



**Submission to: SACC Review Panel
The Treasury**

**Subject: Review of the small
amount credit contract
laws interim report.**

Submission prepared by:

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Uniting Communities works with South Australians across metropolitan, regional and remote South Australia through more than 90 community service programs.

Our vision is: A compassionate, respectful and just community in which all people participate and flourish.

We are made up of a team of more the 1500 staff and volunteers who support and engage with more than 20,000 South Australians each year.

Recognising that people of all ages and backgrounds will come across challenges in their life, we offer professional and non-judgemental support for individuals and families.

Consumer Credit Law Centre

The Consumer Credit Law Centre South Australia (**CCLCSA**) was established in 2014 to provide free legal advice, as well as legal representation and financial counselling to consumers in South Australia in the areas of credit banking and finance. The Centre also provides legal education and advocacy in the areas of credit, banking and financial services. The **CCLCSA** is managed by Uniting Communities who also provide an extensive range of financial counselling and 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.

Uniting Communities, through the CCLCSA, is particularly interested in this enquiry due to our extensive involvement in the provision of financial counselling over many years and ongoing advocacy on a raft of measures associated with financial matters, financial stress, and financial hardship for low and modest income households. Our particular focus is providing support to low and disadvantaged households, and to building families and communities.

We welcome the opportunity to provide comment on the Review of the small amount credit contract laws inquiry's interim report, published in December 2015.

Overall, Uniting Communities regards the observations and options outline in the interim report as positive. It is particularly pleasing to see that important issues such as the adequacy of responsible lending obligations for protecting consumers of small amount credit contracts ("SACC'S"), repeat borrowing, default fee's for SACC's and the adequacy of regulatory protections for consumer leases have not been overlooked.

Our detailed response to specific observations and options outlined in the interim report is provided below.

Interim Report Responses.

Option 1 – Reduce the establishment fee for subsequent loans for a returning customer from 20 per cent to 10 per cent.

Response: Uniting Communities supports reducing the establishment fee on subsequent loans to 10 per cent.

We welcome that the interim report acknowledges that repeat borrowing of SACC's is a major issue. Significantly, it also recognises establishment fees for subsequent loans often do not reflect actual costs incurred by the lender. Moreover, the interim report further recognises that the upfront administrative costs of subsequent loans are significantly lower than those for the initial loan.

As discussed above, CCLCSA clients are generally from low income/Centrelink backgrounds including aboriginal consumers. For this reason, Uniting Communities supports the panel's recommendation that establishment fees for subsequent loans should be lower and properly reflect the actual costs incurred by the lender. In our view therefore lowering the establishment fee from 20 to 10 per cent appears reasonable.

Uniting Communities supports this option because the current cap of 20 per cent provides a financial incentive to lenders to pressure existing borrowers, often the most disadvantaged, into repeat borrowing. These practices expose vulnerable and marginalised clients to significant financial harm and potential exploitation.

Option 2 & 3 – Replace the rebuttable presumption that a SACC is unsuitable if a consumer has had two or more SACC's in 90 days with a bright line test banning SACC to consumers who have had two or more in the past 90 days; Extend the protected earnings amount for Centrelink recipients, where total SACC respondents cannot exceed 20 per cent of gross income, to all consumers and lower the protection earnings amount to no more than 10 per cent of the net income.

Response: Uniting Communities supports the introduction of a 'bright line' test banning repeat borrowing where a consumer has had 2 or more SACC's within a 90-day period and also the option that protected earnings for Centrelink recipients should not exceed 20 per cent of their net income.

Uniting Communities welcomes the panel's concern for protecting vulnerable clients against harm that results from repeat borrowing and unreasonable repayment obligations. In our view, however, options 2 and 3 provide complimentary measures, which properly implemented will better protect the earnings of vulnerable and marginalised consumers.

Through CCLCSA we note that clients often have a raft of debts and with this in mind, consider that a 10 per cent cap on net income is realistic and reasonable. With respect to reforms designed to ban repeat borrowing that is unsuitable to the consumer, we wish to reinforce our support for ASIC's previous submission that raises concern about the extent SACC lenders actually consider information provided about a client's financial situation.

Significantly, ASIC notes that whilst responsible lending obligations to obtain information about consumers' financial situation appears to be complied with, there does not appear to be supporting evidence that SACC lenders actually considered this information. This is clearly an area of concern that requires redress, in particular where vulnerable consumers are concerned.

Moreover, Uniting Communities supports the need to broaden the cap on repayment obligations to include both SACC's and consumer leases, as will be discussed later. Uniting Communities also further reinforces its support for the need for a national database that would enable verification of whether a borrower has defaulted or has had more than 2 or more SACC's in the preceding 90 days. It is particularly important were a 'bright line' test introduced to enforce compliance with responsible lending obligations. In over view, there is a real question about how workable such a test would be without a national data base that enabled for the types of verifications discussed above.

Option 4 – Introduce a default window, where no default fees can be charged until the consumer has missed a payment by one payment cycle.

Response: Uniting Communities supports option 4. Our view is that a grace period for meeting default repayments is reasonable.

Uniting Communities supports the recommendation contained in the interim report that further regulatory intervention is needed to address overcharging by lenders in relation to default fees. Uniting Communities agrees that no default payment should be charged unless one repayment cycle has elapsed. It correctly highlights that in practice, default payments are often used by lenders to artificially increase profits and often bear no relation to the actual costs incurred by lenders as a result of the default.

In addition, it is our view that the default window should be connected to the consumer's income cycle rather than the loan repayment cycle in order to avoid those instances where a consumer is charged a default fee because there was no time allowed for late arrival of payroll or Centrelink deposits.

Option 5 & 6 – Maintain the current maximum amount recoverable for default of the SACC but introduce a supplementary cap to limit how quickly fees can be charged; Cap default fees as a percentage of the amount outstanding on the SACC.

Response: Uniting Communities supports a supplementary cap for default SACC's and a cap on default fees that is a percentage of the amount outstanding and linked to actual administrative fees.

Uniting Communities strongly supports the panel's recommendation to establish a cap on default fees to ensure reasonable recovery of costs. However, our view is that any supplementary cap introduced must be linked to actual costs incurred by the loan provider. In this respect, Uniting Communities strongly agrees with the recommendation that default fees should be capped as a percentage of the amount outstanding on the SACC.

Further, it is our view that a consumer should not be required to pay monthly fees for outstanding months associated with an original loan where the SACC has been repaid earlier.

It is our view that fixed default fees cannot be justified. This is particularly the case with on-line SACCS where administrative costs are much lower than other forms of lending.

Option 9 – Introduce a cap on the maximum amount a lessor can charge. The cap would apply to a defined class of leases covering low-value goods.

Response: Uniting Communities strongly supports a cap on the maximum amount a lessor can charge and that this should be introduced for low-value goods.

In our view, this cap should be introduced to apply to low value goods such as household white goods and appliances. Consumers who enter into consumer leases should have the same protection as consumers of credit products regulated by the **NCCPA**. In practical terms, consumers are using a form of credit for the use of these goods.

Further, we believe the 48 per cent cap should apply to consumer leases. However, concessions granted to SACCS should not apply because the term of consumer leases typically exceeds the term of a SACC.

Moreover, we propose that there should be a limit on the maximum term of a consumer lease. One option for achieving this is to limit a lease to the effective life of a good. This could be determined by reference to the effective life that a good can be depreciated according to Australian Tax Office rules.

Option 11 – Cap the amount of net income that can be used to service all lease payments.

Response: Uniting Communities supports this option.

In our view, there should be protected earnings amounts for all lease payments, similar to those canvassed under option 3. In this respect, we propose a cap restricting the amount of income that can be used to make lease repayments. It should be similar to the options outlined in the panel's interim report for SACCs. Difficulties determining a combined cap could be overcome by introducing a national database where both SACCs and consumer leases are registered.

Option 13 – Provide a remedy for consumers similar to that in section 78 of the National Credit Code allowing action to be taken for unconscionable termination charges.

Response:

Uniting Communities supports this option and agrees that a similar remedy, as outlined in the interim report, should be provided allowing action to be taken for unconscionable termination charges.