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FINANCIAL COUNSELLORS' ASSOCIATION OF WESTERN AUSTRALIA



SUBMISSION TO SENATE ECONOMICS LEGISLATION COMMITTEE: FINANCIAL SECTOR REFORM BILL 2022

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By email: economics.sen@aph.gov.au

Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Members

Financial Sector Reform Bill 2022 Schedule 4: consumer credit reforms

Thank you for the opportunity to provide a submission to the Senate Economics Legislation Committee's (the **Committee**) inquiry on the *Financial Sector Reform Bill 2022* (the **FSR Bill**). This is a joint submission led by Consumer Action Law Centre. A list of all the contributing and supporting organisations is provided at **Appendix B (Our Organisations)**.

This submission focuses on the consumer credit reforms contained in Schedule 4 of the FSR Bill (**Schedule 4**). Some of Our Organisations have provided comment on the other parts of the FSR Bill in a separate submission, led by CHOICE.

We strongly support Schedule 4 of the Bill

The Committee should recommend the Senate pass the FSR Bill, as a matter of priority.

Our Organisations routinely advise and assist people who have numerous payday loans or consumer leases from multiple providers that they are obliged to make repayments to, all at the same time. From this, we know that the product design of payday loans—including high repayments over a short-term—entices people back for further loans, driving a debt spiral. Further, high cost consumer leases similarly cause severe financial distress. In response, in 2018, we formed the Stop the Debt Trap Alliance (**STDT**). STDT members have been doing all we can to advocate for payday loans and consumer leases to be made safer, and has been working to draw attention to the desperate need for reform in this area.

Our Organisations strongly support the content of Schedule 4, which would implement the recommendations made in the final report of Treasury's 2016 Independent Review of Small Amount Credit Contracts (**SACC Review**).¹ The SACC Review was the last time the laws applying to SACCs (or **payday loans**) and consumer leases were reviewed in detail by independent experts. These recommendations were made after an extensive consultation process that took fair consideration of the interests of both consumers and industry. The majority of the recommendations made by the SACC Review were accepted by the previous Government in 2016² and should have easily passed, with bipartisan support. This did not happen.

¹ The Australian Government the Treasury, *Review of the small amount credit contract laws – Final report*, March 2016, available at: https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf

² <https://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/media-releases/government-response-final-report-review-small-amount>

The Bill before this Committee, of all the Bills that have been presented to Parliament on this issue, is the one that would most effectively implement the SACC Review recommendations. The reforms do a very good job of turning the SACC Review recommendations into law.

Schedule 4 of the FSR Bill (in implementing the SACC Review recommendations) would not inhibit the payday lending and consumer lease industry's ongoing operation. People who need to turn to these products as a temporary measure will continue to be able to access them. The major difference is the harms that we outline extensively throughout this submission will be greatly reduced.

In 2015, our Organisations made submissions to the SACC Review to highlight the severe harm payday loans and consumer leases had been causing people in (or at risk of) financial hardship for years. The severe harm we were able to highlight was, and still is, caused by repeat lending of high-cost products contributing to financial exclusion of the most vulnerable. We also emphasised the significant gaps in the existing national credit laws that were being exploited by some lenders.

Since the SACC review and over the last seven years, these products—and the harm caused by them—has not changed. If anything, it has got worse as people across Australia are getting hit by rising interest rates and cost of living pressures. We continue to help families who have been pushed into debt spirals by excessively expensive consumer leases and aggressively marketed payday loans. These credit products do not help people in financial hardship—they breed financial exclusion and almost always leave people worse off.

Many of our Organisations represent financially disadvantaged family violence victim survivors who are forced to take out payday loans in an attempt to manage their safety and financial security. We have shared a victim-survivor's story on page 14 (Jennfier's Story) to highlight the harm caused to family violence victims. The harms that payday loans cause serve to hinder the financial safety of people and their recovery from family violence. Schedule 4, if passed, will also serve to protect family violence victims who experience financial abuse from also experiencing the harms that payday loans cause. Further, we support measures that increase access to government financial assistance for family violence victims that support them to gain financial security such as the national rollout of flexible support packages and increased funding for the No Interest Loan Scheme (NILS).

Passing the FSR Bill will not fix the harm caused by high-cost credit all together, but it would represent a significant step in reducing it and respond to calls for reform for over a decade. **We urge the Committee to recommend that the Senate passes this Bill in full, as quickly as possible.** Please take this step to stop payday loans and consumer leases from trapping more people in cyclical debt.

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Why these reforms matter and the history of the SACC Review

Payday loans

SACCs (commonly referred to as payday loans) are loans of up to \$2,000 paid back over a period of 16 days to 12 months. SACCs are distinguished from all other forms of regulated credit products in the *National Consumer Credit Protection Act 2009 (NCCP Act)* because SACCs can come with additional fees beyond that which are permitted under any other form of regulated loan. The permitted fees are an establishment fee of 20% of the amount borrowed and a monthly fee of 4% of the amount borrowed.³

The generous fee cap on SACCs makes them **the most expensive form of regulated loan in Australia**, and indeed, the vast majority of payday lenders do charge the maximum amount permitted by legislation, as competition is generally ineffective in bringing down prices in this market.⁴ If described as a personal loan or credit card interest rate, the fees on payday loans would often equate to an equivalent annual interest rate of over 200%.⁵

Not all loans for under \$2000 in the Australian marketplace are SACCs. Buy now pay later products (**BNPL**) and wage advance products are not SACCs or not recognised as 'credit' at all under the NCCP Act, and so their terms are largely unregulated. These products are not likely to be impacted by the FSR Bill, but we understand the Government intends on identifying an appropriate regulatory regime for BNPL in future.⁶ While these products are designed to avoid existing legislation (and as a result have very few consumer protections), their fees are generally lower than those charged by payday lenders.⁷

The problems with consumer leases

A consumer lease is a contract that lets someone rent a household item, usually with fortnightly repayments over a fixed term (typically between 12 and 48 months). Commonly leased goods include electronics like phones or laptops, whitegoods and furniture. Consumer leases are extremely similar to hire-purchase agreements or rent-to-buy (and are frequently marketed as such), but with one key difference—that at the end of the lease, the consumer doesn't own the good. Some lessors will gift the good to the lessee at the end anyway, but use the 'consumer lease' arrangement because fewer credit laws apply to them. To some extent, the whole arrangement exists as a result of regulatory arbitrage.

Major harm caused by absence of cost cap for consumer leases

The most obvious and harmful gap in the laws that apply to consumer leases is that **there is no cost cap whatsoever** in either the NCCP Act or the National Credit Code (**NCC**) on what a lessor can charge for an item. Lessors have made ample use of this loophole—a report by the Australian Securities and Investments Commission (**ASIC**) on the cost of consumer leases for household goods found a **consumer lease for a clothes dryer leased by a Centrelink recipient came at a cost equivalent to an 884% interest rate**.⁸ We continue to frequently see consumer lease arrangements where the lessee is locked in to pay many times the price of the good over the course of the loan, yet are still not entitled to own the goods at the end of the lease. Some consumer leases are even stated to go on indefinitely. These are issues that would be fixed by passing the FSR Bill.

³ It should be noted that these caps were enacted in 2012, and were watered down from the initial proposal due to strong industry lobbying. A 2011 senate inquiry on the draft amendments "urged the Government to work with industry" to re-evaluate the caps due to concerns about "industry viability". The chair of that committee, the Hon. Bernie Ripoll, went on to become a prominent advocate on behalf of the payday lending industry.

⁴ These findings are consistent with findings of the Competition and Markets Authority (CMA) in the United Kingdom, which found that customer demand responded weakly to prices and that competition between payday lenders on prices was largely ineffective: Financial Conduct Authority, High-cost credit including review of the high-cost short-term credit price cap, July 2017, p. 23, available at: <https://www.fca.org.uk/publication/feedback/fs17-02.pdf>

⁵ Calculated using RiCalc software – a \$200 loan repayable within 30 days with fees of \$48 which may be charged for a SACC on these terms would equate to an equivalent annual interest rate of approximately 292%.

⁶ <https://ministers.treasury.gov.au/ministers/stephen-jones-2022/speeches/address-responsible-lending-and-borrowing-summit-sydney>

⁷ There are other particularly harmful products that appear be similar to a SACC but which are also not captured by the NCCP Act. A company commonly that arranges many of these loans is Cigno – this will be addressed later.

⁸ <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2015-releases/15-249mr-asic-finds-the-cost-of-consumer-leases-can-be-as-high-as-884/>

Major harm caused by exorbitant fees

The exorbitant fees charged with payday loans and consumer leases mean they are virtually never a good deal for consumers. These are credit products that people typically turn to when they are desperate, and do not consider themselves to have many other options. For this reason, the majority of people who use these products are on lower incomes and are experiencing some level of financial vulnerability or hardship (a fact recognised by previous iterations of this Committee)⁹.

The last thing people on low incomes need is a significant portion of their income being cannibalised by the high fees associated with these credit products, which almost always leave financially vulnerable people worse off and exacerbate financial exclusion, contrary to claims by industry.¹⁰

Case Study – Hilary’s story

Hilary (name changed) lives in regional Victoria, and is a single mother supporting her three school aged children. She works part-time and receives a modest Centrelink parenting payment. Hilary has struggled to make ends meet for years, relying on assistance from family and eventually feeling forced to turn to a number of credit products. Credit products such as payday loans, credit cards and buy now, pay later have exacerbated her financial difficulty over time.

Even after working with a financial counsellor for over a year, Hilary is still trapped in cyclical debt. She has turned to payday loans repeatedly over the last few years when additional expenses (such as assisting family with paying for a funeral) have arisen. However, of the many different products she has used, small amount credit contracts are the most expensive form of credit she has obtained.

In mid-2021, Hilary took out a \$1250 loan from Cash Converters to support her daughter with living expenses. At the time this loan was approved, Hilary was already paying over \$1000 a fortnight to other creditors, and her savings in her bank account routinely dropped below \$100 each week. This was all clear from the documentation Cash Converters obtained from Hilary to conduct their affordability assessment. Despite this, the loan from Cash Converters required her to repay over \$100 a fortnight for 9 months, and came with \$700 worth of fees.

Hilary has since been approved by other payday lenders for similar loans, at times when her bank statements told a similar story. The repayments were not sustainable and they should not have been approved. While these loans may have helped Hilary pay for things upfront, they have routinely left her worse off and have left her trapped in a debt cycle as a result.

Approximate comparative costs of other options for Hilary’s loan

	Payday Loan	Credit Card	Bank overdraft facility	NILS Loan
Sum borrowed	\$1250	\$1250	\$1250	\$1250
Length of loan	9 months	9 months	9 months	9 months
Total fees and charges^{11*}	\$700	\$258.89 (including full \$147 annual card fee)	\$277.18	\$0

⁹ Senate Economics Legislation Committee, Parliament of Australia, National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2) (2020), at 2.5

¹⁰ See for example, Cash Converters submission to Senate Economics Legislation Committee on National consumer credit protection amendment (small amount credit contract and consumer lease reforms) Bill 2019 (No. 2), p 2

¹¹ *Credit card cost calculated with Australian average interest rate (19.94% at 7 October 2022 per <https://finty.com/au/credit-cards/stats/>) and average annual fee (<https://www.canstar.com.au/credit-cards/credit-card-fees/>); overdraft calculation based on fee for CBA’s personal overdraft product (<https://www.commbank.com.au/banking/personal-overdrafts.html>). Both figures also calculated assuming minimum repayments made until the end of the 9 months – if repayments reflected the schedule of a payday loan, these figures could be lower.

Major harm caused by multiple loans approved for people who can't afford them

Harm caused by these products is most pronounced when creditors provide the borrower with multiple loans which they can't afford and which are approved without effectively assessing whether repayments are affordable. When vulnerable consumers are given multiple loans that they cannot afford, repayments gradually take up an increasing and unreasonable proportion of their income, which leads to a debt spiral that is difficult, and often impossible, to get out of. Past independent reports on the same issue indicate a positive correlation between the number of payday loans a person takes out and the likelihood of them falling into a debt spiral.¹²

The risk of repeated debts accruing is not rare or novel. Research commissioned by the Stop the Debt Trap Alliance indicated that over a five-year period, around 15% of all payday borrowers fall into a debt spiral which puts them in financial hardship and at risk of bankruptcy. This is no small number - the research also indicated that 4.7 million payday loans were written between April 2016 and July 2019.¹³

Major harm caused by Irresponsible lending which is rife in the industry

The harm caused by the high cost of these products is amplified by the poor lending standards that is systemic across the industry. Despite our current laws, customers are routinely signed up to products they simply never could afford. This is most commonly due to lenders and lessors following poor processes when conducting affordability assessments required to determine if a product is "not unsuitable" for the customer.¹⁴

One of the big problems with how businesses conduct affordability assessments is that they often involve ludicrous and completely unrealistic estimates of a person's expenditure—with essentials like food, utilities and transport routinely underestimated. Often the estimates they use directly contradict evidence in the bank statements that the customer provides and the lenders are supposed to review. While this likely amounts to a breach of the responsible lending requirements in the credit laws, in our experience it is very difficult to get SACC providers or lessors to acknowledge this which in turn often results in refusals to provide adequate hardship or reimbursement of fees charged.

Moreover, the regulator faces significant barriers in successfully bringing enforcement action in relation to irresponsible lending against this sector of the market because, for example:

- Repeat borrowing is profitable so lenders are likely to be motivated to engage in a range of behaviour from 'tick-a-box' compliance to avoidance. ASIC's Report 426 'Payday lenders and the new small amount lending provisions' (ASIC's payday lending report) confirms this behaviour.¹⁵
- Information about the relevant practices will need to reach the regulator, and will need to do so in a timely way.
- The regulator will generally need enough evidence to establish that behaviour is more than 'one-off' or isolated or attributable to a 'rogue' staff member. This will require similar evidence from multiple consumers.
- The regulator will also need adequate resources in order to pursue a matter.
- Where consumers' evidence can be attacked (for example, because they have been less than truthful in their loan application, often because they are in vulnerable circumstances), additional and more substantial evidence will be needed.

¹² SACC Review, p 12-13

¹³ https://consumeraction.org.au/wp-content/uploads/2019/11/Payday-Lending-Report_FINAL_UPDATED_WEB-1.pdf

¹⁴ The credit laws require a lender to determine if the loan is "not unsuitable". Part of this test is based on an assessment of affordability

¹⁵ <https://download.asic.gov.au/media/3038267/rep-426-published-17-march-2015.pdf>

- At least part of a case is likely to rely on evidence of what was said at the time of lending. This will often involve two conflicting versions of events—the consumer's and the trader's. This makes litigation riskier.
- Consumers' motivation and ability to participate in an enforcement action is likely to be impacted by some or all of:
 - shame
 - embarrassment
 - guilt
 - vulnerability
 - the stability of personal circumstances
 - the potential for adverse allegations to be made against them (e.g. fraud or dishonesty)
 - the potential for adverse findings to be made about them
 - lack of time
 - the lengthy period such actions take from investigation to hearing (commonly several years)
 - the fact that consumer redress may be a secondary consideration in the action - or in some cases not a feature at all
 - other priorities (e.g. work, family etc).

Some or all of these barriers may apply to each enforcement action a regulator wishes to take that involves consumer evidence. It will not be easy for a regulator to be able to effect systemic change across an industry in these circumstances.

Irresponsible lending also remains a profitable business approach for SACC providers and lessors because people will do all they can to make their payments—nobody wants to default on a loan, or have their leased goods taken away. Additionally, if people do miss some payments, default fees result in additional profit if the customer can catch up with repayments. The stress that this can put on individuals and families is immense. Consumer Action's financial counsellors are often forced to refer clients to charities for food vouchers and other essentials that they are not able to pay for.

Case Study – Zane's story

Zane's (name changed) sole income is the disability support pension. Earlier this year, Zane leased an iPhone, and then separately, a soundbar, from a consumer lease provider. Both these leases were for two years, and in total, required Zane to pay an amount nearly double (or possibly higher) than his financial counsellor's estimate of the recommended retail price for each of the products. The fortnightly instalments for the two leases totalled around \$70. Neither item was essential for Zane – he already had a phone.

Zane had almost no savings when he was approved for these leases. His bank statements showed that even before taking out these leases, his pension barely covered his expenses. The responsible lending unsuitability assessment for the second lease undertaken by the consumer lease provider concluded that with the leases he would have less than \$5 extra left to spend each week. This conclusion was only reached by listing his total food expenditure at just \$40 a week, and not accounting for multiple existing debts.

Major harm caused by misleading advertising

Another major aspect of industry conduct that our casework indicates drives negative outcomes is misleading advertising.

Consumer lease industry advertising usually expresses the cost of a lease as a low 'per week' amount, without disclosing the full cost of making many years of payments.¹⁶ Misinformation is common in relation to these leases. Many people seeking advice from Consumer Action about consumer leases report that they did not understand how much the lease would cost when they entered into it. Pressure selling tactics are commonly reported by our clients as well.

Payday lenders, now predominantly operating online, design their websites so their loans appear at the top of Google or other search engines for a range of searches. Websites often advertise their products as though different types of loans are available ('fast cash loan', 'same day loan', 'student loans' 'weekend loans').¹⁷ These loans are all the same, offer the same bad value and cause the same harms.

The 2016 SACC Review recommendations – fit for purpose

The SACC Review panel described the recommendations made in its final report as being consistent with the objective of facilitating financial inclusion, emphasising that this means more than access to finance, irrespective of the cost.¹⁸

At the time they were made, the SACC Review recommendations were considered measured, balanced and meaningful reforms that would reduce the risk of these products causing consumer harm. However, they also enabled the products to be offered by a lender. There were numerous major elements of reform proposed by consumer advocates that were rejected.¹⁹ Likewise, the panel agreed with some of industry's concerns about options for reform canvassed, but rejected others.

On 28 November 2016, the previous Government responded to the SACC Review, accepting the vast majority of the recommendations, and announced that it expected to progress implementation of the legislation during 2017.²⁰ The SACC Review recommendations are discussed throughout this submission in relation to the aspects of Schedule 4 of the FSR Bill that would finally implement them.

The long, fruitless and repetitive road since the SACC Review

A brief recap of the history of matters relating to the SACC Review recommendations over the last six years is below:

- in October 2017, Treasury consulted on draft Legislation intended to implement the SACC Review recommendations accepted by the previous Government (**Treasury Exposure Draft**);²¹
- in February 2018, the Shadow spokesperson for Consumer Affairs tabled a Private Member's Bill in the House of Representatives that was identical to the Treasury Exposure Draft – it was never voted on;²²
- in October 2018, Cathy McGowan, Independent MP for Indi tabled another Private Member's Bill in the House of Representatives that was identical to the Treasury Exposure Draft – it was also never voted on;²³

¹⁶ Examples available at: <https://rent4keeps.com.au/rental-product/tv-audio/>; <https://www.snaffle.com.au/products/>.

¹⁷ See for example: <https://sunshineloans.com.au/loan-types/bad-credit/>

¹⁸ SACC Review, p 2-3

¹⁹ The response of Consumer Action to the SACC Review's final report is available here: <https://consumeraction.org.au/review-small-amount-credit-contract-laws-final-report/>

²⁰ <https://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/media-releases/government-response-final-report-review-small-amount>

²¹ <https://treasury.gov.au/consultation/c2017-t229374>

²² https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bid=r6057

²³ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bid=r6212

- in February 2019, Madeleine King, Labor MP for Brand tabled yet another Private Member's Bill in the House of Representatives that was identical to the Treasury Exposure Draft – it was also never voted on;²⁴
- in September 2019 (the 46th Parliament), Rebekha Sharkie, Independent MP for Mayo tabled yet another Private Member's Bill in the House of Representatives that was identical to the Treasury Exposure Draft – it was also never voted on;²⁵
- in December 2019, Senators Jenny McAllister and Stirling Griff tabled a joint Private Senator's Bill in the Senate that was identical to the Treasury Exposure Draft. That Bill was referred to (the previous iteration of) this Committee, which called for submissions and held hearings. The Committee was split on party lines, with the majority recommending it not be passed,²⁶ however the Bill was still never voted on;²⁷
- in early September 2020, the South Australian (Liberal) State Government published a draft Bill which proposed to implement the SACC Review recommendations into State law, after Federal Government inaction on this issue.²⁸ It did not lead to a Bill before State Parliament;
- in September 2020, the (Commonwealth) Government announced its intention to implement the SACC Review recommendations in conjunction with the removal of responsible lending obligations from all other types of credit products. In December 2020, the Government tabled the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 (Previous Government Bill)* in the House of Representatives. It was referred to (the previous iteration of) this Committee, the majority of which supported passing it (again divided on party lines);²⁹
- in November 2020, Andrew Wilkie, Independent MP for Clark tabled another Private Member's Bill in the House of Representatives that was identical to the Treasury Exposure Draft – it was also never voted on;³⁰
- in March 2021, the Previous Government Bill passes the House of Representatives, but it was never voted on in the Senate.³¹ The Previous Government Bill is discussed further below.

The Previous Government's Bill compared to the FSR Bill

The Bill before this Committee today is, of all these Bills, the one that would most directly follow the SACC Review recommendations. It is an improvement in this regard upon the Treasury Exposure Draft, and the Previous Government Bill.

There are two broad reasons why Schedule 4 of the FSR Bill more closely implements the SACC Review recommendations.

The first is that the current Government has accepted more of the recommendations of the SACC Review in full or in part. The enhancements in this regard are somewhat minor (see sections on proscribed referrals and the ban on canvassing of consumer leases below), but certainly valuable.

The second reason however, is that contrary to what the Explanatory Memorandum to the Previous Government's Bill claimed, that Bill simply did not follow the approach recommended by key parts of the SACC Review, even where accepted by the previous Government. Most crucially, there were meaningful changes to the protected earnings amount caps and the consumer lease cost cap (both discussed below). These changes directly contradicted the recommendations of the SACC Review and the reasoning supporting the recommendation in the

²⁴ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6257

²⁵ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6257

²⁶ [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024484/toc_pdf/NationalConsumerCreditProtectionAmendment\(SmallAmountCreditContractandConsumerLeaseReforms\)Bill2019\(No.2\).pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024484/toc_pdf/NationalConsumerCreditProtectionAmendment(SmallAmountCreditContractandConsumerLeaseReforms)Bill2019(No.2).pdf;fileType=application%2Fpdf)

²⁷ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1234

²⁸ <https://www.cbs.sa.gov.au/campaigns/payday-lending-reform>

²⁹ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/NCCPEcoRecovery

³⁰ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6627

³¹ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6656

final report. These are two of the most important aspects of these reforms, and the changes were such that it would have risked the reforms causing more harm than good. There was no public explanation of why these departures from the accepted expert recommendations were proposed.

Rather than having regard to the Previous Government's Bill, we strongly encourage the Committee to be guided by the SACC Review recommendations in considering this Bill.

Key aspects of Schedule 4 of the FSR Bill

We strongly support Schedule 4 of the FSR Bill in its entirety and without amendments. The reforms do a very good job of turning the SACC Review recommendations into law. It is clear and consistent with the intent. The reforms outlined in the Bill that we consider would be most impactful are each discussed in turn below. A table is also provided at **Appendix A** setting out the key reforms and their corresponding SACC Review recommendations.

10% protected earning amount caps

Recommendations 1 and 15 of the SACC Review recommended the introduction of 'protected earnings amount caps' (**PEA Caps**) for both payday loans and consumer leases. PEA Caps would set a hard limit on the proportion of a person's income they could be required to repay in any pay cycle to either payday loans or consumer leases. The PEA Caps (provided they are set at the right amount) were two of the most important consumer protections recommended by the SACC Review. Their aim was to help significantly reduce the risk of people falling into debt spirals, where they progressively committed more and more of their income to repayments on payday loans or consumer leases.

It was intended that the PEA Caps would also form part of the responsible lending affordability assessment, requiring payday lenders and consumer lessors to ensure borrowers or lessees could not commit an unsustainable amount of their income to payday loans or consumer leases.

Recommendation 1 of the SACC Review recommended that payday lenders should be required to ensure that by issuing a loan to a borrower, the borrower would not be committing more than a total of **10% of their net income** to meet repayments for all their payday loans at any time.³² Recommendation 15 proposed introducing an identical but separate **10% cap** for consumer leases.³³

The SACC Review's Final Report directly considered the figure that the PEA Caps should be set at, and explained their reasoning for picking 10% for each cap. For example, in regard to the payday loan cap, in the report it says:

"The Panel considers that SACC repayments which consume more than 10 per cent of net income have the potential to be unaffordable or cause harm particularly for low income earners and can exacerbate financial exclusion."³⁴

In regard to consumer leases, at page 66 of the SACC Review it says:

"It is the view of the Panel that a cap on total lease payments of 10 per cent of a consumer's net income strikes the right balance between enabling consumers to continue accessing essential items via consumer leases and ensuring that they have the opportunity to improve their financial situation over time by avoiding over commitment to leased household goods".³⁵

³² SACC Review, p 11

³³ SACC Review, p 59

³⁴ SACC Review Final Report, page 16.

³⁵ SACC Review Final Report, page 66.

Current situation: 20% protected earnings cap for payday loans

A PEA Cap already exists for payday loans, but it is currently set at 20% of a person's gross income,³⁶ and only applies to people who receive over 50% of their income from social security payments. This restriction operates under section 133CC of the NCCP Act, though the details of the limit itself is set out via regulation.

In our experience, this 20% limit has not been a sufficient protection for borrowers to which it applies. It does not reserve enough of their income to manage their other expenses, or prevent them from falling into a debt spiral, particularly as people taking out payday loans will often have numerous other debts.

Proposed reform outlined in the Bill

The Bill sets up the framework to introduce PEA Caps for payday loans and consumer leases via the National Consumer Credit Protection Regulations 2010 (**NCCP Regulations**), by amending section 133CC of the NCCP Act to expand how the cap may be set for payday loans,³⁷ and introducing the new section 156B allowing for a cap to be prescribed for consumer leases.³⁸

The PEA Caps must be set at 10%

While the actual PEA Caps will be set in the NCCP Regulations, the Explanatory Memorandum to the FSR Bill (**Bill EM**) states that it is expected the Caps will be set at 10% of a borrower's net income for both SACCs and consumer leases.³⁹ We strongly support setting the Caps at this amount and would vehemently oppose any increase in this figure for either credit product.

It is worth noting that consumer groups advocated in submissions to the SACC Review for a 5% PEA Cap for each product—which had been recommended by academic research.⁴⁰ **A 10% cap was already a compromise.**

The Explanatory Memorandum for the Previous Government's Bill indicated this cap would be doubled for both products, for most people. There was no explanation about why this departure from SACC Review recommendation was proposed—in fact, the Explanatory Memorandum incorrectly claimed to still be delivering on the SACC Review recommendations.⁴¹ The cap should not be influenced by the source of a person's income (be it social security payments or otherwise). More than 10% is too much for any person to commit specifically to SACCs or consumer leases—more could get anyone into trouble. Arguably, many people who are employed are more at risk of changes in income, particularly those working on a low income in the gig economy or similar.

³⁶ Note that for most people in this category, their gross income is similar or the same as their net income

³⁷ Item 12 of Schedule 4.

³⁸ Item 26 of Schedule 4.

³⁹ Bill EM, 4.35; 4.188.

⁴⁰ Pew Trusts, *From Payday to Small Installment Loans*, August 2016, available at: <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/08/from-payday-to-small-installment-loans>

⁴¹ Explanatory Memorandum to the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020*, see paragraphs 3.26 and 4.70

Case Study – David’s story

David (name changed) is an Aboriginal man on a relatively high income. He experienced a relationship breakdown in 2021 and moved back to Melbourne. David took out eight payday loans during a five-month period totaling \$8,500. Despite already paying thousands off some of these loans, David still owed over \$6,700.

The suitability assessment completed by one of the lenders stated that David was already paying close to \$1,500 a fortnight in small amount credit contract repayments – over 40% of his income according to their information. The lender nonetheless approved David for another loan and committed him to an additional repayment of over \$200 per fortnight. Despite his high income, he was unable to afford the repayments and he was stuck in a debt trap. His story demonstrates the value of a 10% protected earnings amount cap on small amount credit contracts applying to everyone. Nobody benefits from committing too much of their income to high-cost credit.

Benefits of the PEA Caps

Higher cost of living issues makes the prospect of raising the PEA Caps more problematic. The PEA Cap is intended to reserve a portion of a person’s wage for essentials. People are going to need more of their income to pay for essentials while wages are increasing slower than inflation and as interest rates rise. This is particularly the case for people on low incomes—if anything, the recommended PEA Caps are more vital in the current economic climate than they were when they were recommended.

PEA Caps would also provide a safeguard against underestimating or assessing expenses of credit product applicants, which is a chronic issue amongst payday lenders and consumer lease providers. We routinely see cases where consumer lessors or payday lenders have determined that a person can afford the repayments on a credit product by referring to generic estimates of expenses, despite the bank statements they obtain for the customer very obviously indicating this does not reflect their spending habits. A bright line test linked to income would protect against the worst instances of this at least.

Finally, while the bright line test would apply in addition to the overall affordability assessment, it would be a simple and clear addition to this process for industry to undertake, and would not require any additional documentation beyond what is already required. Additionally, the test would make it easy for lenders or lessors to more quickly identify unsuitable applicants, reducing the time spent on unsuccessful applications. It would be an easy additional step that would provide clarity and safety to the affordability assessments.

Case Study – Jennifer’s story

Jennifer (name changed) entered into two separate consumer leases with Rent4Keeps, one in July 2021 for an iPad and another in October 2021 for a phone. Both applications were processed by the same salesperson. Jennifer recounted she had told the salesperson that she was a victim-survivor of family violence and receiving the disability support pension, and felt she was pressured to sign the contract very quickly despite not being able to read the terms and conditions on her mobile phone. The copies of the contracts we have seen set out the terms in ridiculously small text.

Rent4Keeps completed two assessments of Jennifer’s financial situation. These applications acknowledge that Jennifer’s sole income source is Centrelink payments, and include incredibly low assessments of outgoing expenses. The salesperson estimated that Jennifer spent only \$20 per fortnight on car expenses, which would not even cover registration, and listed \$30 as her fortnightly cost of food on the second application after estimating \$50 on the first only three months earlier. Rent4Keeps had sighted Jennifer’s bank statements which clearly indicated a higher level of expenditure than their assessment. Jennifer’s was required to pay over \$170 per fortnight under the two agreements – over 15% of her net income. Both assessments indicate that she would have less than \$50 in fortnightly disposable income even if the low expense estimates were correct.

Jennifer has already repaid more than the retail cost of both products, and yet she still owes over \$5,000 on products she does not and may never own. The repayments are unaffordable and are leaving Jennifer in deficit and exacerbating her financial hardship. A legislated 10% protected earnings amount cap for consumer leases would have meant Jennifer would not have been approved for the second (and possibly the first) agreement. As it stands, Rent4Keeps are disputing whether either lease was unaffordable.

Consumer lease cost cap

We routinely assist clients who have been signed up to consumer leases advertised with an attractive per fortnight or per week fee, but the true cost of the fees actually requires them to pay many times the price of the good across the life of the lease. Even if these leases are for essential goods (though many of them are not) the portion of the lessee’s income lost to fees for these products is unreasonable and unsustainable. While the figure in ASIC’s 2015 report quoted above where someone paid an effective interest rate of 884% is on the more extreme end, it is not an obvious outlier. These exorbitant interest rates occur also because of prices of the goods being leased are inflated by lessors.

Consumer Action has assisted numerous clients in similar situations. One client was signed up to a three year lease for a laptop we estimate was worth \$3000 that she was required to pay \$15,600 for (over 5 times the price of the good). This client was also signed up to five other leases for products including a birdcage, and told us she didn’t see the terms and conditions for any of the leases. The case study below contains another recent example.

Another way lease providers wind up misleading people into signing up to leases where they are required to repay an excessive number of times the price of the good is by extending the life of the lease – sometimes even indefinitely. The Bill addresses this by clarifying that any lease over 48 months (or 4 years) will not be able to charge additional fees beyond that which would be allowable if the lease ended at 48 months – directly in line with recommendation 11 of the SACC Review.

Case Study – Tracey’s story

Tracey (name changed) is a victim-survivor of family violence and suffers from numerous mental health conditions. She is also a single mother caring for three children under ten, and her only source of income is Centrelink. Between 2018 and 2021, Tracy had been signed up to six consumer leases - three with Lessor 1 and three with Lessor 2. Tracey also has an outstanding debt to a payday lender, which she told us she has been receiving calls from debt collectors about.

Tracey was in financial hardship before she took out the first lease in 2018, and has been ever since. This should have been clear to the lessors when they assessed whether Tracey could afford the leases - her accounts were frequently near zero or overdrawn and her expenses outweighed her income. Despite this, she was approved for the leases and their repayments took priority over other expenses, as both lessors debited payments via Centrepay.

The leases from Lessor 1 were all particularly poor value, further exacerbating Tracey’s financial hardship. They required Tracey to repay around four times our estimated retail price of the leased goods across the life of the loan – a detail that can easily be missed when the Lessors’ website predominantly advertises a low weekly price. The monthly fees charged on all three leases would have been significantly more than would be permitted under the proposed consumer lease cost cap.

While all the lease agreements were simultaneously on foot, they required Tracey to pay over \$350 a fortnight, which was clearly over 10% of her income (the protected earning amount cap rate recommended to the Government in 2016). Lessor 2 (who provided the latest two leases) appeared to decide the leases were affordable based on assumptions on expenditure which disregarded Tracey’s true circumstances and what she was actually spending. The significant harm these leases caused to Tracey clearly demonstrates that the Lessor’s approach to responsible lending was not appropriate.

Tracey remains under contract with Lessor 1 for two appliances for which she has repaid more than double our estimated retail cost of those appliances. Tracey also told us that when she signed up for the leases she thought that she would have a legal right to own the items at the end of the lease.

Proposed reform in the Bill

Schedule 4 also introduces provisions to the NCC to implement a cost cap for consumer leases. The cap proposed in the FSR Bill would impose a limit on fees charged on the lease, at 4% of the base price of the good per month, for the life of the lease (to a maximum of 48 months). The base price would be set via regulations. The lessor can additionally recoup the price of the good across the life of the loan, and charge any reasonable delivery, installation or add-on fees permitted by ASIC.

The proposed new section 175AA of the NCC in the Bill⁴² would give effect to the cost cap. The way it is drafted is clear and closely follows recommendations 11 and 13 of the SACC Review. The effectiveness of this cap relies on the base price being set at a reasonable price, though presumably this would never be more than the recommended retail price of the good—and would likely be less for second hand goods—in accordance with recommendation 12 of the SACC Review.

A cost cap for consumer leases is desperately needed to bring their fees in line with all other regulated credit products. The 4% per month amount is consistent with the 48% annual cost rate cap in the NCC that applies to almost all other forms of regulated credit.⁴³

⁴² Item 50 of Schedule 4.

⁴³ NCC, s 32AA.

Improvements on the Previous Government's Bill

The cost cap for consumer leases proposed in the FSR Bill improves upon that in the Previous Government's Bill in two ways:

- it removes the right for lessors to charge an additional 20% of the base price of the good as an 'establishment fee'; and
- it makes clear that delivery and installation fees should not be added to the calculation of the 4% per month fee.

Both of these changes are consistent with the cost cap proposed by recommendation 11 of the SACC Review. The Previous Government's Bill departures from the recommended cost cap would have unreasonably enabled lessors to recover additional fees, to the detriment of financially vulnerable consumers. Both the above changes also directly contradicted the reasoning of the SACC Review. In regard to the 20% establishment fee, in the SACC Review final report it stated:

"While the Panel has recommended that the cap be determined by a formula which allows a return of 4 per cent of the Base Price of the goods per month of the lease, akin to the 4 per cent monthly fee allowed for SACCs, the Panel has not proposed mirroring the 20 per cent establishment fee allowed for SACCs. The SACC cap includes a 20 per cent establishment fee because SACCs are for short term and low amounts. For example, if a lease is for \$500 for 90 days the fixed business costs associated with the loan application (including credit checks and to meet responsible lending requirements) could not be recouped if only three 4 per cent monthly fees of \$20 could be charged. Consumer leases however are for longer terms. Information provided to the Panel suggests 12-36 months are currently the most common lease terms."⁴⁴

Additionally, it is also important that the 4% monthly fee will (highly likely) be calculated on top of recommended retail price—or the price retailers would sell this good for outright. This is a figure that already allows for a reasonable mark up of their wholesale price.

Similarly, allowing fees to be charged on delivery and installation was directly in breach of SACC Review recommendation 13 - that a one-off delivery fee could be charged separately to the cap.

"To prevent the cap from causing lessors to no longer to offer goods (particularly, large costly to move goods such as fridges) to individuals living in remote areas, the Panel recommends that a reasonable one-off delivery fee be allowed outside the cap."⁴⁵

The change would have meant that under a 4 year lease, lessees could be required to repay the delivery or installation fee, plus 192% of that amount *again*, which would have been a massive financial incentive for lessors to upsell expensive delivery and installation 'services'. It would have disproportionately harmed more vulnerable people who rely on the delivery or installation services, whether due to transport difficulties, remoteness or otherwise. There was no good reason for this change, and we strongly support the reversion in the FSR Bill to the SACC Review recommendations.

Unsolicited offers and invitations by SACC providers

We strongly support the proposed new section 133CF of the NCCP Act that addresses SACC providers making unsolicited contact with previous SACC users to suggest they take out or apply for another SACC.⁴⁶ This is an important provision that is intended to stop industry conduct that has routinely pushed people toward repeat borrowing and debt spirals.

⁴⁴ SACC Review Final Report, p 53.

⁴⁵ SACC Review Final Report, p 57.

⁴⁶ Item 12 of Schedule 4.

It is standard practice for most payday lenders to directly send text messages or other forms of communication to borrowers just as they are about to pay off one payday loan, suggesting that they apply for another. This kind of marketing is intended to exploit psychological biases and encourage repeat borrowing. The messages are entirely inappropriate—lenders are supposed to consider the requirements and objectives of borrowers before selling a credit product. The only time expensive payday loans can even conceivably be appropriate for someone is where they are in desperate need of short term finance, and their situation is likely to improve in future. There is never an appropriate time for aggressive sales tactics in high-cost credit.

The ban is appropriately broad in that it prevents SACC providers from sending offers even to past borrowers from previous companies, and it needs to stay this way, otherwise industry players will avoid it by sending offers from related lenders or even sharing details of when someone might be susceptible, in exchange for commissions.

Canvassing of consumer leases

Another vital aspect of Schedule 4 is the proposed section 179VA of the NCC, which would introduce a ban on some of the most harmful pressure tactics used by consumer lessors to opportunistically sign people up to lease agreements.⁴⁷ The provision would ban door-to-door selling—a practice that has been shown to result in negative consumer outcomes across a range of industries⁴⁸—and stunts that fringe lessors have used in public places in particularly inappropriate misselling.

This provision delivers on SACC Review recommendation 18 in part. The actual recommendation was to ban unsolicited marketing of consumer leases altogether, which we would support. However, while this does not go that far, it is designed to address the known conduct we are most concerned about.

The SACC Review final report contained case studies of particularly concerning conduct:

- one example ASIC reported of a lessor signing people up to obtain goods from the back of a van in a remote community with a large First Nations population;⁴⁹
- one example provided by Financial Rights Legal Centre, which involved a First Nations single mother who lived in a rural area with low financial literacy who was signed up to rent a huge number of household goods after being told that everyone in the First Nations community was using the company. These sort of sales are often arranged through door-to-door sales or in public places beyond the premises of the lessor.⁵⁰

We know that this kind of conduct remains an issue today—the issue was covered in the news as recently as last month (see link in footnote).⁵¹

This provision would go beyond what the previous Government committed. However, the Previous Government's Bill would not have prohibited these forms of unethical pressure selling, and other types specifically mentioned in the SACC Review final report.⁵²

This provision would stop these excessively harmful fringe operators from pressure selling. It would be hard to imagine any basis on which reputable businesses could reasonable oppose any aspect of this ban.

⁴⁷ Item 34 of Schedule 4.

⁴⁸ For more information see Consumer Action, WEstjustice and Loddon Caampaspe CLC November 2017 publication Knock it off! Door-to-door sales and consumer harm in Victoria, available at: <https://consumeraction.org.au/wp-content/uploads/2017/11/Knock-it-off-Consumer-Action-Law-Centre-November-2017.pdf>

⁴⁹ SACC Review, p 72-73.

⁵⁰ SACC Review, p 61.

⁵¹ <https://www.abc.net.au/news/2022-09-14/accc-considering-issues-raised-over-urban-rampage/101435232>

⁵² See the list at page 72 in particular.

Anti-avoidance provisions

Recommendation 24 of the SACC Review proposed the introduction of provisions aimed at capturing entities using business models for similar types of lending that are not captured by the NCCP Act and NCC, to ensure consumer protection and a level playing field for industry. Since the SACC Review, avoidant credit models have exploded.⁵³

The provisions in Part 4 of Schedule 4 introduce anti-avoidance provisions that impose penalties for businesses if it is determined that they are offering credit products in a manner that is intended to avoid classification as a SACC or a consumer lease. Such factors that will be relevant in reaching this finding are set out and are helpfully linked to consumer perception and outcomes, such as if the arrangement is more complex or more costly to the consumer than if it had been a regulated credit product, or whether the product was advertised in a similar way to a SACC or a consumer lease.

Cigno – deceptive and excessively harmful lending model

In the time since the SACC Review, our services have been inundated with clients seeking advice about unregulated credit products obtained through a company named Cigno. Cigno offer to arrange loans for up to \$1,000 that are generally required to be repaid between 1-3 months—very much comparable to a SACC, however Cigno do not hold a credit licence. It advertises these loans in a similar fashion to payday lenders as well. Cigno then arranges loans for people through third party lenders that do not appear to do any substantial business other than through Cigno. The lender (also not licenced) charges a small fee to the borrower permissible within an exception to the definition of 'credit' in the NCC. However, for the apparent service of arranging and facilitating this loan, Cigno charges exorbitant fees that are well beyond that which would be permitted for a SACC. The fees under the arrangement are often more than the loan itself, and then Cigno gouges people with further excessive fees in a range of circumstances. We have often spoken with people who allegedly owe them thousands on a paltry loan of \$200-300. Cigno will then aggressively chase the debt via repeated texts, emails and even threats to report people to authorities.

Cigno are a clearly predatory lender that takes advantage of people in desperate financial circumstances. ASIC has issued product intervention orders twice to ban their lending models, and have a current proceeding before the courts against Cigno and a lending partner for unlicensed lending.⁵⁴ Cigno have responded to each ASIC action by slightly adapting their lending model.

We believe that the anti-avoidance provisions in Schedule 4 of the FSR Bill would be an effective mechanism to assist ASIC in addressing the harm caused by Cigno and other similar companies.

That said, separate to these reforms we would strongly encourage the Government to consider reviewing the definition of 'credit' that exists in the NCC so that there are no loopholes left for companies like Cigno to exploit. These kinds of models have repeatedly appeared over the years and ASIC has been left to play a game of whack-a-mole to stop them. The best long-term solution would be fix the legislative definition altogether, which could be addressed as part of the Government's planned review of the laws applying to buy now pay later (an issue beyond the scope of this Bill).

Proscribed referrals

Finally, we support the addition of the proscribed referrals provisions at Part 3 of Schedule 4. These provisions would prevent SACC providers from referring prospective borrowers to unlicensed lenders (such as Cigno). This

⁵³ Buy now pay later and wage advance products are also credit products which are designed to avoid regulation under the NCCP Act, but we do not believe these products would be impacted by the FSR Bill. The Government has announced it's intention to separately review how buy now pay later products should be regulated.

⁵⁴ *Australian Securities and Investments Commission v BHF Solutions Pty Ltd and Cigno Pty Ltd* [2022] FCAFC 108. Cigno are currently seeking leave from the High Court to appeal the decision in this case, which found that they had engaged in unlicensed lending.

protection is similar to that contemplated by recommendation 9 of the SACC Review, which was to ban commissions being paid between SACC providers for customer referrals.

We support this revised ban particularly in the wake of the rise of Cigno loans and other forms of unregulated credit. Referrals from SACC providers to unregulated credit providers pose additional risk because the unregulated provider would not be subject to responsible lending obligations. Under the current law, an unregulated provider (like Cigno) could offer SACC providers commissions for receiving referrals for loan applicants they reject because they fail affordability assessments. This ban addresses this risk, and as far as we can see, involves no conceivable downside whatsoever.

Other important reforms outlined in Schedule 4

We also emphasise the value of the following provisions in Schedule 4:

- the proposed section 133CD of the NCCP Act⁵⁵ would introduce a requirement that payday loan repayments and intervals be equal, consistent with SACC Review recommendation 5. This would stop conduct we have seen where the life of loans are artificially extended by reducing payments to very low amounts towards the end of the loan, so that more monthly fees can be charged;
- the proposed section 31C of the NCC would ban payday lenders from charging unexpired monthly fees where a person pays out a loan early, consistent with SACC Review recommendation 7. If a borrower can pay back the amount earlier, this sees the lender realise their profit sooner. Borrowers should not cop the fees for extra months – this current practice effectively imposes a penalty for early payout;⁵⁶
- there are numerous provisions that would improve the disclosure and documentation processes for both payday loans and consumer leases.⁵⁷ While we are sceptical that disclosure is an effective mechanism for reducing consumer harm with complex financial products, improvements in this area are still welcomed;
- the proposed section 179GA of the NCC would introduce a mechanism by which a limit could be set (via regulations) on the amount that can be charged by a consumer lessor for defaults on payments.⁵⁸ Setting this at a reasonable amount in the regulations so that the fee does not amount to a penalty is a must.

⁵⁵ Item 14 of Schedule 4.

⁵⁶ Item 15 of Schedule 4.

⁵⁷ For example, see items 6; 26; 49 of Schedule 4.

⁵⁸ Item 52 of Schedule 4.

Further information

Please contact Policy Officer **Tom Abourizk** at **Consumer Action Law Centre** on 03 9670 5088 or at tom.a@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

- **CONSUMER ACTION LAW CENTRE**
- **FINANCIAL RIGHTS LEGAL CENTRE**
- **INDIGENOUS CONSUMER ASSISTANCE NETWORK LTD**
- **CHOICE**
- **FINANCIAL COUNSELLING AUSTRALIA**
- **UNITING COMMUNITIES CONSUMER CREDIT LAW CENTRE SA**
- **CARE ACT**
- **NILS NETWORK OF TASMANIA**
- **WOMEN'S LEGAL SERVICE VICTORIA**
- **FINANCIAL COUNSELLORS' ASSOCIATION OF NSW INC**
- **FCVIC**
- **THE SOUTH AUSTRALIAN FINANCIAL COUNSELLORS ASSOCIATION**
- **FINANCIAL COUNSELLORS' ASSOCIATION OF WESTERN AUSTRALIA**
- **CONSUMER CREDIT LEGAL SERVICE WA INC**
- **VICTORIAN ABORIGINAL LEGAL SERVICE (VALS)**
- **CENTRE FOR WOMEN'S ECONOMIC SAFETY**
- **HUME RIVERINA COMMUNITY LEGAL CENTRE**
- **ST VINCENT DE PAUL SOCIETY NATIONAL COUNCIL OF AUSTRALIA**
- **KYABRA**
- **TASMANIAN COUNCIL OF SOCIAL SERVICE (TASCOSS)**

APPENDIX A – SUMMARY TABLE OF KEY ELEMENTS OF REFORM

Note: red=departure from SACC Review recommendation

Parts in bold are highlighted as key points of comparison

Page in sub	Rec #	SACC Review Recommendation	Reference in Schedule 4 of FSR Bill	What the FSR Bill would do	Harm addressed	Differences between this and the what the Previous Government's Bill would have done
11	1	A protected earning amount cap set at 10% of net income for all payments to SACCs	Part 1, Item 12	Amend existing provision to NCCP Act to allow cap for anyone to be set via regulations. EM indicates cap would be set at 10% of net income	Stop people from falling into debt cycles where multiple loans and repeat borrowing would take up an unsustainable amount of their income	Amend existing provision to NCCP Act to allow cap for anyone to be set via regulations. EM indicated cap would be set at: <ul style="list-style-type: none"> • for people whose majority of income comes from social security payments, 10% of net income • 20% of net income for all other people
11	15	A protected earning amount cap set at 10% of net income for all payments to consumer leases	Part 2, Item 26	Introduce provision to NCCP Act to allow cap to be set via regulations. EM indicates cap would be set at 10% of net income	Stop people from falling into debt cycles where multiple leases would take up an unsustainable amount of their income	Introduce provision to NCCP Act to allow cap to be set via regulations. EM indicated cap would be set at: <ul style="list-style-type: none"> • for people whose majority of income comes from social security payments, a collective 20% of net income cap with SACCs (if consumer had no SACCs, leases could take up 20% still) • 20% of net income for all other people
14	11	Cap consumer lease fees at 4% of the base price of the good, per month for max 48 months	Part 2, Item 50	Introduce a cost cap for consumer lease fees of 4% of the base price of the good, per month for a maximum of 48 months	Reduce the unreasonable and excessive fees people may be charged for leasing goods	Introduce a cost cap for consumer lease fees of: <ul style="list-style-type: none"> • 4% of the collective amount of the base price of the good, delivery and installation fees, per month for a maximum of 48 months • An additional 20% of the base price of the good

16	8	Ban SACC providers from making unsolicited offers to current or previous SACC borrowers	Part 1, Item 14	Ban SACC providers from making unsolicited offers to current or previous SACC borrowers	Would stop SACC provider using direct messaging to push people into taking out more unnecessary expensive loans	Ban SACC providers from making unsolicited offers to current or previous SACC borrowers
18	18	Ban on the unsolicited selling of consumer leases	Part 2, Item 53	Ban the use of in-person unsolicited selling of consumer leases to consumers outside of their places of business	Would stop: - door-to-door pressure selling - pressure sales by way of customer introductions - sales tactics known to be used in remote communities	Ban door-to-door selling of consumer leases, except with prior arrangement. Would not have banned any conduct in public places.
18	24	Introduce anti-avoidance provisions for unregulated credit products	Part 4	Introduces anti-avoidance provisions for unregulated credit products that are seeking to avoid laws that apply to SACCs or consumer leases	Would empower ASIC to stop unregulated avoidant lending models, like that used by Cigno.	Introduces anti-avoidance provisions for unregulated credit products that are seeking to avoid laws that apply to SACCs or consumer leases
	9	Ban on commissions for referrals between SACC providers	Part 3	Ban on referrals by SACC providers (whether commissions paid or not) to unregulated credit providers only	Stop SACC providers from sending borrowers who cannot afford their loans to unlicensed lenders	No equivalent

APPENDIX B - ABOUT OUR ORGANISATIONS

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians

About Financial Rights Legal Centre

Financial Rights is a community legal centre that specialises in helping consumers 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 is an operator of the National Debt Helpline, 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, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

About Indigenous Consumer Assistance Network Ltd

The Indigenous Consumer Assistance Network Ltd (ICAN) provides consumer education, advocacy, and financial counselling services to Aboriginal and Torres Strait Islander consumers across North and Far North Queensland, with a vision of "Empowering Indigenous Consumers".

Indigenous peoples living in regional and remote communities often experience heightened consumer disadvantage. Structural barriers and an uncompetitive marketplace in remote and regional communities create conditions in which consumer and financial exploitation occur. In line with its vision to empower Indigenous consumers, ICAN provides Indigenous consumers with assistance to alleviate consumer detriment, education to make informed consumer choices and consumer advocacy services to highlight and tackle consumer disadvantage experienced by Indigenous peoples.

About CHOICE

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

About Financial Counselling Australia

FCA is the peak body for financial counsellors in Australia. We are the voice for the financial counselling profession and provide support to financial counsellors including by sharing information and providing training and resources. We also advocate on behalf of the clients of financial counsellors for a fairer marketplace.

About Uniting Communities Consumer Credit Law Centre SA

The CCLCSA was established in 2014 to provide free legal advice, representation, legal education, advocacy and financial counselling to consumers in South Australia in the areas of credit, banking and finance. The CCLCSA is managed by Uniting Communities who also provide general community legal services, as well as a range of services to low income and disadvantaged people including mental health, drug and alcohol and disability services.

About Care ACT

Care is the main provider of financial counselling and capability services in the ACT. Care's Consumer Law program is also the only community legal centre in the ACT specialising in and delivering assistance to vulnerable Canberrans in the areas of consumer and credit law, insurance, bankruptcy, and contracts. Care has a strong commitment to assisting ACT's population to address and resolve issues of financial abuse and operates an outreach service Mobile Debt Clinic.

About NILS Network Of Tasmania

NILS Network of Tasmania is a not for profit community organisation that provides no interest loans of up to \$3,000 to Tasmanians on a Health Care Card or low incomes to purchase essential goods and services. This service is provided through our partnership with Good Shepherd Australia New Zealand, Tasmanian State Government and National Australia Bank. With our loans there are no fees, no charges - ever. We provided these loans across the state to over 3,400 Tasmanians in 2021-22 to a value of \$3.9 million. Since our organisation began in 2002 we have provided over 30,000 loans. Our application process asks clients to visit one of our volunteer loans officers with their bank statements and work through a fortnightly income and expenses budget. We use this budget and bank statement to assess carefully the client's capacity to repay so that we do not add to our client's financial distress by issuing a loan they cannot afford.

About Women's Legal Service Victoria

Women's Legal Service Victoria is a not-for-profit specialist organisation that has been providing free specialist legal services to women since 1982. We work with, and for, women to address legal issues arising from family violence and relationship breakdown. We specialise in providing family violence, family law, child protection, migration and victims of crime legal assistance to women – recognising that these often intersect. We advocate for laws and policies that promote gender equality, improve women's safety and wellbeing, and work towards the elimination of violence against women.

About Financial Counsellors' Association Of NSW Inc

We are the peak membership body that represents all financial counsellors in NSW. Our mission is to support, sustain and enhance the profession. NSW financial counsellors are community workers that provide free, confidential, non-judgmental, non-conflicted advice and services to people and small business owners experiencing financial difficulty and hardship. Financial counselling services are free of charge because the work of our members is funded by the NSW and Federal Governments and benevolent foundations.

About FCVic

Financial Counselling Victoria (FCVic) is the peak body and professional association for financial counsellors in Victoria. Financial counselling is a free and independent advice and advocacy service for people in, or at risk of, financial hardship.

About The South Australian Financial Counsellors Association

SAFCA is the peak body for financial counsellors in South Australia and the Northern Territory. We support financial counsellors to achieve the best possible outcomes for people who are financially vulnerable and support the financial counselling sector to adopt and maintain best practice through professional development, advocacy and law reform within a social justice lens.

About Financial Counsellors' Association of Western Australia

FCAWA supports financial counsellors and their clients through education, information, resources, and relevant casework support. We liaise on behalf of financial counsellors and their clients, with state and federal governments, organisations, businesses and those whose policies affect consumers. We focus on identifying emerging issues, recording current trends and responding to social and systemic issues in the social services sector.

About Consumer Credit Legal Service WA Inc

CCLSWA champions the financial rights of Western Australians on credit, debt and consumer law issues.

- We ensure people in Western Australia are treated fairly in the financial marketplace by providing free, confidential legal advice through our Telephone Advice Line.
- We provide legal representation to people experiencing vulnerability and disadvantage so that they can access justice.
- Our community legal education programs empower West Australians experiencing vulnerability and disadvantage to understand their rights and avoid financial pitfalls.
- We help other service providers, including financial counsellors and community support workers, to understand and support their clients' financial rights.
- We are a voice for change so that financial systems and consumer laws are improved for all.

About the Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) was established as a community controlled Co-operative Society in 1973. We provide referrals, advice/information, duty work or case work assistance to Aboriginal and Torres Strait Islander peoples in the State of Victoria. Our solicitors specialise in one of three areas of law: Criminal Law, Family Law and Civil Law.

About Centre For Women's Economic Safety

The Centre for Women's Economic Safety is a registered charity that exists to support women experiencing, at risk of experiencing, or recovering from economic abuse in the context of domestic and family violence.

About Hume Riverina Community Legal Centre

Hume Riverina Community Legal Service provides free legal assistance to people living in North East Victoria and the Southern Riverina of NSW across 17 local government areas. Our service helps people who are disadvantaged or vulnerable, and would not otherwise be able to get legal assistance, particularly those living in regional and remote areas.

About St Vincent De Paul Society National Council Of Australia

The St Vincent de Paul Society National Council of Australia (the Society) is a lay Catholic charitable organisation that comprises over 45,000 volunteers and members and 6,000 employees who provide on the ground assistance across Australia. Our members and volunteers work directly with those in need by giving them a hand up so they can achieve their full potential.

About Kyabra

Kyabra is a community based organisation committed to strengthening individual, family and community life.

Established in 1976 as the Sunnybank Community Centre, Kyabra continues to provide support and training to thousands of individuals, families and community groups in Brisbane and Sunshine Coast.

About TasCOSS

The Tasmanian Council of Social Service (TasCOSS) is the peak body for the community services industry in lutruwita/Tasmania. Our Vision is of one lutruwita/Tasmania, free of poverty and inequality, where everyone has the same opportunity. Our Mission is to challenge and change the systems, behaviours and attitudes that create poverty, inequality and exclusion, to ensure all Tasmanians have equal opportunity to live a good life. Our membership includes individuals and organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

