was required in the space to online access to cash in gaming venues. [53]

In addition, a recent announcement by Ladbrokes, Sportsbet and BetEasy of their new 3rd party payment facilitator in Australia (Emerchant). Emerchant provides a debit card, which is being marketed as a way to get winnings out quickly, but it also facilitates deposits directly into sports betting accounts from any device. On 18 September 2015 ago Emerchant announced a deal with Cash Converters International. Cash Converters are the biggest payday lender in Australia, and it is clear that their new partnership with Emerchant will only lead to huge debt spiral problems for consumers. [54]

Advertising Regulations

[53] New South Wales. Parliament. Legislative Council. Select Committee on Gambling: The impact of Gambling / Select Committee on Gambling. [Sydney, N.S.W.] : The Committee, 2014. – xviii, 128p. ; 30 cm.
[54] http://www.proactiveinvestors.com.au/companies/news/64615/emerchants-deal-hints-at-strong-international-upside-64615.html)

Currently there are no specific rules applying to the advertising of the payday lending industry outside of those general rules that apply to all advertisers under ASIC Regulatory Guide 234[55] and the codes administered by the self-regulatory Advertising Standards Bureau. These are however largely unspecific and have been ineffective in regulating the excesses of payday lending advertising.

For example, in January 2015 Payday lender Nimble was accused of exploiting people in financial hardship with television and outdoor advertising featuring a man in a rabbit onesie promoting its short-term loans as a means to pay utility bills.[56] Complaints were made to the Advertising Standards Board who ruled that Nimble had not breached Section 2 of the Advertising Code of Conduct, which relates to "health and safety within prevailing community standards.[57] The television ads were pulled anyway however they remain available on YouTube. Ads for Money Plus[58] and Money Me[59] were also recently criticised in the media for being socially irresponsible in directing their advertising towards younger audiences.[60] Financial Rights notes that most of the ads for payday lenders are played on the commercial free to air multichannels which are heavily slanted towards younger audiences. Payday loan advertising also features regularly on a range of commercial radio stations.

Over the last four years there have been a small number of determinations made by ASIC regarding misleading advertising by payday loan companies,[61] however there have only been minimal penalties issued and minor fines imposed.

The story is however different in the UK where there have been over 25 pay day loan ads banned from TV since 2013[62] and there are specific rules applying to the advertising of pay day loans under the Broadcasting Committee of Advertising Practice (BCAP).

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[55] Advertising financial products and services (including credit): Good practice Guideline: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-056mr-asic-puts-payday-lending-industry-on-notice-to-lift-standards/

[56] https://www.youtube.com/watch?v=A840fUsqtn4, https://www.youtube.com/watch?v=3vtDwj7MnBQ https://www.youtube.com/watch?v=OrQGPpO1etI

[57] http://ms.adstandards.com.au/cases/0029-15.pdf

[58] http://video.news.com.au/v/334995/MoneyPlus-Slap-Out-Of-It

[59] http://video.news.com.au/v/334994/MoneyMe-Dont-Wait-Til-Pay-Day

[60] http://www.news.com.au/finance/money/consumer-groups-slam-irresponsible-payday-lending-ads-on-youth-channels/story-fnagkbpv-1227316636592

[61] Paid International: 14-065MR http://asic.gov.au/about-asic/media-centre/find-a-media-release/2014-releases/14-065mr-small-amount-lender-pays-30600-dollar-penalty-for-misleading-online-advertisements/; Cash in a hurry 13-284MR http://asic.gov.au/about-asic/media-centre/find-a-media-release/2013-releases/13-284mr-small-amount-lender-pays-infringement-notice-penalty-for-free-loan-offer/; Fair Loans 12-190MR http://asic.gov.au/about-asic/media-centre/find-a-media-release/2013-releases/13-190mr-lender-to-refund-consumers-and-pay-financial-penalty-following-interest-rate-errors/; Nimble: 13-113MR http://asic.gov.au/about-asic/media-centre/find-a-media-release/2013-releases/13-112mr-asic-concerns-sees-payday-lender-change-advertising/; Fair Finance 13-088MR http://asic.gov.au/about-asic/media-centre/find-a-media-release/2013-releases/13-088mr-fair-finance-australia-pays-infringement-notice-penalty/; Cash Today 12-197MR http://asic.gov.au/about-asic/media-centre/find-a-media-release/2012-releases/12-197mr-asic-takes-action-on-payday-loan-advertising/; Money3 12-136MR http://asic.gov.au/about-asic/media-centre/find-a-media-release/2012-releases/12-197mr-asic-takes-action-on-payday-loan-advertising/

[62] http://www.theguardian.com/media/2014/nov/27/payday-loan-adverts-banned-television-watershed

In December 2013 a UK government Business, Innovation and Skills Select Committee report[63] into the pay day loan sector highlighted concerns around the scheduling of payday loan advertisements on television, including the nature and style of those ads. In October 2013 the Committee of Advertising Practice (CAP) published a guidance for payday loan advertisers on what they need to do to ensure that their ads are socially responsible.[64] Furthermore, from 1 July 2014, financial promotions for payday loans were required to include a Financial Conduct Authority (FCA) risk warning.

CAP launched a further review in mid-2014 on how the advertising rules are being applied to payday loan advertising appearing on TV to ensure that young people, in particular, continue to be protected. This resulted in the development of the updated *Trivialisation in short-term, high cost credit ads Advertising Guidance (non-broadcast and broadcast).*[65] The guidance:

> *"examines the specific issue of whether ads for short-term high-cost credit are likely to be considered socially irresponsible by trivialising the seriousness of taking out a loan… [and] considers issues such as the undue emphasis on speed and ease of access, the promotion of the loan for non-essential products and the promotion of the loan to resolve financial difficulties."*

Payday loan lender will be in breach of the guidance if they

- suggest loans are a suitable means of addressing ongoing financial concerns;
- condone non-essential or frivolous spending; or
- unacceptably distort the serious nature of payday loan products.

The Guidance also suggests that

> *"animation, catchy upbeat jingles and humorous themes are used with care, and proposes phrases to help payday loan advertisers communicate reasonable benefits of the product e.g. " It helped out as my boiler was broken and I was two weeks away from pay day "*[66]

The UK government has also just announced a further public consultation into the scheduling of payday loan advertising to avoid unsuitable juxtapositions between advertising material and programmes, including children's programmes.[67]

In the Australian context, Financial Rights remain seriously concerned with the advertising tactics and strategies used by payday loan lenders on television, radio, outdoor and online. We are also concerned about any advertising by payday lenders to pay bills or loans because there are hardship provisions almost universally available for bills and loans which mean that a payday loan should not be necessary.

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[63] http://www.publications.parliament.uk/pa/cm201314/cmselect/cmbis/789/78902.htm
[64] https://www.cap.org.uk/News-reports/Media-Centre/2013/Payday-loans-and-social-responsibility.aspx#.Vh2dK_mqpBc
[65]https://www.cap.org.uk/~/media/Files/CAP/Advertising%20Guidance/Trivialisation%20in%20short%20term%20high%20cost%20credit%20advertisements%20(broadcast%20and%20non%20broadcast)%20(3)
[66] https://www.cap.org.uk/News-reports/Media-Centre/2015/Insight-New-Guidance-for-payday-loan-ads.aspx#.Vh2ayvmqpBe
[67] https://www.cap.org.uk/News-reports/Media-Centre/2015/Insight-New-Guidance-for-payday-loan-ads.aspx#.Vh2ayvmqpBe

There is a very personalised and effectively hidden aspect of advertising in the online environment. Payday loan lenders take part in online remarketing and search engine optimisation. Remarketing is where a previous visitor to a website (for example a payday loan website) can see ads for the website as they browse other websites that are part of the same advertising display network or alternatively as they search for terms related to the website's products or services on a particular search engine. Advertisements for instant or payday loans then pop up on the internet and appear in advertising panels on a webpage when a consumer searches for other products from weddings to gambling, making it as easy as possible for people who are vulnerable to overspending or gambling, or already feeling the pinch financially, to close the gap between impulse and action.

In 2014 Google changed its policy with respect to pay day loan searches so that AdWords will now only show payday loan ads if the phrase "payday loan" (or similar terms) are included in the user's search query.[68] On the Google Display Network, these ads will be shown only on sites related to payday loans. Facebook too have prohibited advertising for payday loans.[69] Pay day loans are however allowed on other advertising exchanges including the Microsoft Advertising Exchange (as long as the advertisers comply with all applicable laws, regulations and other requirements)[70] Yahoo![71] and the Mi9 Advertising exchange.[72]

Financial Rights Legal Centre has been told about (by our clients) and seen examples of inappropriate direct marketing by payday lenders. In our experience, payday lenders use text messages repeatedly to sell loans. The texting appears to be automated as we have had a number of cases where the borrower is offered a loan when we are representing the borrower in a complaint in their internal dispute resolution. The texts appear to be timed to offer loans just at the end of the term for the current loan. Our clients also report getting a lot of texts around Christmas time offering them loans to buy gifts for family.

There is a long history relating to the regulation of advertising related to socially irresponsible products and services such as alcohol, tobacco, junk food, gambling and motor vehicles. Each of these currently have codes that apply to regulate when, where and how these products can be advertised.

Financial Rights submits that there should either be an outright ban on the advertising of payday loans or, at the very least, strict and specific regulations established for payday loan advertising on television, radio, social media and online.

ASIC already acknowledges that "consumers are heavily influenced by advertisements for products and services."[73] Financial Rights believes that there are strong arguments in favour of singling out the payday loan industry for specific regulation in this regard including:

- the industry's negative impact on particularly vulnerable consumers;

[68] https://support.google.com/adwordspolicy/answer/1314225?hl=en
[69] https://www.facebook.com/policies/ads/
[70] https://advertising.microsoft.com/en/wwdocs/user/display/cl/content_standard/2007/global/Microsoft-Advertising-Creative-Acceptance-Policy-Guide.pdf
[71] https://advertising.yahoo.com/ad-policies/ad-policies-restricted-content/index.htm; https://au.adspecs.yahoo.com/pages/advertising-guidelines/
[72] http://mi9.com.au/terms
[73] Regulatory Guide 234, p4

- the socially irresponsible nature of payday loans;
- the trivialisation of the seriousness of taking out the payday loan in their advertising;
- their increasing use of light-hearted and humorous themes as well as animation and catchy jingles;
- the almost saturation coverage of advertising in google and other online searches relating to financial hardship;
- the targeting of younger demographics in all forms of media but particularly in social media and television; and,
- the promotion of payday loans for non-essential products and to resolve financial difficulties.

Financial Rights argues regulations should be developed by ASIC under ASIC's enforcement responsibilities and powers relating to misleading and deceptive conduct. Alternatively, ASIC could work collaboratively with the self-regulatory Advertising Standards Bureau and/or ACMA to develop a code specific to the advertising of credit and SACCs in particular.

RECOMMENDATION

SACC providers that know or are reckless as to whether a SACC is going to be used for gambling purposes, must not grant the loan.

That ASIC either ban the advertising of payday loans or, at the very least, introduce strict and specific regulations established for payday loan advertising on television, radio, social media and online.

SACCs providers should be prohibited from directly marketing to their customer base because of the high risk of dependency on these types of loans.

Question 12: Anti-avoidance provisions (TOR 2.2)

- *Are stakeholders aware of any avoidance practices in relation to the Credit Act? If so, provide details of these practices and the scope (if known).*

Financial Rights believes avoidance practices in relation to the *Credit Act* are quite common among SACC providers in Australia. There was a long history of avoidance strategies employed under the 48% cap previously applicable in NSW, and while there is less avoidance of the new cap (no doubt in part because they are more generous) some avoidance has persisted.

Appendix 1 includes 2 case studies involving avoidance experienced by clients of out service. We also include an explanation of the Fast Access Finance case, quoted in the enforcement section above, which was another example of attempted avoidance.

While the examples given have been addressed in one form or another, we are concerned that more examples will appear, requiring constant amendment to regulations and leaving the market in a state of uncertainty about how far they can push the limits. We documented nine forms of avoidance of the former cap, with two of these persisting under the new regime and a new structure emerging. Several of these were addressed through changes to the law, with a significant lag time in each case, only to be replaced by a new scheme. A general anti-avoidance clause would be extremely useful in discouraging and hopefully curtailing any further avoidance conduct.

We have also noted a mechanism for extending fees payable under the SACC contract. Appendix 3 contains a Cash Converters contract which structures the repayments to reduce after 6 months in order to maximise the amount that can be legally charged.

Case study

One of the loans for $400 was structured for the payments to reduce after six months from $38.76 to $12.92. The client says she did not request this and she did not anticipate any particular change in her financial circumstances or ability to pay. It would appear the most likely motivation for the change was to extend the loan for the full 12 months and charge the maximum available monthly fee (which is payable on the full amount borrowed for the term of the loan regardless of the amount repaid in the interim).

Full details are provided in Appendix 1, Case Study 5

Pawnbroking

Pawn broking is another example of regulatory arbitrage in relation to the Credit Act. In Report 426 ASIC found that approximately 70% of the payday lenders in the review had diversified their business since the new cap-on-costs provisions commenced, many now operating pawn broking businesses.[74] Pawns are essentially the provision of secured credit, involving charges of interest and various fees. Yet it is under-regulated comparative to all other forms of credit, with only the unjust contract of the Credit Act applying

It is primarily the most vulnerable and disadvantaged members of the community that access loans from pawn brokers, who are considered an option of last resort when consumers cannot access mainstream credit, borrow from friends or family or obtain food or electricity vouchers.

Pawn broking is often exploitative, and involves extremely high interest rates, fees and other set-up charges. In Financial Rights' experience, pawn broking contracts often charge interest rates exceeding 20% per month, with some exceeding over 80% per month. This is much higher than the cost cap currently in place for SACCs, and it is significantly higher than the 48% interest rate cap that applies to larger amounts of consumer credit. Under current pawn broking legislation there is also no protection for essential household items - there is a vast difference between pawning a car needed to get children to school and pawning old jewellery or DVDs.

Case study

Mr H's sole source of income was Centrelink benefits. Mr H could not afford food and other necessities and was behind in rent on his Department of Housing accommodation, but was ineligible for a Centrelink advance. In desperation, Mr H contacted a pawnbroker seeking a loan of $500. The pawnbroker offered a $500 loan initially by phone, but when Mr H arrived at

[74] ASIC REPORT 426: Payday lenders and the new small amount lending provisions, Paragraph 23. Available at: http://download.asic.gov.au/media/3038267/rep-426-published-17-march-2015.pdf

the business premises, the pawnbroker reduced that offer to $300. The pawnbroker did not make any enquiries about Mr H's financial position or his ability to repay the pledge. After a 15 minute discussion, Mr H was put into a pawnbroking contract for $300 which was secured by his car, valued at approximately $3000.

The contract imposed an interest rate of 83% per month, which was not disclosed on the pledge in breach of the disclosure requirements. The contract also imposed a 83% selling fee, and a REVS check fee of $60 (which is normally free). The pawnbroker also inserted into the contract, in the miniscule print, a provision stating 'I do not want to be notified of any surplus' from the sale of the car.

Full details are provided in Appendix 1, Case Study 19. See Case Study 18 also.

While there may be risks inherent in lending to low income and disadvantaged groups, pawn broking is a form of secured credit and the pawnbroker takes possession of the pledged item before handing over any money. Added to this is the consumer's heightened position of financial fragility and vulnerability, since pawning personal items is often a means of last resort. The position of bargaining power "will always rest behind the counter".[75] Pawn brokers are currently in a more favourable position than payday lenders, who have similar customer bases but are subject to all the requirements of the NCCP Act.

While the problem of sham pawn broking contracts, where items of nominal value only are given as security, has been addressed in the Commonwealth law, this does not address the many problems with routine pawn broking services.

Pawn broking is under-regulated compared to all other forms of credit, with NCCP only having limited application (s78 of the NCC). There is a risk of downward drift of predatory operators away from other types of credit and into pawn broking. Pawn brokers are not obliged to be members of External Dispute Resolution.

- *Should any additional anti-avoidance provisions be included in the Credit Act?*

Yes, the Credit Act should absolutely include additional anti-avoidance provisions.

A general anti-avoidance provision would be designed to allow ASIC to take enforcement action if it detected a scheme by a trader which was designed to avoid the operation of the Credit Code. The draft *National Consumer Credit Protection Amendment (Credit Reform Phase 2) Bill* 2012 which was distributed for comment in early 2013 included (among other things) such a provision at clause 323A. Treasury sought submissions on this bill during 2013, but work was apparently discontinued following the 2013 election.

The benefit of this approach is that it enables courts and regulators to identify and react to avoidance schemes before consumer detriment occurs. Currently a consumer (and usually a large number of consumers) must suffer detriment before a complaint can reach courts or

[75] Pawnbrokers thriving as poorest hurt in slowdown, Bloomberg, Business Day July 1, 2013 Read more: http://www.smh.com.au/business/pawnbrokers-thriving-as-poorest-hurt-in-slowdown-20130701-2p5uh.html#ixzz2eS6zUdcm

regulators and it can take a significant period of time before particular business models can be addressed.

The payday lending industry has a long history both in Australia and overseas of developing schemes to avoid consumer protection regulation. Even when legislators draft law with known avoidance techniques in mind (as with the Enhancements Act) payday lenders still find weaknesses to exploit. A general anti-avoidance provision would enhance ASIC's ability to respond to avoidance as it occurs, making it less likely that we will need further regulatory fine tuning in future.

In a recent 2014 review of the Performance of ASIC, the Senate Standing Committee on Economics quoted ASIC as saying:

> "...given that the possible structures for avoiding the cap on costs are limited only by the ingenuity of those advising possible avoiders, the Government could consider a general anti-avoidance provision that sought to deter entities making repeated changes in business models to continue avoiding their obligations under the National Credit Act (rather than addressing each model as it emerges after the event)."[76]

The Committee itself concluded:

> "ASIC needs to be ready to take on the challenge created by a constantly changing industry with the creation of new products and business models—some deliberately designed to exploit legal loopholes. It is also important for ASIC to remain alert and receptive to any signs of poor or irresponsible lending practices, and when they emerge, it must educate consumers of the dangers; act quickly where it has the power to do so; and actively lobby for changes if the laws are deficient." [77]

– *If so, should there be any distinction between business model avoidance and internal avoidance?*

No, no distinction should be made.

RECOMMENDATION
The *Credit Act* should include a broad anti-avoidance provision, including the ability to take preventative steps rather than only react after harm has occurred. Ideally pawn-brokers should be brought completely within the credit regime and subject to more stringent requirements. At the very least they should be required to be members of EDR so that consumers have an accessible venue by which to enforce the limited rights they currently have under the Credit Act.

[76] Quote from ASIC Submission to Parliamentary Committee http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ASIC/Final_Report/c06 - Final Report, Chapter 6, Paragraph 6.31
[77] Ibid. Quote from Committee, Final Report, Chapter 6, Paragraph 6.37

Question 13: Documentation of suitability assessments (TOR 2.2)

The Credit Act requires lenders to make an assessment that the proposed SACC is not unsuitable.

- *How do SACC providers currently meet the requirement to make a suitability assessment and what records of the decision-making process are maintained?*

Currently we do not believe SACC providers make adequate suitability assessments, and they certainly do not maintain adequate records of their decision-making process.

As consumer advocates we request evidence of these assessments when representing a payday lending customer, and we are rarely given (if anything) anything beyond bank statements or a one-page assessment form with tick-boxes that the customer has been asked to sign or standard format wording which varies little from customer to customer.

- *What is the most efficient and effective way to document suitability assessments? Is it possible to use the same steps for actual compliance and demonstrable compliance?*

We strongly submit that a standard model should be developed, ideally by ASIC. A standard model would allow assessments to be comparable, and would be a much simpler and more efficient process for both SACC providers to do assessments and for advocates or dispute resolution schemes to evaluate the adequacy of any given assessment.

At a minimum a standard assessment model would include 90 days of bank statements with regular income and expenses documented; any additional or special expenses that a customer has had recently (or will have in the near future); and evidence of any other liabilities including other SACCs, credit cards, leases and personal loans; and a comparison to the prescribed benchmark.

- *Should SACC providers be required to document the assessment? Please consider whether such a requirement could lead to greater transparency.*

Yes, absolutely. Without being required to document the assessment Financial Rights is convinced that SACC providers simply won't. Without documentation there is no way to evaluate whether or not a SACC provider made an adequate suitability assessment, or even made any assessment at all. Some assessments appear to be done retrospectively once a dispute is raised and they are justifying the granting of the loan.

RECOMMENDATION

SACC providers must be required to document the suitability assessment that they must make under the *Credit Act*

At a minimum a standard assessment model would include 90 days worth of bank statements with regular income and expenses documented; any additional or special expenses that a customer has had recently (or will have in the near future); and evidence of any other liabilities including other SACCs, credit cards, leases and personal loans assessed against a prescribed benchmark.

Question 14: Comparable consumer leases (TOR 3)

The Credit Act applies different obligations to transactions according to whether or not the product is structured as a credit contract or a consumer lease.

- *Which leases could be considered comparable with SACCs?*

The customer base for SACCs loans and a large proportion of consumer leases is the same – low income, vulnerable customers with few options and often facing multiple challenges (including disabilities, both physical and cognitive; addictions; mental illness; language and literacy problems). Many of our payday clients also have consumer leases and the consumer lease market appears to have burgeoned since the introduction of the more restrictive SACCs regime, with a significant proportion of the revenue of some large leasing businesses being collected from Centrelink payment via Centrepay. We also see the same types of failure of responsible lending, with consumer regularly overcommitted on lease payments compared to their ability to pay.

Tellingly the avoidance method adopted by some payday lenders was to adopt a lease structure, for example the Cash Loan Money Centres and Sunshine Loan “leaseback” arrangements[78].

In its recent report 447: Cost of consumer leases for household goods ASIC stated:

> “ASIC has continuing concerns about the conduct of lessors, despite multiple enforcement actions by ASIC… Misconduct by lessors identified by ASIC has included targeting financially vulnerable consumers with limited access to alternative forms of finance (e.g. consumers in regional communities). We are concerned about the risk of this conduct continuing to occur, given high usage of leases by financially vulnerable consumers such as those in receipt of Centrelink payments”[79]

However, Financial Rights submits that there is a problem with all leases that are essentially a finance mechanism (rather than a true rental arrangement), regardless of whether they are comparable to a SACC or not. The relatively light touch regulation of leases compared to credit products has allowed the lending industry to engage in regulatory arbitrage resulting in an exploitative market for consumer goods and motor vehicles under leasing arrangements which are credit contracts in disguise. While the scope of this review is to look at the part of the market that is comparable to the SACC market, we note that there are also car leases which exploit the same provisions.

Case study

Our clients had entered into a consumer lease for a 2002 model Subaru Outback. Both clients identify as Aboriginal. One was on her “P’s” when the car was purchased, and the other did not have a license. They have 4 children, and are entirely reliant on Centrelink. One client also suffers from anxiety and other mental health conditions. Redbook estimated the value of the

[78] http://asic.gov.au/about-asic/media-centre/find-a-media-release/2014-releases/14-278mr-asic-continues-crackdown-on-payday-lending-avoidance-models/
[79] ASIC, Report 447: Cost of consumer leases for household goods, September 2015, p4 paragraph 4.

car as $5,000. The lease was for 5 years, and totalled, $29,480. They would not own the car at the expiry of the term, but could extend the lease for 10 years for $10.

The effective interest rate on the contract was about 86%.

Full details are provided in Appendix 1, Case Study 20. See also Case Study 21

Another complication in relation to consumer leases is that while the value of the consumer goods may often be below the SACCs threshold the total value of the lease repayments will exceed that amount, often by a considerable amount as a result of what are essentially high credit costs. Consumer leases often run for longer than 12 months up to several years. This means that the simple transfer of the same parameters (leases of up to $2,000 for up to 12 months) will not capture the comparable market.

In principle we are opposed to the current carve out for leasing arrangements from many aspects of the Credit Act. Any change to the Credit Act to capture only leases in the SACCs range (say where the cash price of goods less than $2,000) alone, will inevitably lead to problematic leases continuing (and likely growing) in the remaining comparatively lightly regulated space. We strongly submit that the changes need to apply across the board (such as a uniform 48% cap on lending and leasing) or should map the Credit Act without any gaps in coverage – e.g. a lease equivalent of a SACC, and then rules for all other leases which remove any incentive to categorise the essence of the transaction as a lease instead of a credit contract.

- *Should there be greater consistency in the regulatory requirements that apply to SACCs and comparable consumer leases? Please consider:*

  - *the similarities between the consumer bases for SACCs and comparable consumer leases;*

  Yes, consumer advocates have been arguing for years that the regulatory distinction between 'consumer leases' and 'credit contracts' used in the National Credit Code is flawed and has created opportunities for businesses to manipulate the structure of their contracts to exploit legal requirements, which has harmed consumers.[80]

  - *the similar economic outcomes of SACCs and comparable consumer leases;*

Case study

Mr C was heavily reliant on payday loans. Rental Corp. was aware of Mr C's reliance on short term lending as it requested a copy of his credit report before renting the goods to him. Rental Corp. gave Mr C a rental contract for 3 year period for laptop computer and a television. Mr C got 7 more payday loans after signing up with Rental Corp.

Mr C paid $7362 over three years, but didn't quite make it to the end of his rental period because he did not have enough money to pay any more. He returned the goods a few months

[80] Paul Ali, Cosima McRae, Ian Ramsay and Tiong Tjin Saw (2013) Volume 41, Australian Business Law Review, page 240

short of the three year period. Had he made it to the end of the contract, contract says he could have bought similar goods for $1 each, but since he returned the goods early he was not able to keep anything, and still owed $409 to Rental Corp.

Appendix 1, Case Study 22

Case study

Financial Rights represented several Aboriginal clients that were on Centrelink. These clients took out multiple leases over time from Rental Corp. for a computer, laptop, mattress, washing machine, fridge and an automatic transmission for a vehicle. All of these leases were arguably unsuitable under existing responsible lending legislation. Rental Corp. had NO clear process for verifying the clients' income or expenses, and the lease repayments took clients under the Henderson Poverty Index in most cases. The clients wanted to own the goods and were never told anything to the contrary even though the contract said otherwise. Rental Corp. has advertisement on its website that it rewards loyal customers with the ability to 'gift' the items leased to a person they nominate, but the clients had no knowledge of this ad or of the process.

Appendix 1, Case Study 24

Case study

Ms A is a single aboriginal mother with eight children all living with her in department housing. She grew up in a rural aboriginal environment, and until now has never lived in an urban area. She has very low financial literacy and receives Centrelink payments as her sole source of income.

Ms A agreed to rent household goods from a man in a local rental company and she told Financial Rights that "everyone in the aboriginal community was using him." She ended up renting nearly every item in her house from him. He told her that she could only pay for her rentals through Centrepay, and he would arrange for all of the payments himself on the phone after Ms A put the call through to Centrepay. Ms A said she felt like she had no control over the payments, and that the salesman controlled all of the transactions.

Ms A believed that she was renting to own the items in her house as she had been directed by the rental company to go to a particular furniture shop and to choose all her goods. Mrs A had multiple contracts with the same rental company. After the time she believed a contract had finished she was then advised by the rental company that NO it was a rental contract but if she wanted to purchase the goods she would need to come into the store and pay $100 cash per contract after each contract had expired. If she stopped any Centrepay deductions then they would come and take the goods.

Client never had the $100 cash so she continued with the Centrepay deductions indefinitely to keep all her goods (most of which had depreciated to be of very little value). Almost all of Ms

A's Centrelink benefits were going through Centrepay, and she was left with almost no money each fortnight to pay for food, electricity, clothing, etc., She had incurred rent arrears and eviction hearing was pending and she was being assisted by local charities.

Appendix 1, Case Study 27

– *ASIC evidence[81] which suggests that the effective interest rate for some consumer leases is substantially greater than the maximum allowed for SACCs under the caps;*

This evidence is precisely why consumer leases should be treated like SACCs and subject to strict cost caps. It is completely outrageous that according to ASIC's evidence consumers receiving Centrelink payments are charged significantly higher prices than non-Centrelink consumers. Such a practice is usury, and is exactly why modern civilisation has had laws against usury lending for hundreds of years.

We speak to many consumers who call us because they cannot afford essential expenses such as rent and energy. It is only upon delving into their financial situation that we discover a significant proportion of their Centrelink payments are being diverted to pay consumer leases. In some cases they are shocked when we calculate the total costs of the lease over the full term. In others they realise they are being outrageously overcharged compared to the cash price for comparable goods, but felt they had no option if they wanted to have access to goods others took for granted. Unfortunately, these items are impacting negatively on their ability to meet other even more essential expenses such as food, shelter and energy.

Case study

An Aboriginal woman contacted the Credit and Debt Hotline at Financial Rights Legal Centre. She rang about her electricity bill but in conversation with the financial counsellor it became apparent that one of the many things she was committed to paying was a lease on a washing machine. The caller was very upset to find out that contrary to her understanding she had no right to own the washing machine under the contract (which she sent to us for review) and the total cost of the lease was about $2,000 for a $400 washing machine.

Appendix 1, Case Study 26

– *the effect of introducing new regulatory requirements on the viability of the consumer leasing market and the availability of consumer leases; and*

We have no comment on the viability of the consumer leasing market, and we believe there are much better alternatives for consumers than a consumer lease in nearly every scenario (lay-by agreements, pay by installments, no interest loan schemes, etc.). The vast variability in the price charged by some providers is also evidence that the price is being set by what the provider considers it can get away with charging than by reference to underlying costs and risks.

[81] ASIC Report, Cost of consumer leases (September 2015).

– *the impact of the distinction based on whether or not the consumer has a right or obligation to purchase the leased goods.*

Financial Rights strongly believes that this distinction is flawed, open for manipulation and regulatory avoidance, and misleading for consumers. The distinction should be abolished under the law and instead replaced by a much simpler distinction. In a recent law review article Paul Ali, et al argued that:

> "the Code should abandon the "right or obligation to purchase' distinction and instead distinguish between 'true leases' and 'finance leases':
>
> In a '**true lease**', the business providing the lease retains title to the goods as well as most risks and benefits incidental to ownership. True leases are of a short term compared to the useful life of goods, as they are intended to be returned and leased out again to other consumers. Typically the amount paid for lease will be less than value of product.
>
> In a '**finance lease**', the lease provider retains title to the goods, but the lessee shoulders the risk, including depreciation. Finance leases usually last for the whole or a major part of the useful life of the goods, and the consumer pays an amount in excess of the value of the goods. This being so, the consumer is in substantially the same position as a person buying the goods on credit except that they do not obtain title.

The authors propose that finance leases should be regulated in the same way as credit contracts, and true leases should not be regulated by the Code at all. This would ensure regulation focuses on the substance of the transaction rather than its form, and avoids having parallel regulation for different finance leases depending on the arbitrary distinction of whether or not they provide a right or obligation to purchase. The exemption of 'true' leases from regulation under the credit code is effectively already in place, because the Code doesn't regulate leases where amount paid by the consumer is less than value of goods.[82]

RECOMMENDATIONThe distinction between types of finance lease should be abandoned with all but true leases being treated like credit contracts.

Care should be taken in recommending changes to the treatment of leases which are comparable to SACCS not to create a new problem in relation to leases which do not meet this definition.

[82] Paul Ali, Cosima McRae, Ian Ramsay and Tiong Tjin Saw (2013) Volume 41, Australian Business Law Review, page 243-26; Summary included here is from the Consumer Action Law Centre, available at: http://consumeraction.org.au/summary-of-consumer-leases-and-consumer-protection-regulatory-arbitrage-and-consumer-harm/

Question 15: Applying SACC provisions to comparable consumer leases (TOR 3)

- *As SACC and comparable consumer lease providers market to a similar consumer base, should the same provisions apply?*

Similar protections should apply to SACCs and comparable leases for the reasons outlined above but most of the following protections should apply to all leases.

Should there be additional disclosure requirements for comparable consumer leases, such as a requirement to disclose:

– *the purchase or cash price of the leased good;*

Yes, absolutely. Currently consumer lease providers have to disclose the total cost of the lease payments, but not the retail value of the goods. A requirement to disclose the 'purchase or cash price' of the leased good would provide a very valuable comparison for consumers who may not have any idea what a certain item normally sells for. Agreeing on the criteria for disclosing a cash price is also the first step in prescribing the disclosure of a comparative interest rate. This should be applicable to all leases, not just SACCs.

– *the amount the consumer will pay in excess of the purchase or cash price;*

Yes, this requirements would also be very useful for consumers.

– *the cost of credit in dollar terms;*

Yes. The way the information needs to be presented should also be consumer tested. The way it is disclosed is as important as the disclosure itself.

– *the cost of credit as an interest rate; and*

Yes, since consumer leases are substantively the same as credit, lease providers should be required to provide a comparable interest rate (like a APR) so that consumers can compare lease options to other credit options. Again this should apply to all leases.

– *the cost of other services financed through the rental payments (apart from the cost of hiring the goods, such as a warranty or delivery)?*

Yes, absolutely. Not providing this information is misleading for consumers. Consumer lease contracts often differ significantly from their advertisements and consumers do not understand the true cost of the contract until it is too late.

Case study

Ms X obtained a consumer lease for a laptop from Rental Corp. while she was unemployed.

After 18 months, Ms X was suffering financial hardship (her lease account was in arrears) and she tried to return the laptop. Ms X was informed by an employee or Rental Corp. that if she cancelled the lease then she would have to pay a termination fee but if she continued to rent the item for three more months there would no more fees.

A month later an employee of Rental Corp. arrived at Ms X's home and repossessed the laptop. No notice was sent to Ms X prior to the employee arriving at her house. Six months later Ms X received demand of payment for her arrears plus a termination fee of $986.66. The termination fee is equal to about 12 months worth of rental.

By this stage the Ms X had paid rental payments on the item equal to about three times the market value of the laptop.

Appendix 1, Case study 23

Please consider the cost of complying with any such additional disclosure requirements against the benefit of providing additional information to consumers.

We have no comment on the cost of complying with additional disclosure requirements, although we emphasise that the current regime is causing consumers significant harm, and consumer detriment of not adequately reforming these products would outweigh most increases to compliance costs. It is also detracting from a level playing field with lease providers competing with other finance options without having to disclose the true cost of their product in comparable terms.

- *If greater consistency between SACCs and comparable consumer leases is considered warranted, which SACC provisions should be extended to those leases?*
  - *Would the SACC provision need to be modified when applied to comparable consumer leases?*

The answer to this question depends largely on what the regulatory regime for SACCs ultimately looks like after the government responds to this review. Subject to our comments under the cost caps section below, we envisage similar limits rules in relation to benchmarks, multiple leases, and lending to people in default should apply, in addition to a costs cap and a limit on the total amount that can be recovered in the event of a default.

Leases where the cash price of the goods is less than $2,000 would be a good starting point, provided all leases outside this range were subject to the 48% cap applicable to other loans (see below). If not, then the limits might have to be different for cars compared to other goods to capture equivalent contracts for a similar customer base (and there would be a high risk of further avoidance behaviour). Modelling and analysis would need to be done in any case to determine the implications of different lease terms on total price, balancing the need to keep payments affordable while lowering the overall cost of finance.

RECOMMENDATION

There should be additional disclosure requirements for all consumer leases including the purchase price of the leased good, the amount the consumer will pay in excess of the purchase price, the APR, and the cost of other services financed through the rental payments.

Additional protections should apply for those leases which are comparable with SACCs unless lending in this segment is limited by a 48% cap on the cost of credit. Those protections should be essentially the same as for SACCs, although a higher effective amount borrowed may be required to capture car leases.

Question 16: Cap on costs for consumer leases (TOR 3)

- *If a cap on consumer leases that are comparable to SACCs was introduced, how should the cap apply?*

In our experience consumers are entering consumer leases which cost up to multiples of the cost of a SACC, resulting in extensive detriment to the consumers themselves, and other creditors who go unpaid as a combined result of irresponsible lending and price gouging.

ASIC found that Centrelink recipients were consistently charged more for consumer leases than the advertised costs, and they were regularly charged more than non-Centrelink customers for the exact same goods.[83] In its report ASIC compares the findings in its report on consumer leases to its previous experience dealing with SACCs. ASIC recommends that "reforms could be considered to address conduct by lessors in charging unreasonably high costs to financially vulnerable consumers."[84]

However, it needs to be taken into consideration that in the loan market, the SACCs cap was only possibly because there is a 48% cap on all other loans. Making changes to part of the lease market without addressed the remainder will leave a new opportunity contracts to be structured to avoid the operation of the cap.

We recommend that all consumer leases where consumers pays more for the goods than the retail value should be treated as credit contracts, and be subject to a 48% interest cap. This would be the least complicated and most effective way to address the problems in the market.

Alternatively, all comparable leases should be brought into the SACC regime and treated with the same cost caps, responsible lending requirements and suitability assessments as payday loans, including the limit on the overall amount that can be recovered under the contract. All other leases should be subject to a 48% cap.

We note that a higher amount borrowed (or cash price) limit would only be required for motor vehicles if there is no cap on the leases above the SACC threshold. In the case of there being no

[83] ASIC Report, Cost of consumer leases (September 2015)., paragraphs 12-13.
[84] Ibid, paragraph 15.

cap on other leases, the limit would have to be at least $5000 for the car market. We strongly recommend against this course of action

- *The cash price of the good is used as the basis for applying the cap on costs. Should the approach for sales by instalment also be used as a basis for applying the cap to leases that are comparable to SACCs? If so, how should the cash price of the good be defined?*

It is noted that Treasury conducted significant and extensive work on calculating the cash price of leased goods. It is our understanding from attending those Treasury meetings on the issue of consumer leases that it is indeed possible and achievable to calculate the cash price for goods.

We note the following:

- The vast majority of goods leased have a clear recommended retail price and it is usually a straightforward process to work out the price of the good as it is often on display in other shops. It is noted, for example, that a major leased goods company, Flexirent, operates in a number of chain department stores (for example Harvey Norman) and the price of the goods is clearly on display. There is no issue in calculating the cash price for these goods.

- The main area of contention seems to arise from lease companies that use their own “home brand” and factor in other services into the price of the goods. Our response is that this problem can still be resolved. The cash price of the goods can still be ascertained even on “home brand” products using the same process as used for pricing any product with a RRP. For the sake of transparency other services should not be included in the cash price.

We believe that the cash price of goods issue could easily be resolved by consultation with industry by ASIC and regulatory guidance.

We believe that there are considerable benefits for consumers in ascertaining the cash price of the goods that are being leased. The benefits include:

- The ability to prepare cash price to the lease costs. This could lead to better decision making on whether a loan or lease suits their needs better.

- Be able to see the cash price and compare it to other similar product cash prices. If the cash price seemed unreasonably high the consumer would be able to question this and it may lead to shopping around

- The cash price can be used to calculate an effective interest rate.

If not, what alternative approach could be used to determine a cap on costs for leases?

We are not aware of any alternative that would not require an estimate of the cash price as a starting point for limiting the costs of a lease. Protections would need to be in place to ensure the case price is not overestimated to artificially reduce the ostensible cost of credit.

RECOMMENDATION

All consumer leases the meet the definition of 'finance lease' should be considered comparable with credit contracts and there should be greater consistency in the regulatory requirements. All finance leases and be subject to a 48% interest cap. Otherwise, as a second best option, a specific SACC regime for comparable leases should be enacted with effectively similar protections, with the 48% cap applying to all other contracts, similar to the credit regime.

Attached Appendices:

- **Appendix 1:** Case studies
- **Appendix 2:** *The Stressed Finance Landscape Data Analysis* : A report by Digital Finance Analytics and Monash University Centre for Commercial Law and Regulatory Studies (CLARS) OCTOBER 2015
- **Appendix 3:** Redacted Contracts
- **Appendix 4:** Capacity to pay assessments listing loan proceeds as income

Concluding Remarks

Thank you again for the opportunity to comment on the review of the small amount credit contract laws. 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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Appendix 1
Case Studies

These are all case studies drawn from our client work at the Financial Rights Legal Centre, with the exception of Case Study 15

SACC Cases

Case Study 1

Our client is a 46 year old male who has been on Centrelink payments for the past seven years – either Newstart or the Disability Support Pension. He currently does a small amount of part-time work with through a disability service, but receives most of his income from Centrelink. He has a history of schizophrenia, depression and anxiety.

When he presented on the Financial Rights Credit and Debt Hotline he owed money to three different SACC providers (details below). He had used the money for living expenses – including cigarettes and alcohol. He began to drink more heavily in late 2014 after moving to NSW from interstate, struggling to find any work and having problems with his psychologist.

When seeking help he reported that he could no longer keep up with all the payments. He would pay off the money he owed and then get further offers of credit, which he found impossible to resist. One SACC provider gave the client a form to sign so that he would not receive any further credit or marketing, but the form also excluded any liability on the SACC provider's part if he did get a loan from them.

On one occasion he pawned an item to borrow $100 with a related entity to the SACCs provider on the same day he obtained a pay day loan. This pawn had cost him $345 by the time he presented for assistance. He wished he had never found out about pay day lenders.

At the time of seeking assistance he was about to enter a Part IX Debt Agreement under the Bankruptcy Act to deal with the pay day loans when Financial Rights intervened.

SACC Provider 1		SACC Provider 2		SACC Provider 3	
04/2/2014	$100	16/08/2013	$300	17/11/2014	$600
18/2/2014	$500	06/02/2014	$350	05/02/2015	$400
17/08/2014	$130	14/02/2014	$300		
18/11/2014	$500	17/06/2014	$350		
08/2/2015	$500	19/09/2014	$500		
19/2/15	$51	14/11/2014	$600		
Total amount borrowed	$1881		$2400		$1000

	Jul-Sep 2013	Oct-Dec 2013	Jan –Mar 2014	Apr-Jun 2014	Jul-Sep 2014	Oct-Dec 2014	Jan-Mar 2015
No. of SACCs per Qtr.	1	0	4 (all in Feb)	1	2	3 (all in Nov)	3 (all in Feb)

Case Study 2

Our client suffered financial difficulty after suffering an injury. She could not work in her usual occupation of aged care for a period, and then when she returned to work, she experienced problems getting rostered on for sufficient hours to cover her expenses. She obtained a series of 18 loans from the same SACCs provider over an 18 month period. The recorded purpose for the latest loan was temporary cash shortfall. The client says she is not good with money generally and she kept going back to the SACC provider to pay living expenses or earlier loans, often in the hope that her hours would increase before the next loan fell due. She obtained a loan from a different SACC provider once in the same period.

On four occasions she was given a loan while she still had another loan outstanding with the same provider. On several other occasions she obtained a new loan within less than a week of paying out the previous one. She was consistently provided loans when she had already had two other SACCs in the previous ninety days. She also had 2 other SACCs in the same period which are noted on the lender's documentation as having been identified in her bank statements.

The only application form we saw before the matter settled did not ask about dependents, although our client had a teenage daughter. They accepted a nominated amount of $200/mth for everyday living expenses. The SACC provider calculated her actual income and expenses from her bank account statements to verify these figures, revealing an average net income as $4056.37 per month and average expenses as $4,530.23. They then approved a loan with $744 per fortnight repayments, despite her already being in deficit by almost $500 per month based on her account statements. The form itself noted an 89% discrepancy between the client's nominated expenses and the expenses as revealed by the bank statement, but the loan was still approved. The SACC provider indicated when challenged on this issue that they had *not actually used the assessment provided to us as part of the approval process*, but had completed it afterwards.

Main SACC Provider

Loan	Date	Amount Borrowed	Amount Paid
1	27/07/2013	500	620
2	27/08/2013	800	992
3	26/09/2013	1000	1240
4	25/10/2013	1200	1725
5	17/12/2013	1000	1705
6	1/03/2014	200	248
7	11/03/2014	500	620

8	9/04/2014	800	992
9	6/05/2014	1200	1488
10	20/05/2014	500	620
11	14/06/2014	200	248
12	12/07/2014	100	124
13	6/08/2014	400	496
14	2/09/2014	300	372
15	29/09/2014	1200	1536
16	4/11/2014	500	704
17	8/12/2014	500	620
18	31/12/2014	1200	0
Total		12,100	14,350*

This is the amount the client had paid upon seeking assistance – the matter has since been settled on the basis with the client being refunded some of this amount. This includes the 2 other SACCs obtained elsewhere.[1]

	Jul-Sep 2013	Oct-Dec 2013	Jan –Mar 2014	Apr-Jun 2014	Jul-Sep 2014	Oct-Dec 2014
No. of SACCs per Qtr.	3	5	2	4	4	3

Case Study 3

Our client was employed and earns approximately $1600 per fortnight. He had a gambling problem, for which he has recently sought assistance. To maintain his addiction he borrowed from five SACC providers in the past 2 years. He has defaulted on his repayments many times and has money outstanding to most providers.

[1] As we have no documents for these we have estimated their dates based on the timing of the repayments noted in the other SACC provider's paperwork.

In one instance one of the lenders appears to have turned its mind to the presumption of unsuitability in relation to having already had two SACCs in the previous 90 days, but concluded that they had sufficient information to rebut the presumption:

> "We established he did have two other short term loans, but because he has no listed defaults [on credit report] and confirmed that he did not have any overdue loans we established he was up to date with these loans".

It would appear that not only had he had other SACCs loans in the previous 90 days, but they were still two outstanding at the time of this particular loan.

We have details from of the loans provided by three SACCs providers only covering a period of 10 months to May 2015.

SACC Provider 1		SACC Provider 2		SACC Provider 3	
16/07/2014	$600	31/12/2014	$300	17/02/2014	$1090
08/08/2014	$800	22/01/2015	$1300		
17/09/2014	$600	15/5/2015	$875		
20/10/2014	$800				
15/12/2014	$1000				
25/02/2015	$800				
31/03/2015	$845				
Total amount borrowed	$5,445		$2,475		$1090

	Jul-Sep 2014	Oct-Dec 2014	Jan-Mar 2015	Apr-Jun 2015
No. of SACCs per Qtr.	3	3	4	1

Case Study 4

Our client is 80 years old, entirely dependent on Centrelink and a tenant of the Department of Housing. He has been a habitual user of pay day loans for 10 years, predominantly for car repairs, but also for food and bills at times. In January 2015, with two other pay day loans already outstanding, he obtained a third loan to pay his car registration.

Despite relatively low repayments over a twelve month period, this loan was the straw that broke the camel's back and he could not afford the repayments.

Our solicitor had to ask the SACCs provider three times in writing before they would act on a withdrawal of his direct debit authority. In the meantime, another 6 attempts were made to take payment from his account which had insufficient funds, resulting in $30 in bank dishonor fees.

He has no complaints with his other SACCs provider that he has used almost exclusively in the past and is keen to ensure he can go back to them if he needs to.

Case Study 5

Our 67 year old client has Parkinson's disease, Diabetes Type II (on insulin), short term memory problems and other physical issues. She lives in Government Housing. She has a disability and needs assistance to go anywhere. Her financial counsellor advises that she sometimes does not buy medicine in order to pay loans and bills.

In the period from October 2013 to April 2015 she has had 5 SACCs. In one case she says she only wanted $700 or $800 and was pressured to take $1,000.

In the case of 3 loans it is apparent that the SACC provider has applied a rule of thumb of estimating fortnightly expenses at 15% of income, grossly short of actual cost for most low income earners. See Extract below.

It is also apparent from the extract that she has at the time of the loan below one SACC that has just finished a couple of weeks previously (City Finance)[2], and two other concurrent SACCs (cash Converters and Loan by Phone). She also has a consumer lease and is repaying a lump sum to Centrelink.

[2] There are possibly two of these but it is unclear.

SMALL AMOUNT CREDIT CONTRACT APPLICATION
INCOME AND EXPENDITURE STATEMENT

MONTHLY INCOME — **A**

CENTRELINK	$1,855.97
EMPLOYMENT	$0.00
TOTAL MONTHLY INCOME	**$1,855.97**

MONTHLY EXPENSES — **B**

Share of RENT	$451.45	Rent Share
Share of LIVING EXPENSES	$278.38	Default 15% of income per 'A' above
Other SACC LOAN REPAYMENTS	$84.21	
OTHER recurring Creditor payments	$517.27	
TOTAL MONTHLY EXPENSES	**$1,331.31**	

A minus **B** = **$524.66** FREE + UNCOMMITTED INCOME

NOTES (eg - where repayments on another small amount loan have been finalized even though they show up on last 90-days bank statements or explaining the share of accomodation expenses)

SACC's	Description	Repayments	Frequency	Start Date	End Date
Cash Converters Personal Finance (Post 1st March)	Bills	$38.76	Fortnightly	12/12/2014	08/06/2015
City Finance		$56.00	Fortnightly	03/03/2014	03/12/2014

Creditors	Description	Repayments	Frequency	Start Date	End Date
Centrelink	Lump Sum Repay	$93.10	Fortnightly	13/08/2014	18/02/2015
Other	City Finance	$56.00	Fortnightly	13/08/2014	09/12/2014
Other	Loans By Phone $1000	$80.00	Fortnightly	20/09/2014	20/04/2015
Centrelink	Rental for fridge/freezer	$65.00	Fortnightly	01/01/2014	30/06/2015

Applicant's Initials [redacted]

Prepared on information provided by me:

Name: [redacted]

Signature:

Date: 22/12/2014

One of the loans for $400 was structured for the payments to reduce after six months from $38.76 to $12.92. The client says she did not request this and she did not anticipate any particular change in her financial circumstances or ability to pay. It would appear the most likely motivation for the change was to extent the loan for the full 12 months and charge the maximum available monthly fee (which is payable on the full amount borrowed for the term of the loan regardless of the amount repaid in the interim) – see Appendix 3.

In the same period the client had two leases over 36 months, one costing $65 per fortnight and the other $25. The cash price of the first leased item was $639 and the second $459; the total amount payable under the leases in each case was $3,120 and $1,950 respectively, amounting to interest rates of roughly 242% and 108%.

Case Study 6

Client has been in receipt of the Disability Support Pension since January 2013. This is her sole income. She was granted a total of 12 loans from the same SACC provider between 20 June 2013 and 18 August 2014. The amounts borrowed varied from $110 to $600. Our client was

21 years old at the time she took out the first loan. She has a child but does not have full time care of her child and she has been diagnosed with Borderline Personality Disorder.

Between June 2013 and August 2014, our client also obtained a personal loan through her bank, a loan from another pay day lender as well as several advances on her Centrelink Income. She had authorised direct debit facilities to allow for repayments to be made from her bank account. There were times where her repayments were dishonoured as she did not have enough money in her bank account. These missed payments were rescheduled and was taken in another direct debit attempt. Despite having only had more than 2 SACCs in a 90 day period once, our client's bank statements show that the direct debits would frequently cause her account to be overdrawn leaving her with very little of her Centrelink income for everyday living expenses once it was deposited into her account. For example, with 3 direct debits from her account to pay 3 different loans (2 of which were pay day loans) her account went into $124.83 overdrawn. The next day when her Disability Support Pension of $314.90 was deposited into her account, she was only left with $190.07 to pay for living expenses for the next fortnight. This was a frequent occurrence which left her in a cycle of financial hardship resulting in further pay day loans.

We are currently in CIO alleging breaches of responsible lending by the SACC provider. All loans have been paid but we are seeking a refund of all fees and charges in excess of the principal amounts.

Loan	Date	Amount Borrowed
1	Jun 2013	$120
2	Aug 2013	$110
3	Sept 2013	$110
4	Oct 2013	$110
5	Dec 2013	$128
6	Dec 2013	$145
7	Jan 2014	$150
8	Feb 2014	$600
9	Apr 2014	$140
10	May 2014	$150
11	July 2014	$150
12	Aug 2014	$150
Total		$2063

	Apr-Jun 2013	Jul-Sep 2013	Nov-Dec 2013	Jan-Mar 2014	Apr-Jun 2014	Jul-Sep 2014
No. of SACCs per Qtr.	1	2	3	2	2	2

Case Study 7

Our client was granted 13 loans by the same SACC provider between 10 January 2014 and 3 January 2015. So far we have obtained from the SACC provider 13 loan contracts and 12 loan assessments and a summarised statement.

The assessment states the purpose of the loan was "temporary cash shortfall" and we note the recent decision in *ASIC v The Cash Store (in liquidation)* [2014] FCA 926 which found such a purpose was not sufficient in identifying the purpose of the loan when assessing suitability. We submit that having a "temporary cash shortfall" on 12 successive occasions in a year is indicative of a person in chronic financial difficulty and unable to afford the loans which were granted.

While our client had frequently had more than 2 SACCs in the previous 90 days the SACC provider did ostensibly address the presumption:

> "As two or more short term loans in the last 90 days have been identified, we applied reasonable additional checks to disprove a presumption that you could not pay without experiencing substantial hardship. You passed those additional checks, and we found that you were able to repay without experiencing substantial hardship." [extract from suitability assessment provided by SACC provider.]

No information is given as to what those "additional checks" entailed.

Loan	Date	Amount Borrowed
1	10/01/2014	$260
2	06/02/2014	$250
3	03/03/2014	$600
4	03/04/2013	$1200
5	01/05/2014	$250

6	27/05/2014	$490
7	21/06/2014	$400
8	26/07/2014	$200
9	23/08/2014	$250
10	19/09/2014	$340
11	15/10/2014	$500
12	12/11/2014	$1000
13	03/01/2015	$570
Total		$6,310

	Jan -Mar 2014	Apr-Jun 2014	Jul-Sep 2014	Oct –Dec 2014	Jan-Mar 2015
No. of SACCs per Qtr.	3	4	3	2	1

Case Study 8

Our client works in retail. She took a voluntary demotion when she found the stress of a management position too difficult to cope with and then found herself short of income. Her income was $517 per week, and her rent alone was $200 per week.

She began to use pay day loans because she was embarrassed to admit to her partner that she had lost income. Her use of pay day loans soon spiralled out of control, severely exacerbating her problems. She obtained loans when she was in default of other loans but did not admit to this when asked.

She began to default regularly and received mobile calls, e-mails and calls to work chasing money. Her boss took one of the latter calls to her great embarrassment. Eventually she sought the assistance of a financial counsellor.

The following analysis is based on her account statements for the 90 days leading up to a seventh loan granted on 29/05/2015 for $800. Some details are missing from our instructions to date but it is clear that there were five previous SACCs granted in the 90 days prior to the granting of the seventh loan and one more that was on foot when the 90 day period began, with repayments appearing in the statements.

	Loan granted	Borrowed (deposited into acct in 90 day	Payments in the 90 days
1	Granted pre Statement period	n/a	$65.61 (weekly)
2	20/04/2015	$1500	$97.91 (weekly) – replaces above amount loan 1 repaid.
3	24/04/15	$400	$166.99 (weekly)
4	Early May (or late April). Repayments began on 18/05/2015.	Unknown – repayments begin to come out but there is no corresponding deposit	$165.33 (weekly)
5	15/5/2015	$350	$145.66 (weekly) - Loan 3 repaid.
6	27/05/2015	$200	Unknown

The following extract from the bank account statements taken by the SACC provider clearly reveal that in one week in May 2015 the client has $429.47 in SACC repayments come out of her account, which with $250 towards rent and $56 dollar in groceries pushes her account into the red. Her next salary payment of $485.70 is instantly reduced to $320.85 as a result of the overdrawn account. Three days and two more loan repayments later she has $23 left in her account and is granted yet another SACC.

5/15/2015	**dp**	**DEPOSIT ONLINE xxx1126 TFR Westpac Cho**	**$20.00**	**$393.13**
5/15/2015	**lc,dp**	**DEPOSIT Sunshine Loan Ce xxx24-2**	**$350.00**	**$373.13**
5/15/2015	**dp**	**DEPOSIT ONLINE xxx2096 TFR Westpac Cho**	**$30.00**	**$23.13**
5/14/2015		DEBIT CARD PURCHASE COLES 4960 [redacted] AUS	($15.50)	($6.87)
5/14/2015		DEBIT CARD PURCHASE COLES 4960 [redacted] AUS	($14.00)	$8.63
5/13/2015		WITHDRAWAL BY EFTPOS xxx7220 COLES [redacted] NSW 12/05	($25.00)	$22.63
5/12/2015	ld	PAYMENT BY AUTHORITY TO SUNSHINE LOANS xxxxxxxx2914	($166.31)	$47.63
5/12/2015		PAYMENT BY AUTHORITY TO PAYGATE xxx4945/Aus Financ	($97.91)	$213.94
5/12/2015	ov	ACCOUNT OVERDRAWN FEE 11-MAY-2015	($9.00)	$311.85
5/12/2015	**py,dp**	**DEPOSIT-SALARY** [redacted]	**$485.70**	**$320.85**
5/11/2015	ld	PAYMENT BY AUTHORITY TO NIMBLE xxxxxxxx7459	($165.33)	($164.85)
5/7/2015		DEBIT CARD PURCHASE COLES 4960 [redacted] AUS	($56.00)	$0.48
5/7/2015		DEBIT CARD PURCHASE COLES 4960 [redacted] AUS	($4.00)	$56.48
5/5/2015	ld	PAYMENT BY AUTHORITY TO SUNSHINE LOANS xxxxxxxx8867	($166.33)	$60.48
5/5/2015		PAYMENT BY AUTHORITY TO PAYGATE xxx8505/Aus Financ	($97.91)	$226.81
5/5/2015		WITHDRAWAL MOBILE xxx9266 BPAY First [redacted]	($250.00)	$324.72
5/5/2015	**py,dp**	**DEPOSIT-SALARY** [redacted]	**$573.90**	**$574.72**

The following extract shows that another loan is granted less than 2 weeks later when a payment to an existing SACC has clearly been dishonoured and no make up payment is apparent, strongly suggesting the client is in default.

5/27/2015	**dp**	**DEPOSIT MoneyMe xx6802 MoneyMe xx6802**	**$200.00**	**$397.58**
5/26/2015		WITHDRAWAL BY EFTPOS xxx8431 COLES [redacted] NSW 26/05	($155.00)	$197.58
5/26/2015		PAYMENT BY AUTHORITY TO PAYGATE xxx8514/Aus Financ	($97.91)	$352.58
5/26/2015	ld	PAYMENT BY AUTHORITY TO SUNSHINE LOANS xxxxxxxx3246	($145.66)	$450.49
5/26/2015		DIRECT ENTRY DEBIT DISHONOURED FEE xxx5969	($9.00)	$596.15
5/26/2015	**py,dp**	**DEPOSIT-SALARY** [redacted]	**$533.90**	**$605.15**
5/26/2015	**dp**	**DIRECT DEBIT DISHONOURED xxx5969**	**$165.34**	**$71.25**
5/26/2015	**dp**	**DEPOSIT ONLINE xxx1440 TFR Westpac Cho**	**$130.00**	**($94.09)**
5/25/2015	ld	PAYMENT BY AUTHORITY TO NIMBLE xxxxxxxx8322	($165.34)	($224.09)
5/25/2015	ov	ACCOUNT OVERDRAWN FEE 22-MAY-2015	($9.00)	($58.75)

Case Study 9

Our client suffered from a traumatic brain injury as a result of a head injury. As a result she is cognitively impaired. Unfortunately, due to her vulnerability she became a victim of an on-line romance scam. She was unduly influenced by a man purporting to be a US Army Officer based in Nigeria to send him money which she believed would allow him to come to Australia to marry her. She relies on a Disability Support Pension.

She borrowed $450 from one SACC provider on 2 March 2015 and 10 days later borrowed $600 from another SACC provider on 12 March 2015. She sent the money to the overseas scammer. She didn't have any prior SACC that we are aware of. She defaulted on both loans, not having made any payments at all. On one of the loans her loan purpose as per their Assessment was "for my future wedding".

The assessment provided by the second SACC provider, in our view, does not establish that the loan was not unsuitable. Firstly, my client already had another SACC and was in default on that loan when she applied for the second loan. Accordingly, there is a presumption of unsuitability that she could not have afforded the loan without substantial hardship. Secondly, they did not take into account the other SACC loan repayments when calculating our client's monthly expenses and grossly underestimated her ongoing living expenses.

Case Study 10

Our client is an Aboriginal woman and a single mother of two dependent children (6 and 8 years old) whose sole source of income is Centrelink. She lives in rented accommodation in Western Sydney. A SACC provider gave her a series of five loans (at least two simultaneously) that left her and her children with insufficient money to live on. The following is an example of her outgoings at one point in the series clearly showing a number of other SACC and other commitments and insufficient funds on which to live:

Income per fortnight:	$1,285.48[3]
Expenses per month:	
Insurance	$ 45.26
(converted into fortnightly amount):	$ 20.88
Expenses per fortnight:	
Rent	$271.56
Cash Stop repayment 29/11/12	$ 89.75
Quickcash repayment 29/11/12	$130.00
ANZ direct debit	$239.11
Centrepay deduction 29/11/12	$ 25.00
Lump Sum Advance 29/11/12	$ 70.98
Centrepay deductions 22/11/12	$25.00
Lump sum advance 22/11/12	$38.50
Expenses per week:	
City Finance repayment 29/11/12:	$ 37.00[12]
(converted into fortnightly amount)	$ 74.00
LESS TOTAL FORTNIGHTLY EXPENSES:	$ 974.78
AMOUNT REMAINING AFTER EXPENSES	**$ 310.70**
Less fortnightly SACC Loan 1 repayment	$103.32
Less fortnightly SACC Loan 2 repayment	$ 60.13
FORTNIGHTLY AMOUNT LEFT TO LIVE ON:	**$147.25**

Case Study 11

This case occurred prior to the 2013 amendments. However we include it to demonstrate a point in relation to enforcement.

We were acting for a client with a mild intellectual disability. He had a history of multiple overlapping loans going back 5 years (pre SACC amendments). He had no documents and little recollection.

On his behalf in January 2013 we requested that the SACC provider provide documents, including statements and contracts. Despite extensive follow up from us to try to obtain the documents, as well as a complaint lodged in EDR, as at May 2013 we were yet to receive any documents in breach of ss36 and 185 of the National Credit Code (NCC) – which provides time limits. Instead the SACC provider continually required confirmation from us that we were seeking a hardship variation on behalf of the client.

[3] Centrelink Income Statement of Narelle Williams dated 29 November 2012
[12] Commonwealth Bank statement 29/11/2012-01/08/12

The documents were necessary to determine the client's position in respect of potential causes of action under the NCCP for breach of Responsible Lending and relevant information as to his loss and remedy.

In EDR the lender made a number of offers to resolve the client's complaint before the production of documents. The offers could not be reasonably considered in absence of any evidence about what had occurred. When documents were eventually produced some 6 months after requesting them, the documents revealed the client had over 18 loans over the period and had borrowed $18,899 and repaid $32,140.05.

Sections 36 and 185 of the NCC provide that such documents must be provided (at most) within 30 days. Breaches of these sections are offences of strict liability and attract a criminal penalty.

A dispute was raised with the regulator in April, with evidence of the failure to provide documents in the mandated time period. ASIC took steps to issue an infringement notice, however, declined to proceed when the client accepted an offered amount by the SACC provider to resolve the substantive dispute of responsible lending breaches. The dispute had at this stage been ongoing for 11 months. The settlement terms did not preclude our client from assisting the regulator in the infringement notice. Further, the failure to take action in relation to such offences completely undermines the effectiveness of the law in fulfilling its intention.

MACC case

Case Study 12

In August 2013, our client obtained a $2000 loan to be repaid over a period of 52x fortnights (2yrs) at $60.17 per fortnight yet our client defaulted after the first 3 payments. There were numerous direct debit dishonours as our client could not afford the repayment amounts. The total amount to be repaid was $3,128.05. By about July 2015 (almost 2 yrs later) our client had paid approximately $2635 but still owed another $1103.

On or about 15 May 2014 the same client entered into another loan contract with a different company giving security over his car for a loan of $1610 with establishment fee of $416 bringing the total amount to $2026 to be repaid over a period of 26x fortnights). Repayments were set at $98.38 per fortnight yet our client defaulted after the first 2 payments. After a further 2 direct debit dishonours he had his repayment amounts changed to $50 per fortnight and still owes $1682 after 17 months. At the time this loan was granted, our client was already making repayments on at least 2x SACCs through the same and a consumer lease through another company. He was also making repayments on the 1st MACC above.

Avoidance

Case Study 13

Cash AFX (ICM Group Finance Pty Ltd) – cash chequing

Our client is a disability support pensioner. He suffers from bi-polar disorder. His sole source of income is Centrelink. He was desperate to get a loan to get some goods out of the local pawn broker and he already had two SACCs.

He attended a loan provider (Cash AFX) and signed loan documents that purport that the loan attracts 0% interest and therefore was not a credit contract regulated by the NCCP under s6(1). It is ostensibly a loan for $540.97, has a loan establishment fee of $26.99, and requires fortnightly payments of $141.99 per fortnight, requiring Bob to pay back $567.96 over 4 fortnights. But our client does not get $540.97 in hand ($567.97 less the establishment fee); he only gets a cheque for $400. Immediately after he gets the cheque, he is signed up to a "Cheque Cashing Deed" whereby he has signed that he "attests that: I have not been required to use any other service as a condition of Cash-afx cashing this bill of exchange and that in my opinion the fee charged is reasonable for the convenience of the service". Our client is charged $140.97 for the cheque cashing, but this is apparently not interest.

For a loan of $400, our client is charged $167.96 including the establishment fee compared to $112 under the SACC regime. Cash AFX subsequently admitted in correspondence that the loan, which was entered into in July 2014 was in breach of regulation 50A which commenced on 13 June 2014.

Our client walked past Cash AFX in January 2015, and saw big sign on their front door advertising "$$$ GUARANTEED Lowest Interest Rates in Town For Loans & Payday advances $$$". The website states they continue pawn broking services. The entity known as ICM Group Finance and business name Cash AFX do not hold a credit license under the NCCP.

Case Study 14

Jane wanted a loan for $600 to pay a utility bill. The money was provided by way of a Cash Cheque which she cashed at the Bank of Qld. The money was purportedly received in exchange for goods being a washer and freezer sold by our client for $600. She then leased the goods back at a rate of $86.67 per fortnight. The total amount payable over a 12 fortnight period was to be $1040. In fact our client always owned the goods.

The lender had arranged for the payments to be made through Centrepay, the Centrelink statement that the payments listed as a Basic Household Goods deduction.

Under the SACC restrictions, a $600 loan over 12 fortnights (roughly 6 months) the total repaid would have been $864, being an establishment fee of $120 and six monthly fees of $24. Repayments would have been about $72 per fortnight. A review of the clients Centrelink statement showed was left with $40.23 after all the deductions.

ASIC took action in October 2014 against Cash Loan Money Centres and Sunshine Loans have agreed to stop offering 'leaseback' arrangements to consumers who want a payday loan.

Case Study 15

Australian Securities and Investments Commission v Fast Access Finance Pty Ltd [2015] FCA 1055

ASIC summarised the arrangement as follows:

Company A arranged for the prospective customer to sign a purported contract with it, pursuant to which the customer purportedly purchased a number of diamonds from the Company A for a fixed price of $250 per diamond (**Sale Agreement**);

The Sale Agreement included a term to the effect that the customer repay the amount of the total purported sale price of the diamonds by instalments to Company A;

concurrently with the signing of the Sale Agreement, Company A arranged for the customer to sign a second purported contract, with Company B, pursuant to which the customer purportedly sold the same number of diamonds it had purchased from the Company A, to Company B for a fixed price of $125 per diamond (**Purchase Agreement**);

The customer then received, by payment into a bank account nominated by the customer, money equivalent to the total sale price of the diamonds purportedly sold to Company B pursuant to the Purchase Agreement;

There were never any diamonds the subject of the Sale Agreement and the Purchase Agreement, but rather the Sale Agreement and the Purchase Agreement were mere pretences to obfuscate an underlying loan transaction, and of no effect respectively as sale and purchase contracts for diamonds.

Case Study 16

Our client was given 22 loans ranging from $100 to $250 in the period 27 September 2011 to 23 April 2014. Our client was on DSP at the time of all loans. I am instructed that my client used the money for general living expenses. Our client's Statement of Financial Position as at 2011 and 2014 show that his living expenses exceeded his monthly income at both points in time. Our client's financial position did not significantly change over the period in which these loans were granted. The only document relied on by the lender and its associate to verify our client's financial position was his Telstra telephone bill issue date 17 September 2011 which shows that he had an overdue bill of $48.95 to Telstra.

In total our client borrowed $3,820. His statements show that he met the repayments on these loans with great difficulty:

Loan	How payments were made
1	Paid on 31/10/11 by overdrawing account

2	Dishonoured payment on 28/11/14 Paid on 12/12/11 and 28/12/11 by overdrawing bank account
3	Dishonoured payment on18/1/12 and 6/2/12 Paid on 23/1/12 which left him only $30 in bank
4	Paid on 16/4/12 which left him only $27 in bank
5	Paid on 12/6/12 by overdrawing on bank account
6	Paid on 6/8/12 by overdrawing on bank account
7	Paid on 3/9/12, 17/9/12 and 1/10/12 by overdrawing on bank account
8	Paid on 15/10/12, 29/10/12 and 26/11/12 by overdrawing on bank account
9	Dishonoured payment on 17/12/12 Paid on 7/1/13, 21/1/13 and 4/2/13 by overdrawing bank account
10	Paid on 22/2/13, 8/3/13, 22/3/13 and 16/4/13 by overdrawing bank account
11	Paid on 29/4/13, 13/5/13, 27/5/13 and 10/6/13 by overdrawing bank account
12	Paid on 24/6/3, 8/7/13, 22/7/13 and 5/8/13 by overdrawing bank account
13	Paid on 19/8/13 and 2/9/13 by overdrawing bank account. Paid on 16/9/13 leaving only $12.39 in bank
14	Paid on 30/9/13, 14/10/13 and 28/10/13 by overdrawing bank account
15	Paid on 28/10/13, 11/11/13, 25/11/13 and 9/12/13 by overdrawing bank account
16	Paid on 29/11/13, 11/12/13, 23/12/13 and 6/1/14 by overdrawing bank account
17	Paid on 6/1/14 and 3/2/14 by overdrawing bank account
18	Paid on 3/2/14, 17/2/14 and 3/3/14 by overdrawing bank account

19	Paid on 17/2/14 by overdrawing bank account. Paid on 3/3/14 which left only $7 in bank account.
20	Paid on 17/3/14, 31/3/14 and 17/4/14 by overdrawing bank account
21	Paid on 31/3/14 and 17/4/14 by overdrawing bank account
22	Paid on 28/4/14 by overdrawing bank acct

This loan provider purports to avoid the operation of the Credit Act by involving two entities – one which advances the loan and the other which offers a "service" which enables you to get the money on the same day (otherwise you would get a cheque in the mail up to 10 days later). We succeeded in the Credit and Investments Ombudsman arguing that this arrangement was regulated under the Credit Act see CIO Determination dated 13/1/2014. Recently ASIC lost a case against these entities in the Federal Court *Australian Securities and Investments Commission v Teleloans Pty Ltd [2015] FCA 648*. However, regulation 50A of the Credit Regulations was enacted after the events disputed in the court case to deal with this particular method of avoidance. We also think we can distinguish our case from the Federal Court matter because the companies changed their contractual arrangements between our client's contracts and the structure considered by the Court.

Pawn Broking

Case Study 17

Our client has low income from part-time work as traffic controller. Her pay varies from week to week as she is a casual and the amount of work available varies. She has had 7 SACCs loans since the commencement of the Credit Act and 21 pawn broking contracts in 3.5 years.

Case Study 18

Mrs P's sole source of income was Centrelink benefits. She pawned some sentimental jewellery for a loan of $750. She was never able to save up the original amount plus the interest and fees to recover the jewellery, so she kept entering agreements with the pawnbroker to extend the redemption period as she was desperate not to lose the jewellery as it had enormous sentimental meaning. Over those three and half years, Mrs P had paid $7,800 in interest and fees to the pawnbroker. Mrs P approached us as she was unable to afford to pay any further interest and the pawnbroker was threatening to sell her jewellery.

Case Study 19

Mr H's sole source of income was Centrelink benefits. Mr H could not afford food and other necessities and was behind in rent on his Department of Housing accommodation, but was ineligible for a Centrelink advance. In desperation, Mr H contacted a pawnbroker seeking a loan of $500. The pawnbroker offered a $500 loan initially by phone, but when Mr H arrived at the business premises, the pawnbroker reduced that offer to $300. The pawnbroker did not make any enquiries about Mr H's financial position or his ability to repay the pledge. After a 15 minute discussion, Mr H was put into a pawnbroking contract for $300 which was secured by his car, valued at approximately $3000.

The contract imposed an interest rate of 83% per month, which was not disclosed on the pledge in breach of the disclosure requirements. The contract also imposed a 83% selling fee, and a REVS check fee of $60 (which is normally free). The pawnbroker also inserted into the contract, in the miniscule print, a provision stating 'I do not want to be notified of any surplus' from the sale of the car.

Consumer Leases

Car leases

Case Study 20

Our clients had entered into a consumer lease for a 2002 model Subaru Outback. Both clients identify as Aboriginal. One was on her "P's" when the car was purchased, and the other did not have a license. They have 4 children, and are entirely reliant on Centrelink. One client also suffers from anxiety and other mental health conditions. Redbook estimated the value of the car as $5,000. The lease was for 5 years, and totalled, $29,480. They would not own the car at the expiry of the term, but could extend the lease for 10 years for $10. After 12 months in the contract, the car suffered mechanical problems. The car was off the road for some weeks, and repaired under warranty but continued to have issues and they made the decision to stop making the payments.

Initially they wanted to keep the car, but on discovering the true cost and that car was a 2002 model (not a 2010 model as they had believed) they no longer wanted the car. The car was surrendered and a termination fee of 12 weeks rental ($1320) was charged. The effective interest rate on the contract was about 86% per annum.

Case Study 21

Client had gone to a car yard in April 2014 and signed up for a 5 year car lease agreement worth $31,460. She thought she would own the car out right at the end (the market value of car today is around $5,200). Client is a single parent with 2 children whose sole income is from Centrelink. Client could not afford repayments of $240 per f/n, pretty much from the beginning of the contract.

Goods Leases

Case Study 22

Mr C was employed as a cleaner, had health issues and likely suffered from an intellectual disability.

Mr C was heavily reliant on payday loans. Rental Corp. was aware of Mr C's reliance on short term lending as it requested a copy of his credit report before renting the goods to him. Rental Corp. gave Mr C a rental contract for 3 year period for laptop computer and a television. Mr C got 7 more payday loans after signing up with Rental Corp.

Mr C paid $7362 over three years, but didn't quite make it to the end of his rental period because he did not have enough money to pay any more. He returned the goods a few months short of the three year period. Had he made it to the end of the contract, contract says he could have bought similar goods for $1 each, but since he returned the goods early he was not able to keep anything, and still owed $409 to Rental Corp.

Even though Financial Rights began to represent Mr C in order to help him get a refund of some of his payments (minus the benefit of the use of the goods) Rental Corp. sold the debt to a debt collector who were threatening Mr C with legal proceedings if he didn't pay the $409 in seven days.

Case Study 23

Ms X obtained a consumer lease for a laptop from Rental Corp. while she was unemployed.

After 18 months, Ms X was suffering financial hardship (her lease account was in arrears) and she tried to return the laptop. Ms X was informed by an employee or Rental Corp. that if she cancelled the lease then she would have to pay a termination fee but if she continued to rent the item for three more months there would no more fees.

A month later an employee of Rental Corp. arrived at Ms X's home and repossessed the laptop. No notice was sent to Ms X prior to the employee arriving at her house. Six months later Ms X received demand of payment for her arrears plus a termination fee of $986.66. The termination fee is equal to about 12 months worth of rental.

By this stage the Ms X had paid rental payments on the item equal to about three times the market value of the laptop.

Case Study 24

Financial Rights represented several Aboriginal clients that were on Centrelink. These clients took out multiple leases over time from Rental Corp. for a computer, laptop, mattress, washing machine, fridge and an automatic transmission for a vehicle. All of these leases were arguably unsuitable under existing responsible lending legislation. Rental Corp. had NO clear process for verifying the clients' income or expenses, and the lease repayments took clients under the

Henderson Poverty Index in most cases. The clients wanted to own the goods and were never told anything to the contrary even though the contract said otherwise. Rental Corp. has advertisement on its website that it rewards loyal customers with the ability to 'gift' the items leased to a person they nominate, but the clients had no knowledge of this ad or of the process.

Case Study 25

Mr G is an Aboriginal client. He entered a consumer lease with Rental Corp. for a 2GB tablet, a PS3 game console and games. All of these items were worth a total of $1,000 but Mr G paid $3,900 over 18 months. Mr G was on a DSP but his income was erroneously listed in the responsible lending assessment as $1,000 per week. Mr G's payments increased from $54 to $100 at one stage without his permission but dropped again when this was raised by with Rental Corp. by a financial counsellor. Mr G's contract has a tick-a-box section for responsible lending purposes (e.g. do you earn $ 200-399 $ 400-600 etc.), and there is a similar section for his expenses. Both of these sections arguably do not comply with the responsible lending laws. Mr G's agreement also has contradictory terms. The first page of the contract has a tick box for rent-to-own with a $1 fee to buy at the end of the agreement (which appears to make it a sale by instalments under the National Credit Code) but this is contradicted by the other terms and conditions, making the contract misleading and hard to combat by consumer advocates trying to assist Mr G.

Case Study 26

An Aboriginal woman contacted the Credit and Debt Hotline at Financial Rights Legal Centre. She rang about her electricity bill but in conversation with the financial counsellor it became apparent that one of the many things she was committed to paying was a lease on a washing machine. The caller was very upset to find out that contrary to her understanding she had no right to own the washing machine under the contract (which she sent to us for review) and the total cost of the lease was about $2,000 for a $400 washing machine.

Case Study 27

Ms A is a single aboriginal mother with eight children all living with her in department housing. She grew up in a rural aboriginal environment, and until now has never lived in an urban area. She has very low financial literacy and receives Centrelink payments as her sole source of income.

Ms A agreed to rent household goods from a man in a local rental company and she told Financial Rights that "everyone in the aboriginal community was using him." She ended up renting nearly every item in her house from him. He told her that she could only pay for her rentals through Centrepay, and he would arrange for all of the payments himself on the phone after Ms A put the call through to Centrepay. Ms A said she felt like she had no control over the payments, and that the salesman controlled all of the transactions.

Ms A believed that she was renting to own the items in her house as she had been directed by the rental company to go to a particular furniture shop and to choose all her goods. Mrs A had multiple contracts with the same rental company. After the time she believed a contract had finished she was then advised by the rental company that NO it was a rental contract but if she wanted to purchase the goods she would need to come into the store and pay $100 cash per contract after each contract had expired. If she stopped any Centrepay deductions then they would come and take the goods.

Client never had the $100 cash so she continued with the Centrepay deductions indefinitely to keep all her goods (most of which had depreciated to be of very little value). Almost all of Ms A's Centrelink benefits were going through Centrepay, and she was left with almost no money each fortnight to pay for food, electricity, clothing, etc., She had incurred rent arrears and eviction hearing was pending and she was being assisted by local charities.

Appendix 2

THE STRESSED FINANCE LANDSCAPE DATA ANALYSIS

OCTOBER 2015

A report by Digital Finance Analytics and Monash University Centre for Commercial Law and Regulatory Studies (CLARS)

This research was commissioned by Consumer Action Law Centre, Good Shepherd Microfinance, and Financial Rights Legal Centre.

Research was conducted by Digital Finance Analytics and the Centre for Commercial Law and Regulatory Studies at Monash University, using their proprietary tools and methods.

1.1 About Digital Finance Analytics and CLARS

Digital Finance Analytics (DFA) is a boutique research, analysis and consulting firm that provides custom research and advice to Australian and international clients.

DFA maintains industry models, authors various industry reports and collaborates on mortgage, SME and housing sector publications. It combines primary consumer research, industry modelling, economic analysis and segmentation analytics to offer insight into the dynamics of the mortgage, lending, savings, payments and superannuation sectors. Its research focuses in particular on changing channel preferences and how products, services and customer experience should be tailored to this new environment. DFA is able to pinpoint opportunities created by changing customer needs in the evolving market using experience derived from more than 25 years of analysis.

The DFA Household survey is an omnibus survey that interfaces with more than 26,000 Australian households each year. We look specifically at the financial profile of these households. The data included in this report was drawn from the survey results between March 2005 and 20 July 2015. DFA has been supplying insight and analysis to the finance industry in Australia for more than 20 years.

Gill North heads the finance, investment and taxation group within the Centre for Commercial Law & Regulatory Studies (CLARS) at Monash University. CLARS brings together a multidisciplinary approach to address and identify key issues in commercial law and regulatory practice.

Note we have not offered interpretations of the data, but merely present the facts from objective analysis.

1.2 This Report

This report was commissioned jointly by the Consumer Action Law Centre, Good Shepherd Microfinance, and Financial Rights Legal Centre.

Digital Finance Analytics (**DFA**) completed the analysis drawing insights from the DFA household survey. Associate Professor Gill North, Law Facility, University of Monash added content and insight.

We review detailed data from the 2005, 2010 and 2015 surveys as a means to dissect and analyse the longitudinal trends. The data results are averaged across Australia to provide a comprehensive national picture. We segment Australian households in order to provide layered evidence on the financial behaviour of Australians, with a particular focus on the role and impact of payday lending.

In order to rigorously generalise our findings through the surveys, the survey is undertaken across postcodes on a statistical distribution basis which matches the Australian Bureau of Statistics (ABS) census. We then scale up the survey results, at a post code level to the total number of households per postcode. Each post code is handled separately to give statistically accurate results. Note that because of low population some regionals post codes have very low representation, and we call these out in the surveys. The overall correlation between the survey and the total is better than +/- 1.5%. We tune the survey each year to ensure it tracks the census and ABS datasets. The data is statistically robust (and with a 26,000 base sample which equates to 0.3% of households each year we have an excellent foundation). The confidence level within the methodology is 95% (representing a significance level of 0.05).

Initially, we define and identify the segment of households who are financially stressed among the 26,000 surveys collected. We then identify a subset of this group which we define as financially distressed. From Section 3 onwards, we have deducted the numbers of financially distressed from the total number of stressed households in the analysis to ensure there is no double counting. In the survey, all payday borrowers were either financially stressed or distressed. However, the existence of a payday loan was not *per se* an indicator of financial stress. The factors for determining whether households are stressed or distressed, and the size of each group, are set out in Section 2. We examine the underlying drivers of household financial stress and distress, and the impact of payday lending. We highlight the changing nature of the payday lending industry over the last decade and the current trends. We note the increasing importance of web based services to the industry's continued growth.

For 2015 payday lending has been defined as loans of $2,000 or less for terms between 16 days and 12 months, in accordance with the *National Consumer Credit Protection Act 2009* definition of a small amount credit contract. For earlier years we have used a variety of indicators to approximate the equivalent market sector. Essentially for the 2005 data, the industry had not defined payday loans as a separate category, so in our analysis we removed other types of borrowing (e.g. mortgages, credit cards, personal loans) and by a process of elimination identified payday-type loans. In 2010, and 2015 snapshots, payday loans were separately identified.

1.3 Survey Methodology

The DFA omnibus survey comprises more than 30 discrete questions, constructed in a series of data branches. Data is recorded direct to a Structured Query Language (**SQL**) database. Here are some examples. The full survey is proprietary. We illustrate the approach from two of the 30 potential questions.

The first area relates to basic demography. A sample of the survey questions is set out below:

1. "Thinking about your household, tell us:

- *I. How old are you?*
- *II. What type of household are you? (prompt: sole, single parent, married, divorced, family, other)*
- *III. What is the occupation of the primary household member? (prompt: if multiple members, prompt for other occupations)*
- *IV. What type of employment do you have? (prompt: full-time, part-time, part-time multiple, casual, unemployed, in education, career break, full-time career, other)*
- *V. What is you level of employment? (prompt: executive, manager, team leader, worker, self-employed other)"*

The second area relates to financial footprint. A sample of the survey questions is set out below:

2. "Thinking about your financial status, tell us:

I. *What was your estimated income in the last 12 months? (prompt: $ amount, How confident of value?)*
II. *What were the sources of income, and relative contribution? (prompt: salary, Centrelink benefits, investment income, superannuation, -- % breakdown)*
III. *{Investment Branch - If investment income} "What type of investments paid income last year? (prompt: shares, property, bonds, bank deposits, other, relative share and $ value)*
IV. *How much would the household currently owe on loans? (prompt: $ value, How confident of value?)*
V. *Thinking about your loans, what type do you have? (prompt: mortgage, investment mortgage, credit card, personal loan, lease, payday/small loan, other, -- % breakdown)*
VI. *{Payday Branch - If payday borrower}*
    a. *"How much have your borrowed payday last year? (prompt: $); how many loans did you take last 12 months (prompt: number of discrete loans, number of parallel loans).*
    b. *How will you pay off the loan? (prompt: source? When? How? No Plans is OK, but press as payday will have firm end date)*
    c. *How did you choose payday (prompt: only choice, easy access, repeat borrower, recommended by friend, recommended by family, TV advert, internet search, flier, telephone call, other)*
    d. *How did you apply for the loan (prompt: looking for source/channel, internet, phone, local shop, post, agent, other)*
    e. *How long did it take to get the cash? (prompt: looking for time in days; also press for payment in account, or cash in hand (bank account most likely))*
    f. *Would you use payday again?*
    g. *How happy were you with the payday loan? (prompt: rate 1 to 5, 1=excellent, 2=OK, 3=adequate, 4=poor, 5=very poor; get a sentence to explain their rating; what worked and what did not."*

Data is captured into a database, which can subsequently be interrogated by custom SQL queries.

The survey is statistically tested against the ABS census data, and results are grossed up to the 8.47 million households currently in Australia. The sample is statistically optimised by state, age profile, segment and other factors. It is statistically correct +/- 1.5%. The confidence level within the methodology is 95% (representing a significance level of 0.05).

2 How Many Households Are Financially Stressed?

Our analysis segments Australian households into various groups in order to identify those that are financially stressed, and a subset that are financially distressed. Financially stressed households are generally coping with their current financial situation (even if using unconventional means), while financially distressed households are not. By coping, we mean for example, short term borrowing from family, friends, or payday loans, as well as juggling multiple credit cards, moving debts from one credit source to another and deliberately making late payments. The distinction between financially stressed and financially distressed households is important, because a broader spectrum of financially stressed households are now using payday lending facilities. These classifications of households are, of course, dynamic, with financially stressed households moving into a position of distress and vice versa.

2.1 Financially Stressed Households

The 2014 ABS Social Survey indicated there were 8.4 million households[1] in Australia. Our database assumes there are now 8.47 million households.

The DFA surveys apply a range of leading indicators to households that identify them as being in financial stress. These include:

- Those in mortgage stress;[2]
- Those who are behind with loan repayments;
- Those who have been declined some form of credit;
- Those who consistently borrow again to repay an existing loan (excluding mortgage re-financings);
- Those who seek debt counselling or credit repair services;
- Those who have had difficulty getting or keeping a bank account;
- Those in bankruptcy or a deed of arrangement.[3]

DFA selected these indicators because they have proved to be reliable over the long term. We have not sought to match other indicators of stress which may be used by other parties. Our omnibus survey looks at a variety of the household's circumstances. Our datasets are wider than those used by other parties, and are more likely to identify the graduation between stressed and distressed households. The datasets are repeatable over the long term, which provides more stable data. Essentially in summary, we define financial stress as a household which is not able to meet their financial commitments as they fall due.

[1] Australian Bureau of Statistics, 41590DO015_2014 General Social Survey, Summary Results, Australia, 2014
[2] Mortgage stress is defined as households that are in some form of loan default or are struggling to pay their mortgage on time.
[3] Deed of arrangement in this context means a formal or informal mechanism where debtors agree to make scheduled payments to reduce debt and creditors agree not to enforce the in the meantime. This may include structured arrangements under the Bankruptcy Act such as Debt Agreements and Personal Insolvency Agreements, hardship variations under the credit law or other informal arrangements

Different characteristics are given a score and a weighting for severity. Respondents are then classified as stressed, distressed or not stressed at all according to their score.

Since 2005, there has been a rise in the absolute number and relative percentage of financially stressed Australian households. Our surveys indicate that in 2015 2.69 million households are in financial stress, representing 31.8 per cent of all households.

Figure 1: Percentage of households in Australia that are financially stressed

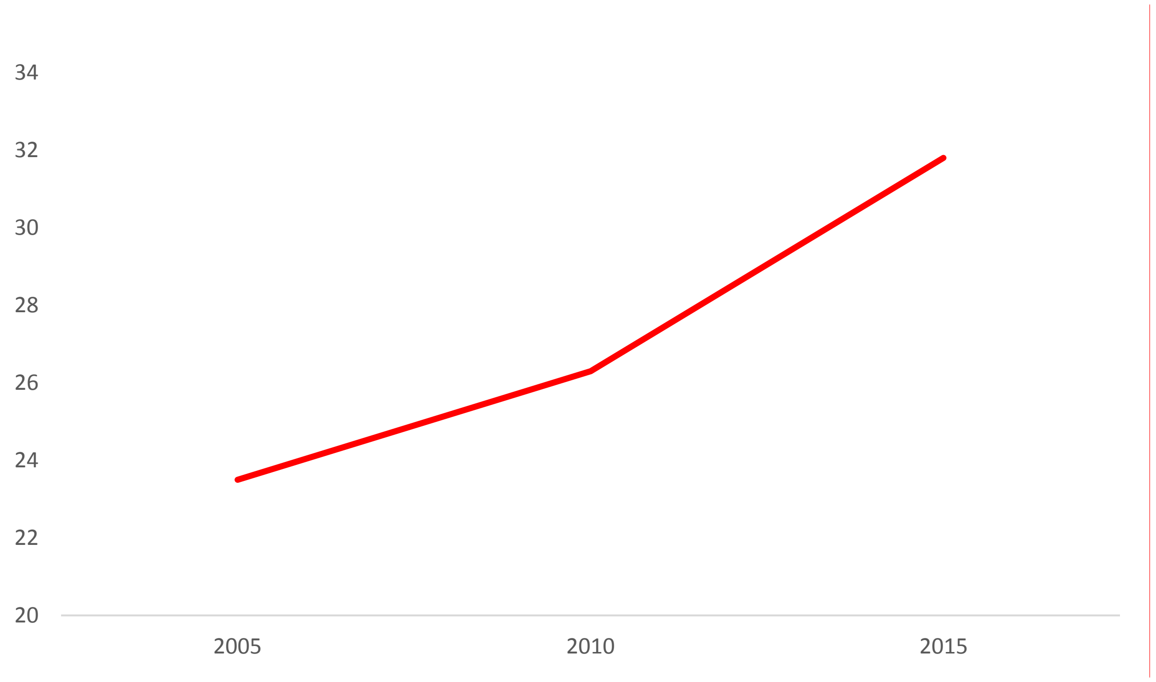


Table 1: Number of financially stressed households in Australia			
	2005	***2010***	***2015***
Number of households in Australia	8,056,000	8,335,000	8,470,000
Number of households in Australia that are financially stressed	1,894,379	2,195,145	2,697,192
% of households in Australia that are financially stressed	23.5%	26.3%	31.8%

In June 2015, 59 per cent of the households in financial stress included more than one adult member, while the remainder were lone member or one-parent families. One-parent families with a female parent were more likely to be in financial stress than those with a male parent. The poor financial position of sole female parent households was commonly associated with a lack of child support income.

Figure 2: Distribution of household types in financial stress

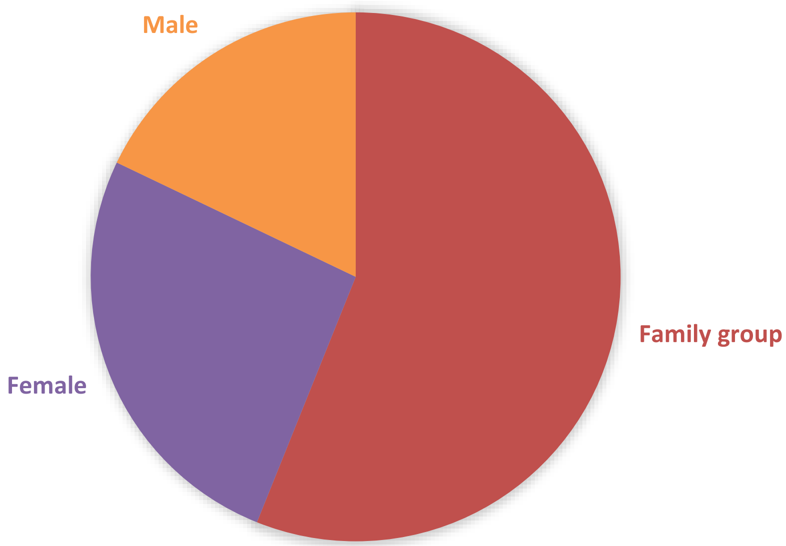


Table 2: Household types in financial stress (%)	
Family group	59.44%
Female	21.59%
Male	18.96%

2.2 FINANCIALLY DISTRESSED HOUSEHOLDS

The leading indicators we apply to identify households in financial distress include:

- Those who are repeat borrowers;
- Those with limited credit options;
- Those with chronically insufficient regular cash flow to meet obligations as they fall due;
- Those unable to find $2,000 in an emergency within 7 days;
- Those with no or limited access to traditional banking facilities (including transaction accounts, loans and credit cards).

In summary, distressed households are first not meeting their financial commitments as they fall due, and are also exhibiting chronic repeat behaviour, and have limited financial resources available.

Since 2005, there has been a significant rise in the number and relative percentage of households who are in financial distress. The 2015 survey data indicates that 1.8 million households (just over 20 per cent of all households) are now financially distressed.

Figure 3: Percentage of households in Australia that are financially distressed

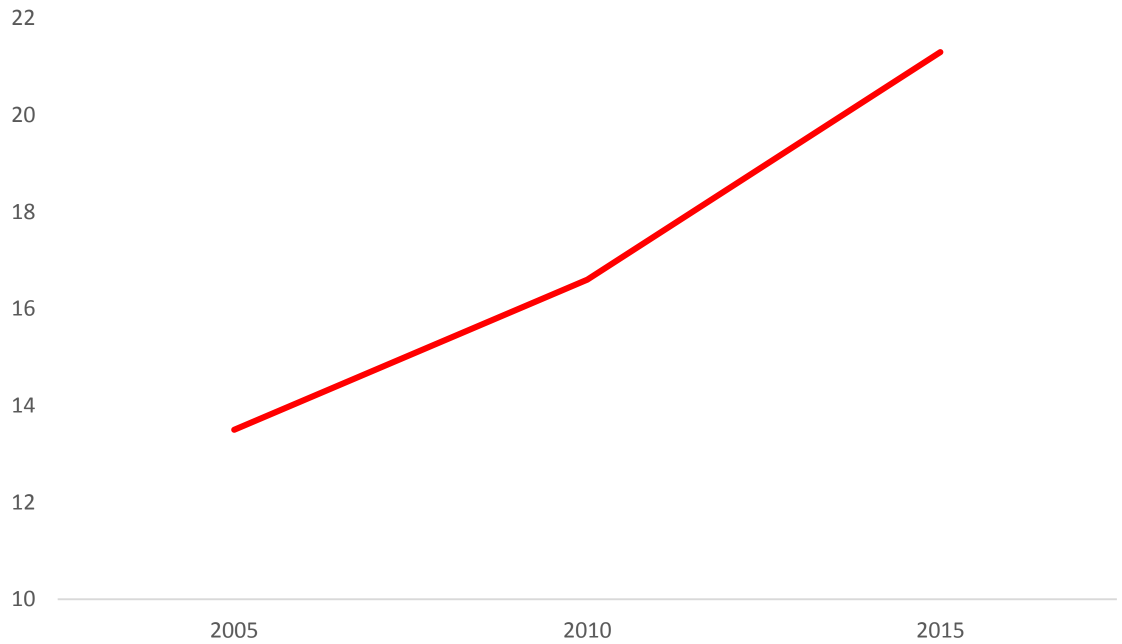


Table 3: Financially distressed households			
	2005	***2010***	***2015***
Number of households in Australia	8,056,000	8,335,000	8,470,000
Number of households in Australia that are financially stressed	1,894,379	2,195,145	2,697,192
Number of households in Australia that are financially distressed (subset of financially stressed)	*1,091,322*	*1,382,685*	*1,800,070*
% of households in Australia that are financially distressed	13.5%	16.6%	21.3%

There are important differences in the relative distribution of households in financial distress and others. The 2015 data indicates that a disproportionate number of households in financial distress are either one parent families with children or other non-standard household types, including older lone person households. Conversely, younger couples and couples with families are less likely to be financially distressed.

Across the households identified as being in financial distress in June 2015, 40 per cent were family groups with more than one adult. Of the remaining 60 per cent, there were more lone female households and one-parent families than lone males in financial distress.

Figure 4: Distribution of household types in financial distress

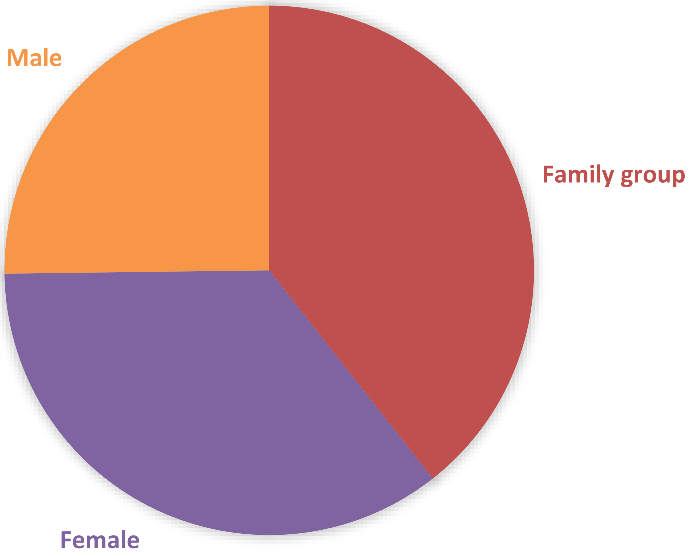


Table 4: Households in Financial Distress (%)	
Family group	39.40%
Female	35.40%
Male	25.20%

2.3 UNDERLYING CAUSE OF HOUSEHOLD FINANCIAL STRESS

There are many complex elements, which may arise as single events or as a combined set of factors that create a challenging environment and lead to households becoming financially stressed and or distressed.

Those households who register as financially stressed are asked to identify the reasons for their difficulty. They are able to give multiple answers, and the results are summarised and weighted on a percentage basis, as shown below.

Table 5: Underlying cause of financial stress (self-assessed)

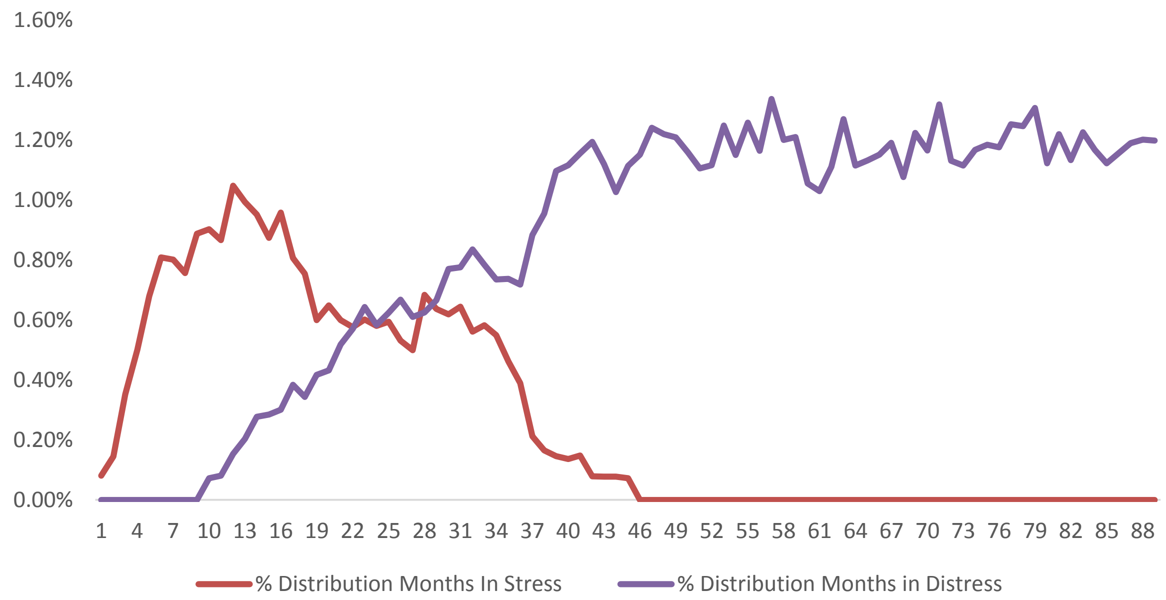
	2005	***2010***	***2015***
Overspending	35.6%	27.7%	28.9%
Poor budget management	21.6%	23.6%	15.8%
Loss of employment	11.2%	13.5%	15.6%
Health issues	17.5%	16.8%	15.4%
Reduced government benefits	3.5%	8.7%	9.8%
Relationship breakdown	5.6%	6.5%	7.3%
Drop in income	5.0%	3.2%	7.2%

Sometimes these factors are created by an external event, such as a relationship breakdown, health issues, or loss of employment. Our data shows that unemployment has become a more significant factor over the last decade, with fifteen per cent of households indicating that this caused their financial problems.

Other households identify loss of income as the main factor, whether from less overtime, lower pay rates, reduced government benefits or failure to received agreed child support. The reasons for loss of income were sourced from the qualitative part of the surveys. Notably, the households surveyed that ascribed their financial problems to their own behaviour such as overspending and poor budgeting has reduced from 57.2% in 2005 to 44.7% in 2015.

The longer households are financially stressed, the greater the probability they will fall into a position of financial distress, with a critical transition point at 18-24 months.

Figure 5: Months in financial stress and distress – relative distribution by type and month



3 Profile Of Payday Borrowers

Some households who use payday lending fall into the financially stressed group, but not the subset of financially distressed households. Those that fall within the financially distressed category generally have no savings or assets to draw upon. Please note that we have deducted the numbers of financially distressed from the total number of stressed households in the analysis to ensure that there is no double counting.

3.1 Payday Access Channels

The DFA survey includes data on channel and device interaction. In the survey, within the payday questions we ask specifically about where they found out about short term loans. We allow multiple answers, and the data is weighted on a percentage basis.

There have been significant changes to the channels through which households became aware of payday lending services. In 2005, local payday lending providers advertised through print media such as local fliers and local outlets. The rise of the internet has facilitated major changes in promotion practices. By 2015 more than 40 per cent of the households surveyed used the internet, search engines or social media to find out about payday lenders.

Figure 6: Key payday lending information sources (% of all payday borrowers)

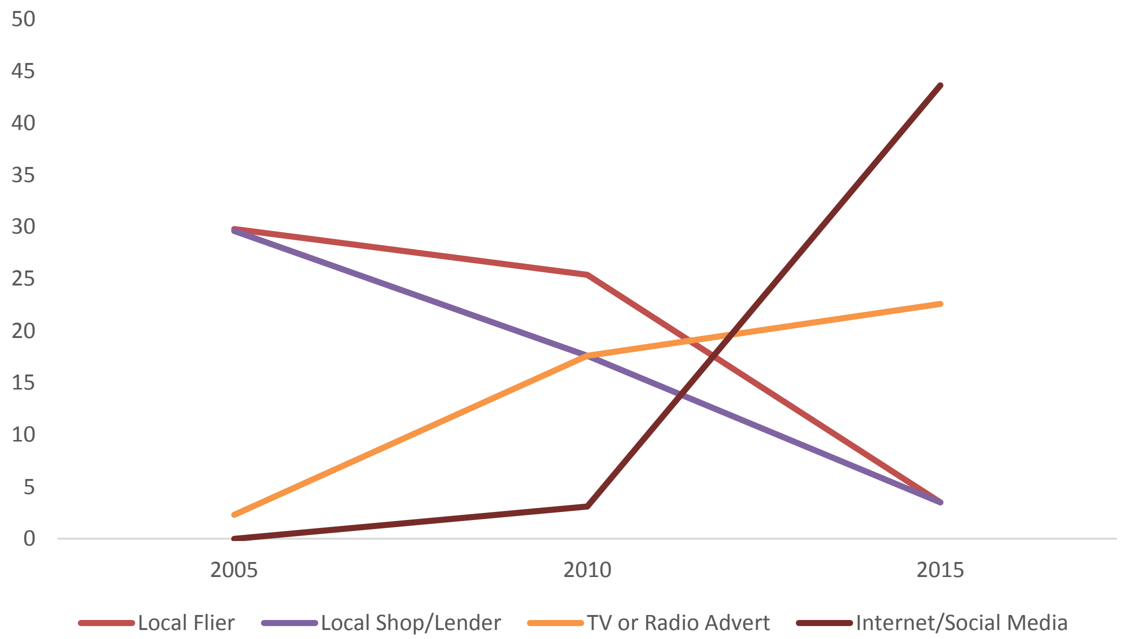


Table 6: Where did you find out about payday lending?			
	2005	***2010***	***2015***
Internet/social media	0.0%	3.1%	43.6%
TV or radio advert	2.3%	17.6%	22.6%
Print media/advertisement	23.7%	21.7%	11.3%
Friends	7.8%	5.7%	8.5%
Other	0.1%	2.8%	3.7%
Local flier	29.8%	25.4%	3.5%
Local shop/lender	29.6%	17.6%	3.5%
Family	1.2%	1.5%	2.1%
Yellow Pages	5.5%	4.6%	1.2%

We see a corresponding shift in channel preferences between 2005 and 2015. In 2005, the telephone and local shops or lenders were the most common interface to payday lenders. Most payday lending was done face to face and with local branches of lenders or agents calling on potential customers. By 2015, more than 68 per cent of households used the internet to access payday lending. Hence, online lending is now the primary access channel for payday lending.

Figure 7: Payday lending access channels (% of borrowers)

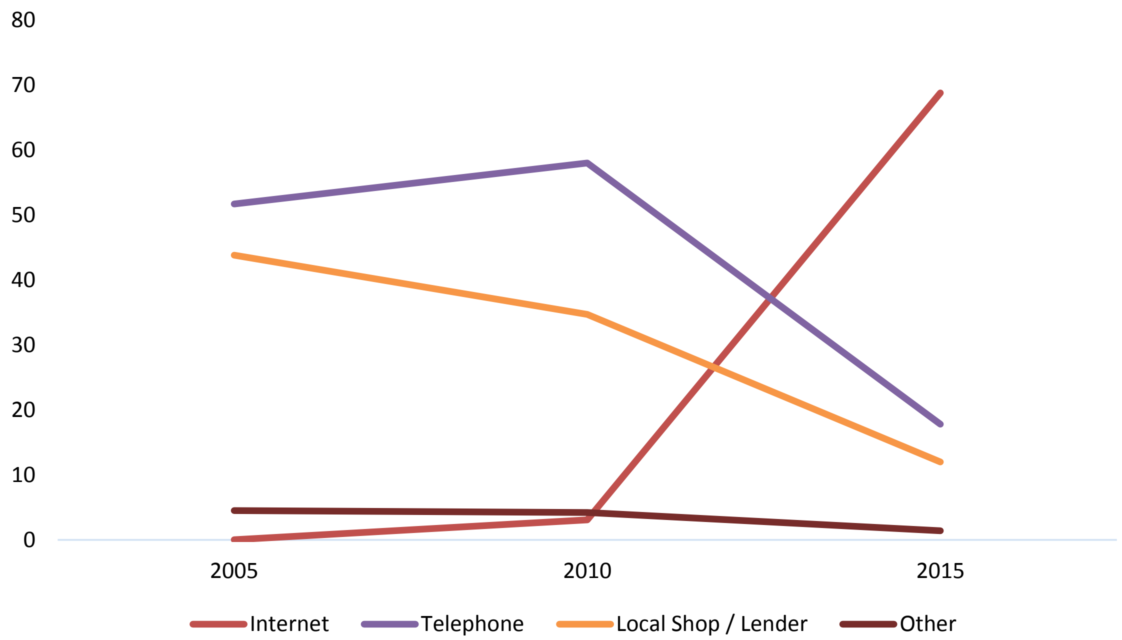


Table 7: Which channel did you use to access payday loans?			
	2005	***2010***	***2015***
Internet	0%	3.1%	68.8%
Telephone	51.7%	58%	17.8%
Local shop/lender	43.8%	34.7%	12%
Other	4.5%	4.2%	1.4%

For those using online access, we also ask about the devices they use, and again weight the answers in percentage terms. Of those accessing payday lending online in 2015, there was a variety of devices in use, with personal mobile phones and public personal computers being the most commonly used.

Table 8: Which device did you use for online access?	
Own mobile phone	21.7%
Public personal computer (web café, library etc)	21.3%
Own mobile personal computer	13.8%
Own tablet/iPad	12.3%
Own fixed personal computer	9.8%
Friends/family personal computer	6.8%
Friends/family mobile phone	6.7%
Friends/family tablet/iPad	4.8%
Other	2.8%

Table 9: Which operating system do you use to access payday loans?	
Windows	46.5%
Apple/iOS	27.8%
Android	14.5%
Other	11.2%

Table 10: Which application do you use to access payday loans?	
Use dedicated app on smart phone or tablet	29.8%
Use web site on smart phone or tablet	31.9%
Use internet web site on other device	38.3%

3.2 Payday Market Size, Loan Size And Number

As described above, we identify all forms of lending households have, and those stressed and distressed. We are able to extract via SQL the average amount, and the average number of loans.

During the five years from 2010 to 2015, the total number of households using payday lending services increased significantly. However, there has been a shift in the mix of household segments using these services. Financially stressed households emerge strongly in the 2015 data, with 41 per cent of households using payday loans in the last three years being financially stressed. Over the same period, the number of financially distressed households using these services fell by five per cent (but still make up 59% of payday borrowers). All users of payday lending were either stressed or distressed according to the criteria described above. For this analysis we ask respondents whether they have used a short term (payday) loan in the past three years.

Figure 8: Number of households using payday loans in the last three years

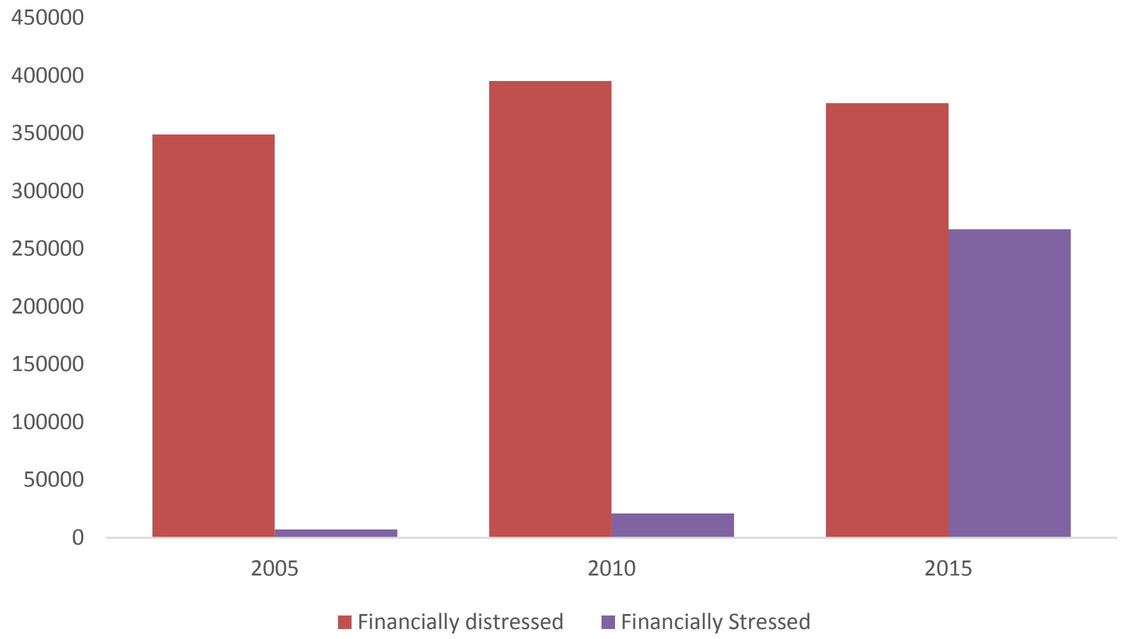


Table 11: Number of households using payday loans in the last three years			
	2005	***2010***	***2015***
Number of financially distressed households	348,976	395,297	376,206
Number of financially stressed households	7,121	20,805	266,881
TOTAL	356,097	416,102	643,087

During the 12 month period to 20 July 2015, the average payday loan outstanding per borrower was $2,223 whilst the average number of loans was 3.64. The average amount outstanding is lower than in 2005 but higher than in 2010. The average number of loans in 2015 was greater than in either 2005 or 2010.

Table 12: Average amount outstanding and average number of payday loans			
	2005	***2010***	***2015***
Average amount outstanding to payday lenders per household	$2,353	$1,930	$2,223
Average number of payday loans in the last 12 months	3.03	2.50	3.64

The number of borrowers taking out more than one payday loan the preceding 12 months has grown from 17.2% in 2005 to 38.0% in 2015.

For this analysis we ask about the types of loans households have. For those with payday (short term loans) we ask about the number of loans they held in the past 12 months. The question only asks "have you had" a payday loan in the past 12 months. Then how many altogether and how many at one time. It is not possible to discern whether people have included loans taken out the year before but still outstanding. We isolate them in the database, and can assess those with more than one loan. We can also look at these in the context of the DFA segmentation.

The average number of payday loans per borrower has also increased in 2015 compared to 2005 after falling in 2010.

Using SQL data we calculated the average number of loans, and their relative distribution, on a count and percentage basis. The distribution of payday loans reveals an increase in both the number and percentage of payday borrowers with more than 1 loan in every category from 2 per year to more than 10.

Figure 9: Percentage of borrowers with more than one payday loans in past 12 months

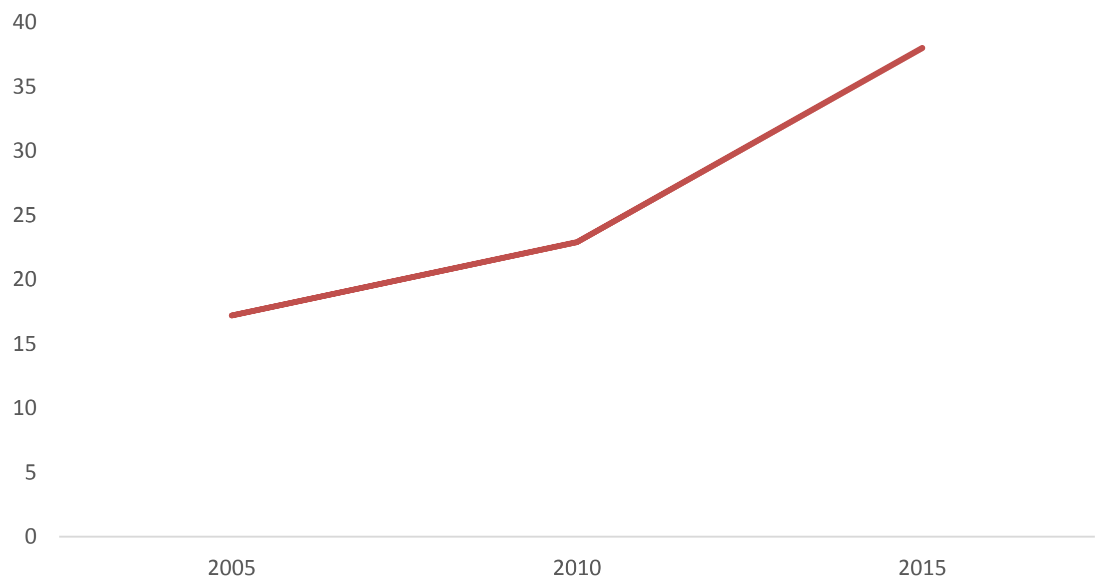


Table 13: Number of households with more than one payday loan in last 12 months			
	2005	***2010***	***2015***
Number of households with a payday loan in past 12 months	279,181	336,003	357,396
Number of households with more than one payday loan in past 12 months	47,894	76,783	135,763
% of payday borrowers with more than one payday loan in past 12 months	17.2%	22.9%	38.0%
% of financially stressed households	*2.5%*	*3.5%*	*5.0%*
% of financially distressed households	*14.7%*	*19.4%*	*33.0%*

There has been a similar but smaller shift upwards in the number of borrowers with concurrent payday loans. Note again, this is based on respondents' answers - we do not independently validate their responses.

Figure 10: Percentage of borrowers with concurrent payday loans

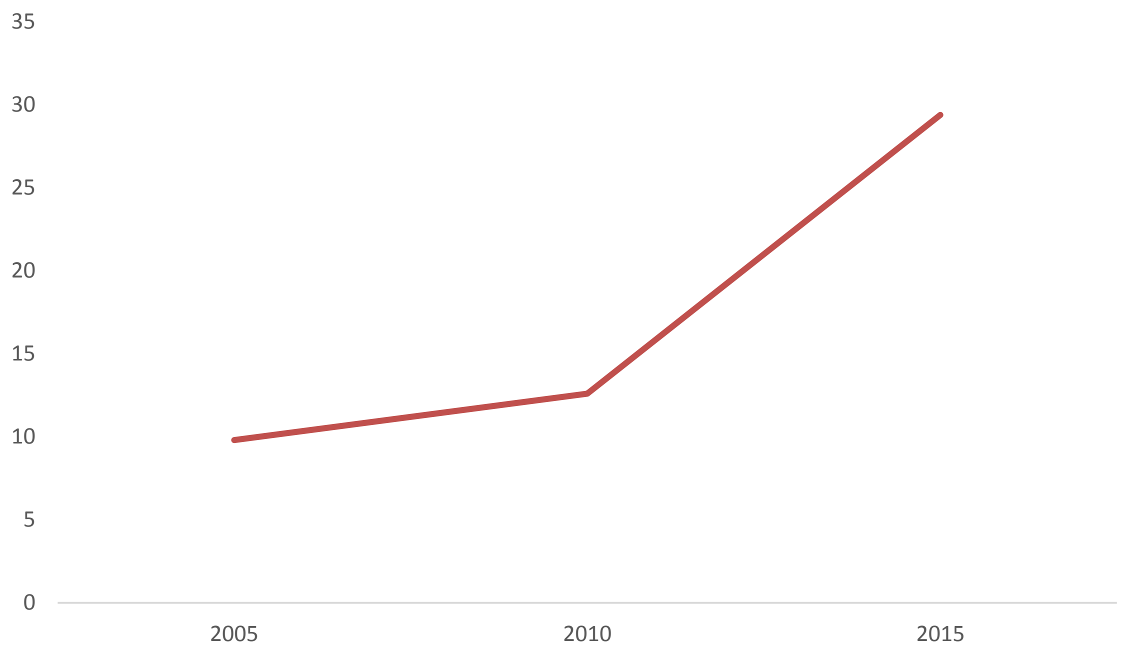


Table 14: Borrowers with concurrent payday loans			
	2005	***2010***	***2015***
Percentage of payday borrowers	9.8%	12.6%	29.4%

The average duration of payday loans outstanding has fallen significantly over the last decade. In 2005 the average duration was 77 weeks, in 2010 this fell to 56 weeks, and in 2015 the comparative figure was 23 weeks.[4] In the payday branch of questions, we ask how long the loan is open (i.e. the duration of the loan). This is a household estimate and not validated independently.

Table 15: Average duration of payday loans (weeks)			
	2005	***2010***	***2015***
Average duration in weeks	77	56	23

[4] From 2013 onwards payday loans (also known as small amount credit contracts) have been limited to 12 months or less by legislation.

3.3 PAYDAY LOAN PURPOSES

The responses indicated that emergency cash for household expenses, such as food and clothing, are the most common reason for taking out a payday loan. From 2005 to 2015, this response rose from 30 per cent to 35 per cent of respondents. Utility bills appear quite often (10 per cent), as do car related expenses (12 per cent) and specific household purchases (e.g. a new fridge) (8 per cent). In the payday question branch we ask about the reason or reasons for borrowing. The answers are clustered in the analysis and distributed on a percentage basis. Multiple answers are allowable.

Table 16: Purpose of payday loan

	2005	*2010*	*2015*
Emergency cash for household expenses	31.4%	33.8%	35.6%
Specific event [5]	12.8%	9.5%	15.6%
Car registration or expenses	15.7%	13.2%	11.2%
Repay existing loan	17.6%	15.4%	9.8%
Water, gas or electricity bills	9.6%	11.2%	8.9%
Phone, internet or TV bills	1.2%	3.1%	7.8%
Household purchase	8.7%	8.9%	6.5%
Other	2.8%	4.5%	4.6%

Two striking observations emerge. First, more payday loans are now being used to cover the costs of internet services, TV subscriptions and phone bills (these are now regarded as essentials, not luxuries). Secondly, the level of borrowing for the purpose of repaying existing loans fell from 18 per cent in 2005 to 10 per cent in 2015. The largest category, emergency cash for household expenses can be further broken down as follows:

Table 17: Breakdown of 'emergency cash for household expenses'

	2005	*2010*	*2015*
Children's needs	19.6%	21.1%	22.7%
Clothing	17.8%	19.1%	21.6%
Medical bills	13.6%	14.2%	15.1%
Food	15.3%	13.2%	11.4%
Healthcare needs	12.8%	11.4%	10.8%
School trips	5.6%	7.9%	9.1%
Fares/travel costs	5.6%	7.2%	8.3%
Other	9.7%	5.9%	1.0%

[5] Within this category, funding of a wedding was the most common answer, followed by a holiday, funeral expenses, school fees and parties.

We also asked about overall satisfaction with the payday lending experience. The specific questions as outlined below and the answers were weighted on a percentage basis. Those who expressed a level of dissatisfaction are able to comment on the cause. We used these answers to produce summary categories, and weighted them on a percentage basis.

The responses to these questions reflect common themes between financially stressed and distressed households. About half of these households were satisfied with the experience, but financially distressed households were less happy than the other segments. The majority of borrowers gave an authority for direct debits from their bank accounts.

Potential compliance issues were highlighted by some respondents. 38.7% of distressed households surveyed were refinancing another debt when they took out a payday loan, and 36.8% already had another payday loan. The majority of both stressed and distressed households surveyed were not provided details of alternatives when they took out their payday loan. Others had linked services – like insurance – added into the loan. Only a small number of borrowers were aware of the APR of the loan.

Table 18: Circumstances when borrower took out their payday loan

When you got your payday loan:	***Stressed Households***	***Distressed Households***
Did you give authority for a direct payment?	78.6%	56.9%
Were you provided with details of alternatives?	61.8%	56.9%
Were you satisfied with the lender experience	61.2%	39.8%
Would you take another payday loan?	51.2%	58.9%
Had you been declined elsewhere?	31.6%	43.2%
Were you refinancing another debt?	23.4%	38.7%
Did you have to take another service? (e.g. Insurance)	23.3%	41.5%
Did you already have a payday loan?	17.6%	36.8%
Did you know the effective APR of the Loan?	11.4%	4.5%

Around half of the households that had used payday lending services indicated they would be willing to take another payday loan. Distressed households were more likely to be both dissatisfied with the experience and willing to take another loan. Of those who were not satisfied with the experience, there were a range of issues.

Table 19: Reasons for not being satisfied with payday loan

I was not satisfied because:	***Stressed Households***	***Distressed Households***
The terms were not clear to me	31.7%	32.5%
There was too much paperwork	21.3%	7.8%
I had more money taken from me than I expected	18.0%	24.7%
I paid more fees than I expected	17.8%	12.7%
I did not get the amount I wanted	11.2%	22.3%

We use data from two questions to derive the percentage of borrowers who have a payday loan who were behind in their payments in 2015. First, we ask if households are behind with their payments on any of their loans. Second if they are, we ask a specific follow-up question to determine their current default status. Note this is based on their responses, we do not independently test their answers. Arrears under 30 days are not counted as a default.

Table 20: Percentage of payday borrowers in arrears or default on a payday loan

Total number of payday borrowers	357,396	
Number of payday borrowers more than 30 days in arrears but less than 90 days	9.80%	35,025
Number of payday borrowers more than 90 days in arrears	4.90%	17,512
Number of payday borrowers formally in default	3.70%	13,224
Number of payday borrowers who have had their loan frozen or entered a payment arrangement	1.20%	4,289
Total in arrears or default	19.60%	70,050

3.4 PAYDAY BORROWER DEMOGRAPHICS

We now turn to the demographic characteristics of payday borrowers. In 2015, sole male households are significantly more likely to use payday loans than sole female or multiple adult family groups.

Figure 11: Types of borrowers using payday loans

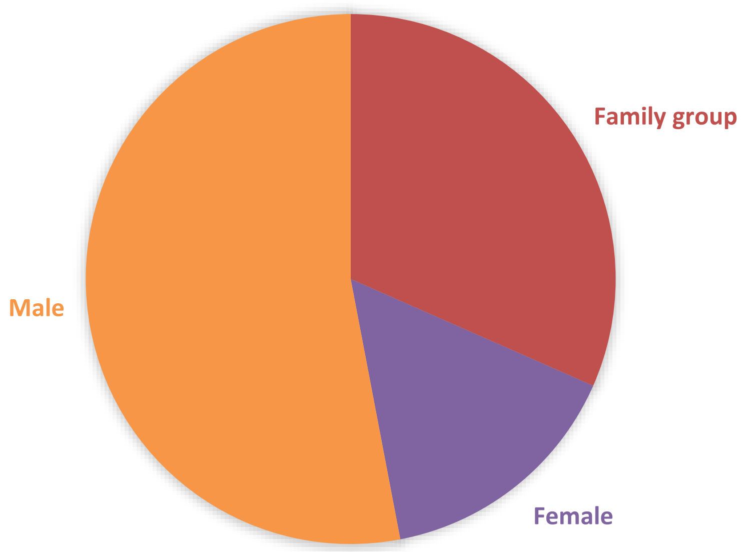


Table 21: Types of borrowers using payday loans	
Type of borrower	***% of all households using payday loans***
Family group	31.6%
Female	15.4%
Male	53%

In 2005 the average age of the main payday borrower was 45 years, but this has since dropped to 41 years. Trend analysis shows that in 2005, most payday borrowers were over 40 years old, with peak demand from borrowers in their late forties. Today we see a significant rise in younger borrowers, with households in their thirties now active. Older households are generally much less likely to borrow[6]. As described above, our basic survey methodology captures a number of demographic questions, the results of which we used in the data analysis via SQL. The data only related here to those households who use payday loans.

Figure 12: Percentage of payday borrowers by age group

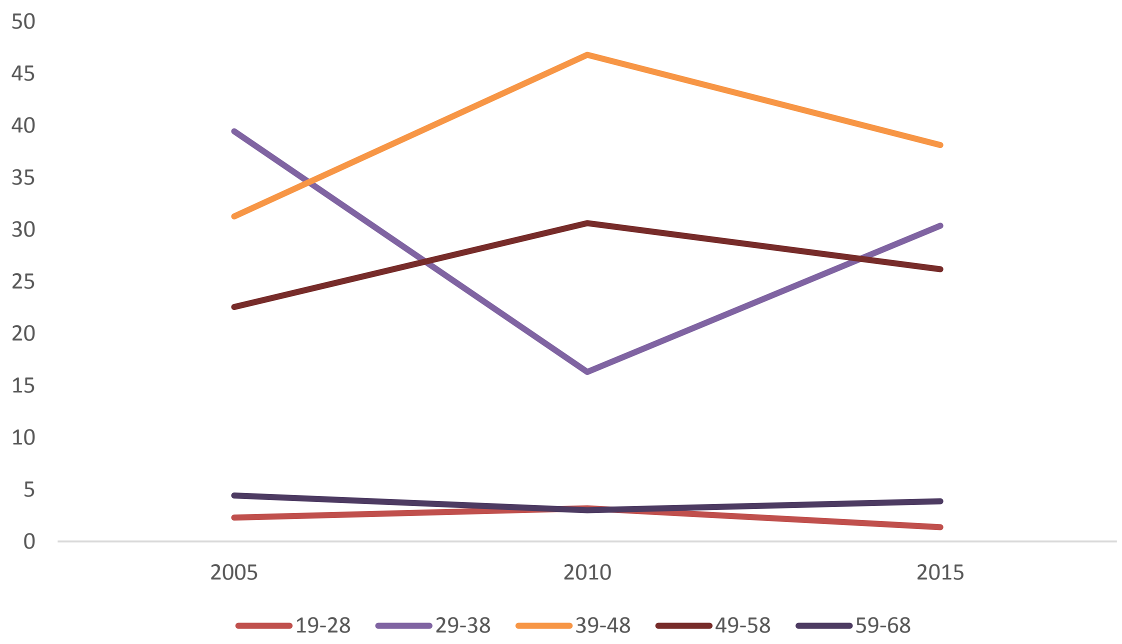


Table 22: Percentage of payday borrowers by age group			
Age	***2005***	***2010***	***2015***
19-28 years old	2.28%	3.18%	1.37%
29-38 years old	39.44%	16.30%	30.35%
39-48 years old	31.26%	46.78%	38.12%
49-58 years old	22.53%	30.61%	26.17%
59-68 years old	4.4%	2.98%	3.86%

[6] The DFA survey is with main householder, so it is possible the representation of the older and younger are understated, where they live as part of a wider household.

Education levels are a significant factor associated with payday loan usage. Households with adults that have been to university are significantly less likely to borrow than those with school-level education.

Table 23: Percentage of payday borrowers by education level	
School	94.74%
University	5.26%

Most payday borrowers are employees (over 70 per cent) rather than managers or executives. However, approximately 15 per cent of payday lending households describe themselves as expert professionals.

Table 24: Percentage of payday borrowers by type of employment	
Employed worker	70.9%
Expert professional	15.4%
Other	11.3%
Manager	2.2%
Executive	0.2%

The industry footprint is interesting, with those in the agribusiness (15 per cent) or construction (13 per cent) industries most likely to borrow. Those who have retired (11 per cent) or are not currently working are also significant groups (9 per cent), followed by administrative staff (8 per cent) and sales (6 per cent).

Table 25: Top 6 industry sector employers of payday borrowers in 2015	
Occupation	*Percentage of payday borrowers*
Farming, fishing, and forestry	14.7%
Construction and maintenance	12.6%
Retired	11.3%
Not currently employed	8.6%
Office and administrative support	8.1%
Sales	5.9%

3.5 PAYDAY HOUSEHOLD INCOME PROFILES

While there are significant variations in the income levels of households using payday lenders, these households have consistently lower average annual incomes than the overall Australian population.

The average income of payday borrowers has changed very little over the past ten years; in 2005, the average annual income was $34,549 and in 2015 it was $35,702. Allowing for inflation over this period, the average real income of borrowers has dropped.

Table 26: Average annual income of payday borrowers		
2005	***2010***	***2015***
$34,550	$35,202	$35,702

Today 28 per cent of payday users have annual incomes below $30,000 and only 9 per cent have incomes over $50, 000. When we compare the income distribution of those who use payday lenders to the distribution of all households surveyed, the more limited income of these borrowers is striking.

Figure 13: Income distribution of payday borrowers

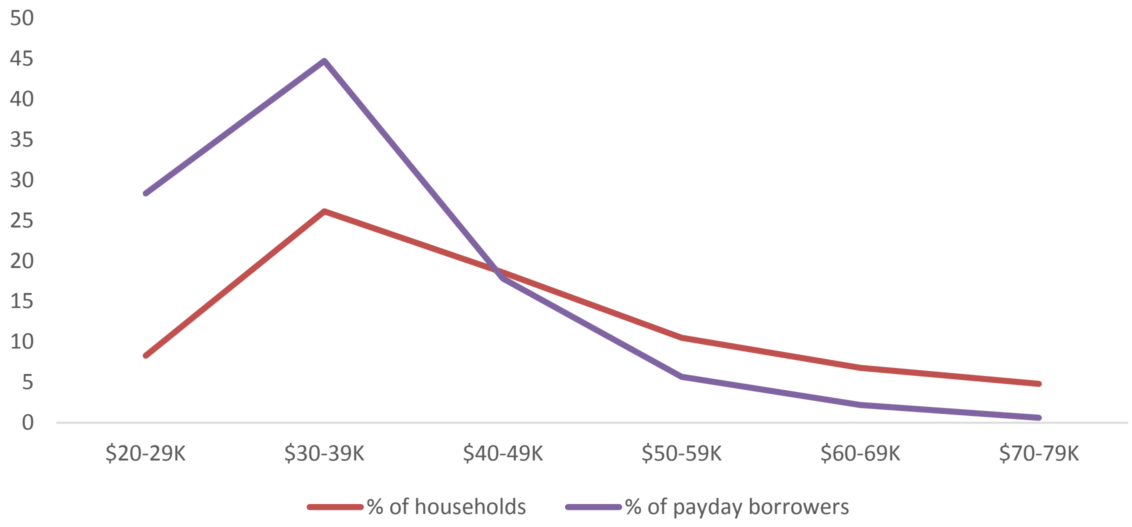


Table 27: Income distribution of payday borrowers[7]		
Annual income	***% of all households***	***% of payday borrowers***
$20-29,000	8.28%	28.34%
$30-39,000	26.11%	44.75%
$40-49,000	18.57%	17.81%
$50-59,000	10.50%	5.66%
$60-69,000	6.79%	2.20%
$70-79,000	4.78%	0.60%

3.6 Distressed and Stressed Payday Borrowers

There are interesting contrasts between financially distressed and financially stressed households. In the payday branch of the survey we ask specifically why they went with the payday option. The responses were summarised by response and segment on a relative percentage basis.

Financially distressed households generally use payday loans either from desperation or because it is seen as the only option, whereas the financially stressed households are attracted by the convenience of the service.

[7] Note: Data on income distribution above $79,000 has not been included as the percentage of payday borrowers with income above this amount was nominal. There were, however, a number of survey participants who did not use pay day lending who had income significantly higher than $79,000.

Table 28: Reasons for taking out a payday loan		
	Distressed Households	*Stressed Households*
Only option	78.0%	31.5%
Desperation	17.0%	8.0%
Convenience	5.0%	60.5%

The overall lending patterns reveal clear differences across these households groups. Financially distressed households rarely have a property with a mortgage, while 17 per cent of financially stressed households have a mortgaged property. The penetration of credit cards and store cards is low amongst distressed households[8]. In contrast, 69 per cent of financially stressed households have credit cards and borrow heavily on them. Around 36 per cent of the households within this segment also have store cards. Both types of households have other loans and both groups have multiple payday loans running concurrently.

Table 29: Overall borrowing patterns of payday borrowers		
	Distressed households	*Stressed households*
Has mortgage on property	1.2%	17.6%
Has credit card	3.6%	68.9%
Has credit card debt	90.0%	98.0%
Has store card	1.1%	35.8%
Has other loans	78.6%	81.5%
Has multiple concurrent payday loans	35.8%	27.2%

3.7 PAYDAY AND HOUSEHOLD SEGMENTATION

We use a multifactorial model to determine which segment a particular household is aligned to. Our segment definitions are listed in **Appendix 1**. Applying this segmentation to the payday sector, we see some important trends.

The most significant observation is the spreading penetration of payday lending from the traditional "battler" groups to a wider range of segments including young growing families, stressed seniors, and rural sectors. A growing proportion of "multicultural" groups are also using payday loans. This segment includes first or second generation migrants to Australia with English as a second language.

[8] The majority have residual credit card debt, while no longer having access to a credit card.

Table 30: Types of payday borrowers by DFA segments			
	2005	***2010***	***2015***
Disadvantaged fringe	43.8%	34.3%	35.0%
Multicultural establishment	24.4%	25.8%	28.9%
Battling urban	25.2%	29.0%	16.6%
Young growing families	3.5%	6.7%	11.3%
Stressed seniors	1.6%	2.0%	5.3%
Rural family	1.6%	2.2%	2.8%
Suburban mainstream	0.0%	0.0%	0.3%
Exclusive professionals	0.0%	0.0%	0.0%
Mature stable families	0.0%	0.0%	0.0%
Wealthy seniors	0.0%	0.0%	0.0%
Young affluent	0.0%	0.0%	0.0%

3.8 Future Growth of Payday Lending

We used our industry model, household segmentation, demand modelling and DFA survey data to estimate the future growth of payday lending. The figures below reflect the value of loans written each year, but does not include loan carry forward, refinances and defaults, so is therefore a conservative estimate. The size of the market is estimated by grossing up the data from our survey to a national level, using the ABS census as a guide.

We predict continued growth in all of the following:

- the use of payday loans by financially stressed households;
- the penetration of payday lending to a broader spectrum of the population; and
- the relative and absolute levels of online originated loans.

There are a large number of online lenders operating in Australia. Some of these are locally owned, and others operate as Australian arms of international businesses. We expect the overall value of the payday lending sector in Australia to exceed $1 billion by 2018. As a comparison, the credit card market is currently worth $40 billion[9]. Note this is an indicative model only, and underlying assumptions, and therefore outputs may change.

We model future volumetrics based on our baseline household survey data. We gross up the 26,000 per annum reference data to national level, on a statistical representative basis. We assume there will be similar utilisation and debt patterns, at a segment and state level, and overlay expected population and employment growth. We assume population and household growth will maintain current trend levels.

We assume the current mix and duration of loans, including multiple loans, continues at current rates. We assume no change in the current payday legislation, and we assume the current levels of

[9] See http://www.digitalfinanceanalytics.com/blog/how-big-is-the-payday-lending-market-in-australia/

availability of other forms of credit, and current lending rules. We make the following specific assumptions:

1. Unemployment at the national level will remain at 6.3% out to 2018 (and current state differentials continue, with rising rates in WA and SA.
2. Cash interest rates will rise from 2.0% from mid-2016, to reach 3.5% by 2018
3. GDP will remain at 2.5% to 2018
4. Core inflation will remain at 2.5% to 2018
5. Income growth, after inflation will be zero out to 2018

Estimates are rounded up. Based on past performance, we have a confidence level of +/- 1.5% out to December 2016, and +/- 3% beyond to 2018.

Figure 14: Estimated value of payday loans written per year ($'000,000s)

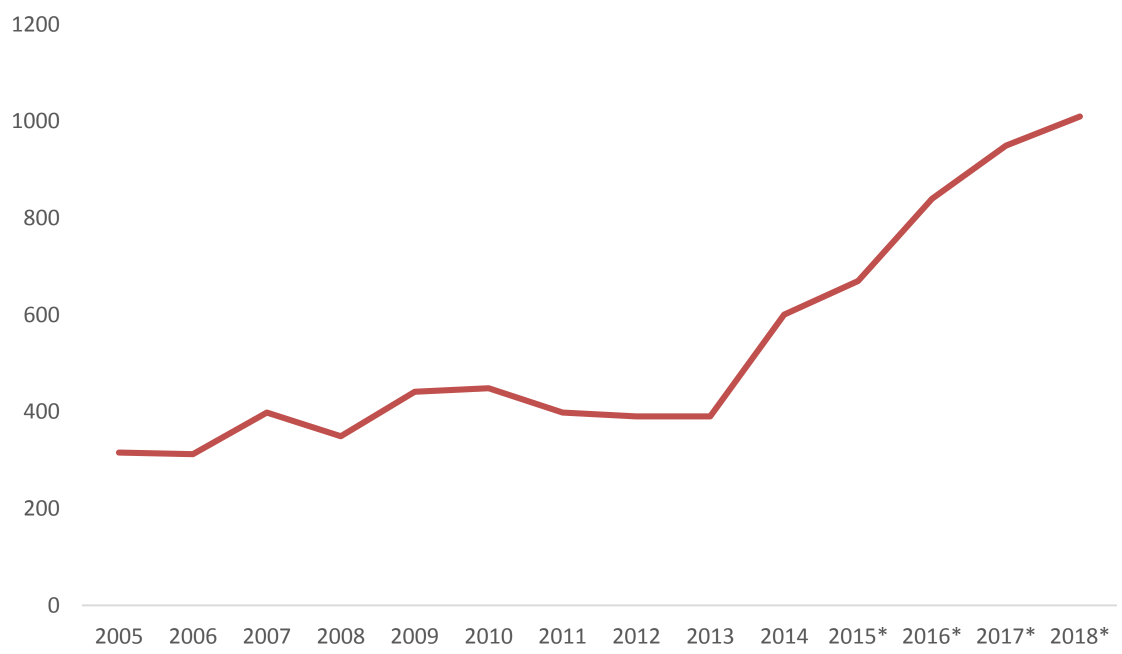


Table 31: Estimated value of payday loans written per year ($'000s)

2005	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	*2014*	*2015**	*2016**	*2017**	*2018**
315698	312246	398239	307971	349321	441343	448468	398140	390994	600847	670000	840000	950000	1010000

* Projection figures

As part of the channel data, we identify those using online services for the origination of payday lending. We counted the number of loans, versus those originated online for payday households. This gives a relative value and count by segment via our SQLs.

The increased penetration of payday lending amongst financially stressed households appears to be linked to the rise of mobile technologies and the ease and convenience of online originated loans.

Figure 15: Percentage of payday loans written online

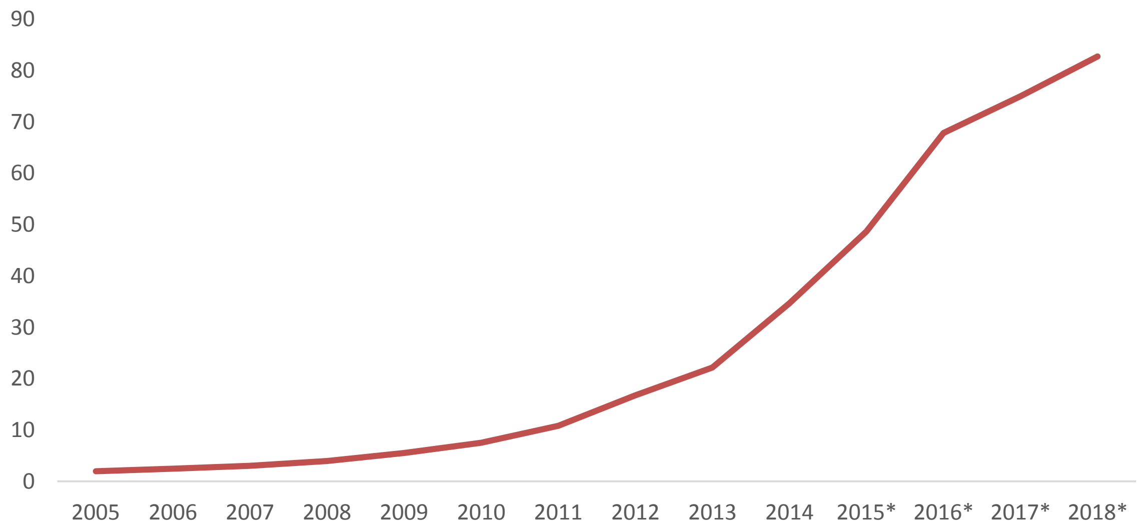


Table 32: Percentage of payday loans originated online

2005	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	*2014*	*2015**	*2016**	*2017**	*2018**
1.99	2.51	3.02	3.96	5.56	7.56	10.87	16.77	22.16	34.74	48.67	67.86	75.06	82.79

* Projection figures

3.9 SURVEY ANALYSIS

Our analysis has highlighted the diverse nature of financially stressed households. One can legitimately argue that most users of payday loans are disadvantaged and or vulnerable in some way. Our survey analysis confirms the following:

- Most payday loan households have a relatively low income;
- Most have a low educational level;
- Many have minimal or no assets and savings;
- Many use these loans out of desperation or a lack of other funding options;
- Some have English as a second language;
- Many appear to have limited understanding of financial matters;
- Many appear to measure the success of payday lending services based on minimising external pressure (rather than on the long term financial outcomes).

Hence many households that use payday loans are in financial distress and use short term payday loans from desperation. Others choose payday loans as a convenient service to assist with short term cash flow needs.

The survey analysis indicates that Australian households are increasingly likely to apply for a payday loan online. Moreover, the clientele of payday lenders is expanding from financially distressed to financially stressed households, and this trend is likely to continue. Online services are now mainstream, and this presents significant new challenges for customers, policy makers and regulators.

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APPENDIX 1: DFA SEGMENTS

Details of the segments are set out below:	Sample Post Codes	Number In Segment
1. Young Affluent: These are predominantly young and affluent individuals, commonly renting apartments in fashionable high density inner-city suburbs near public transport hubs. Many are transient tenants who regularly change their residence. They have high incomes, most have no children and a high proportion of de facto households. 40% have recently moved and home sharing is common. Building activity is high with considerable invested in building and alterations, and property values and rental costs are also high. Most are white collar workers with professional or executive careers across a variety of industries, especially finance and property, and a significant proportion have or are undertaking tertiary education. Technologically savvy they are early adopters of technology and are the segment most likely to purchase goods or services online or by phone. They opt for premium credit cards but are attracted by interest free offers. Car ownership is below average with public transport preferred.	Sample Post Codes include: 2039, 3054, 4064, 5006, 6004, and 6008.	432,873
2. Young Growing Family: These are young families who are new home buyers purchasing separate homes in affordable new estates on urban fringes with low density housing and average to below average property values. Building activity is high but average building spend is below average. These neighbourhoods are young and have the highest building approval and population growth. The segment is typically made up of blue collar workers and tradespeople, people in clerical, sales and service occupations, and a significant proportion of transient workers in remote mining locations who are suitably compensated for adverse working conditions. Despite being relatively affluent, mortgage commitments lead to tight family budgets. Most have no post-school qualifications but an above average number of technical diplomas and certification. Due to work commitments from both partners they have a preference for non-branch based banking. Computer and internet use is above average.	Sample Post Codes include: 2759, 3159, 4125, 5125, 6122, and 7017.	664,423
3. Rural Family: These are individuals in rural areas. There has been a marked population decline in this segment. Most housing is separate with low property values. Significant numbers of homes are owned or being purchased, but rental properties are also common catering to the transient section of the population. Predominant industries are agriculture; forestry and fishing with blue-collar employees, but local enterprises require a significant proportion on white-collar administrative and managerial staff. Employees cater to local needs in townships in a variety of manual labour, trade and service oriented professions. Early school leavers with few post-school qualifications are common. Computer ownership and internet use is low. Vehicle ownership is average. Affluence and incomes are generally low but	Sample Post Codes include: 2671, 3300, 4470, 5690, 6312, and 7301.	822,177

sometimes supplemented by rental income. Most individuals are Australian born with a significant proportion indigenous.		
4. Battling Urban: These are individuals with strong financial constraints and limited incomes, living in urban and suburban areas. High density apartment blocks are common in these areas, and State and privately rented housing availability leads to a highly transient and mobile population. Suburban semi-detached and separate houses also make up a significant proportion of these neighbourhoods catering to mobile couples and families. Building activity and property values are average to low and housing density is high. With average incomes and education levels, the jobs in this segment are across a variety of industries and are mainly mid to lower white-collar and clerical roles. They have above average ownership of computers and internet use. Vehicle ownership is below average. Unemployment levels are high in many areas and qualifications are low. There are significant areas with post 1980s migrant populations, and tertiary education is valued in these areas.	Sample Post Codes include: 2167, 2565, 3194, 4018, 5068, and 6060.	534,369
5. Disadvantaged Fringe: These are disadvantaged peripheral urban and country areas with low income levels. State rental accommodation is common, but there is also a significant proportion of young families purchasing homes in newer peripheral suburbs with low-mid density housing and low property values. The majority of homes are owned or being purchased. Most of the population have a European or Oceanic ancestry. Education levels are low but tertiary institution attendance is average, suggesting academic and professional aspirations. They are not technologically savvy; hence computer and internet use is low. Credit card usage is uncommon and multiple car ownership (older models) common. Individuals mainly have manual blue-collar or clerical white-collar jobs in a variety of industries, especially retail, wholesale trade, health, community services and hospitality. Unemployment is high.	Sample Post Codes include: 2286, 3338, 3658, 4132, 5098, and 6058.	1,564,098
6. Suburban Mainstream: These are a mix of white and blue collar workers in a variety of industries predominantly not as decision makers. Significant numbers of households have children. Many individuals are Australian born, but there are significant numbers of Europeans and Asians. Incomes and affluence are above average, and are supplemented by some rental income. Neighbourhoods are stable and well established with a high rate of home ownership and a combination of housing types in mid-high density areas within metropolitan districts and fringes, with relatively high property values. There is little population growth and average building approvals but many properties have or are being renovated. They are frequent users of the internet, direct debit and remote banking. Credit card and mobile phone usage is high, and multiple car ownership per household is the norm. There are significant numbers of mid-size separate homes either being purchased or fully owned.	Sample Post Codes include: 2203, 3056, 4059, 5031, 6160, and 7000.	2,556,745

7. Mature Stable Family: These are affluent and established individuals in mid-outer suburbs with above average household size and mortgages. They have separate homes on large blocks of land in established communities, with multiple vehicles and significant personal possessions with requisite insurance cover. Housing density is low but building rates are high with above average expenditure on new residences and extensions. Tertiary education is valued and parents are still supporting their dependent children. The segment is technology savvy with 60% home computer ownership, and uses the internet for banking and invests in financial planning. Corporate managers and business owners across a variety of industries are common in this segment. There is not a large investment in property or shares despite the segment having above average incomes.	Sample Post Codes include: 2153, 3133, 4061, 4069, 5066, and 6070.	587,294
8. Exclusive Professional: These are some of the wealthiest individuals living in the most exclusive suburbs. These professionals and business owners are financially astute and obtain advice from their personal planners or on-line. They enjoy fast access internet services, and are high-end technology savvy. Although they are heavy users of premium credit cards, they prefer to pay off the balance each month. They are generally the type to feel financially stable, and have the highest household incomes, highest rate of home ownership, and also have the highest commitment to mortgage/rent payments. They are predominantly upper white-collar professionals, primarily employed in the property, business, finance and insurance sectors, and usually married couples with older dependent children aged 18 to 24. They earn substantial incomes, investing through numerous methods including property and share portfolios that in turn provide considerable additional income.	Sample Post Codes include 2071, 2075, 3126, 4007, 5062, and 6009.	636,426
9. Multicultural Establishment: This segment contains individuals from a variety of different cultures (predominantly Southern and Eastern Europe and Southeast Asia) living in established multi-cultural communities with individuals migrated to Australia or first generation born here. Affluence levels are moderate and incomes are below average but some additional income is gained from rent. English is often a second language. There are significant numbers of early school leavers in blue-collar roles, many in the manufacturing, utilities and construction industries. There are also individuals in lower white-collar roles, but unemployment in this segment is high. Many own their medium-value homes but others take advantage of State (above average proportion) and private rental accommodation. Separate housing is prevalent and located in high-density areas. Building activity is low and the population is non-transient with moderate growth. They are not technology savvy; hence computer and internet use is low. Car ownership levels are also low.	Sample Post Codes include: 2166, 3061, 4076, 5110, and 6061.	527,307

10. Stressed Seniors: These are senior individuals across provincial and metropolitan areas, generally living in lower value homes in low-density suburbs. The segment also includes residents in nursing homes and retirement villages. Most are home owners and many are no longer working and are retired, living on pensions and other incomes. Most are early school leavers and those still working are in a variety of occupations and industries in predominantly white-collar roles. Affluence is relatively low with limited income from government pension and supplementary assistance. They are not technologically savvy, have low computer and internet use and prefer to use branch banking. Car ownership is low, and unemployment is above average. The oldest citizens are in this segment and are predominantly in retirement villages and nursing homes.	Sample Post Codes include: 2219, 3194, 4163, 5021, and 6157.	206,769
11. Wealthy Seniors: These are senior individuals across provincial and metropolitan areas, generally living in lower value homes in low-density suburbs. The segment also includes residents in nursing homes and retirement villages. Most are home owners or purchasing new homes, and many are no longer working and are retired, living on personal pensions supplemented by other incomes. Many are early school leavers and those still working are in a variety of occupations and industries in predominantly white-collar roles. Affluence is relatively high and many individuals gain significant income from rent and investments. There are significant numbers of recent retirees. They are quite technologically savvy, have relatively high computer and internet use but still prefer to use branch banking. Car ownership is average, and unemployment is above average.	Sample Post Codes include 2539, 3230, 4183, 5204 and 6044.	309,919

Appendix 3

LOAN CONTRACT

This Loan Contract will be entered into between Cash Converters Personal Finance Pty Ltd (**A.B.N. 42110275762, Australian Credit Licence Number 391436**) ("Lender") and the Borrower when the offer by the Borrower on the terms and conditions of this document is accepted by the Lender.

By signing below, I [redacted] ("the Borrower") offer to enter into this Loan Contract with the Lender on the terms and conditions set out below.

Financial Table

DISCLOSURE DATE	All information disclosed in this Financial Table is disclosed as at **12 December 2014**
AMOUNT OF CREDIT	**$480.00**
PAYMENTS OUT OF THE "AMOUNT OF CREDIT"	**$80.00** is to be paid to the Lender. **$400.00** is to be paid to the Borrower.
ESTABLISHMENT FEE	**$80.00** is payable on the settlement date to the Lender. If not paid at settlement, the fee will be debited to the loan account and will be paid as part of the repayments until the end of the term.
MONTHLY FEE	**$16.00** is payable to the Lender and will be debited to the loan account monthly on the first day of the term and thereafter on the day after that first day in each subsequent month until the loan account balance is paid (for example, if the first day of the term is 15 June, the fee will be debited and payable on 15 June and thereafter on the 16th day of each subsequent month). If that day falls on a day of the month that does not exist, the fee will be debited and payable on the last day of the month (for example, if that day falls on 31 June, the fee will be debited and payable on 30 June).
TOTAL AMOUNT OF CREDIT FEES AND CHARGES	Establishment Fee **$80.00** Monthly Fees **$192.00** TOTAL = **$272.00**
REPAYMENTS	The Borrower agrees to make the repayments set out below. If repayments are due weekly, the first repayment must be made on the start date shown below and subsequent repayments are due weekly after that. If repayments are due fortnightly, the first repayment must be made on the start date shown below and subsequent repayments are due fortnightly after that. If repayments are due monthly, the first repayment must be made on the start date shown below and subsequent repayments are due on the same day in each month after that. However, if in any month there is no day which corresponds to that day, the repayment for that month is due on the last business day of that month. If a repayment day is not a business day, then the repayment is due on the last business day before that repayment day. **REPAYMENT DETAILS** 13x Fortnightly **$38.76** Start Date **17/12/2014** 13x Fortnightly **$12.92** Start Date **06/06/2015**
TOTAL AMOUNT OF REPAYMENTS	The total amount of all the repayments is **$672.00**.
OTHER CREDIT FEES AND CHARGES DISHONOUR FEE	**THE FOLLOWING CREDIT FEES AND CHARGES ARE OR MAY BECOME PAYABLE:** **$33.00** will be debited to the loan account in the event that a direct debit is declined or a payment by salary deduction or by cheque is [redacted] and this results in a repayment not being made by the due date. It is payable to the Lender when it is debited to the loan account.
COMMISSIONS	A commission for the introduction of credit business is to be paid by the Lender to **Hunter Region Cash Converters**. The commission is **$57.12**.

 Customer Initial [redacted]

Appendix 4

Examples of payday loan proceeds being included as income in Capacity to Pay Assessments

Extracted from client contracts

Example 1:

Consumer's capacity to repay

Net Income	$ 2,000.00 (over loan term – 60
Total Expenses	$ 1,400.00 (over loan term – 60
Expected Loan Proceeds	$ 2,025.00
Disposable Income (Net Income – Total Expenses+ Loan	$ 2,625.00
Estimated Repayment Amount (Principal + Credit Product Fees)	$ 2,559.68
Estimated Surplus Income (Disposable Income – Estimated repayment)	$ 65.32
Capacity to repay	Yes

Example 2:

Consumer's capacity to repay

Net Income	$3,172 (over loan term – 60 days)
Total Expenses	$1,000 (over loan term – 60 days)
Expected Loan Proceeds	$2,025
Disposable Income (Net Income – Total Expenses+ Loan proceeds)	$4,197
Estimated Repayment Amount (Principal + Credit Product Fees)	$2,425
Estimated Surplus Income (Disposable Income – Estimated repayment)	$1,772
Capacity to repay (Preliminary Stage)	Yes