

HOW TO
GUIDE

RESOLVING DISPUTES ABOUT

Loans from Cash Converters



financial
counselling
australia




Financial Rights
LEGAL CENTRE


consumer
action
law centre

AS AT 1ST JUNE 2017

ABOUT THIS GUIDE

Cash Converters is the largest payday lender in Australia. Consumer advocates see many clients who have problems associated with loans from Cash Converters.

This guide provides financial counsellors and consumer lawyers with a step by step guide about how you can support your client in a dispute with Cash Converters, about a Small Amount Credit Contract (payday loan).

Small Amount Credit Contracts are:

- Loans up to \$2000
- Loan terms between 16 days and 12 months.

Important

This guide concerns loans made on or after **1 July 2013** when the full legislative protections were introduced for these loans. If the loan was granted before 1 July 2013 then you'll need to get legal advice.

This guide does not apply to Cash Converters' pawnbroker contracts. If your client has a problem with a Cash Converters' pawnbroker's contract, you'll need legal advice.

Cash Converters is also offering Medium Amount Credit Contracts (MACCs). These are loans for between \$2,001 and \$5,000 with terms of between 16 days and 2 years. This guide does not apply to MACCs.

This guide contains information only and should not be relied upon as legal advice. For advice on your client's specific issue, contact one of the agencies listed at the end of this guide.

HOW YOU CAN HELP YOUR CLIENT?

What you Need to Know

There are lots of issues with payday loans. But through the casework of consumer advocates, we have identified two particularly concerning practices with the lending system Cash Converters has relied on.

This means that when you have a client with loans from Cash Converters there are some specific steps you can take.

Importantly, some of your clients may be entitled to compensation for current or past loans.

The Problems Have Been ...

Consumer advocates routinely see breaches of the responsible lending laws by Cash Converters. The loans are often unaffordable when granted and/or didn't meet the client's needs. Two further responsible lending issues we have identified include:

Problem 1: Artificially Extending the Term of the Loans

The amount of repayments under some loans are inexplicably reduced (stepped down) after 6 months without the consumer requiring this. This extends the repayment period to 12 months and maximises the amount of fees that Cash Converters can obtain under the Small Amount Credit Contract regime. Had the repayments been maintained at the original amount, the loans would be paid off faster and at less expense to the consumer.

Problem 2: Using Benchmarks to Estimate Living Expenses

Calculating a loan applicant's living expenses and rental costs by reference to a prescribed percentage of their income (15% and 25% respectively) in circumstances where their actual expenses are more than this. As a result of this conduct, ASIC required Cash Converters to refund \$10.8M to online borrowers.

If the above problems exist, your client has grounds to lodge a complaint on the basis that the loans were unsuitable.

What's in it for Your Client

If the loan(s) are found to be unsuitable, your client will still have to pay back the cash they received under the loan(s) (less any repayments already made), but should not have to pay any fees or charges.

If the payments already made by your client are more than the cash they got, then your client should get a refund.

STEP BY STEP GUIDE

Address the immediate issues

Complete steps 1, 2 and 3 as soon as you can. These can usually be actioned in the one appointment with the client.

TOP TIP: If relevant, include any previous loans that may have been repaid. Your client may be entitled to further compensation.

1

Complete Part A of the Responsible Lending Checklist

This will help to identify whether there is an argument that Cash Converters breached the responsible lending laws or other laws applying to Small Amount Credit Contracts.

2

Request Documents from Cash Converters

Use the attached letter to request relevant documents from Cash Converters about your client's financial situation at the time they applied for the loan(s). Cash Converters has 30 days to provide the documents. You can also use this letter to initiate your client's complaint.

Obtain Client's Bank Statements (as at the time of the loan(s))

You'll need these later to check whether your client had any other payday loans.

3

Cancel any Direct Debits

Cash Converters will generally use a direct debit from the client to ensure repayments are met. If the consumer has insufficient funds, they will often be charged a fee by Cash Converters AND their bank. If the client cannot meet the repayments, or you are negotiating lower repayments on the grounds of hardship, then the client should cancel the direct debit directly with their bank (or credit union/building society). You need to deal with the outstanding debt and any defaults separately.

Documents are received

4

Complete Part B of the Responsible Lending Checklist

Once you have received the documents, complete Part B of the responsible lending checklist. (If you have other questions, you can contact a specialist legal centre).

Does the lending appear to be responsible?

5

NO—Complain

Your client may have a complaint against Cash Converters. Send a complaint to Cash Converters' Internal Dispute Resolution team (see attached letters). Cash Converters has 45 days to respond.

YES—Discuss usual options for managing the debt with your client, including considering whether they are judgment proof or need to apply for hardship

Is the Cash Converters response received within 45 days and/or is it adequate?

6

No? Complain to the Credit and Investments Ombudsman (CIO)

Your client's next step is to lodge a dispute in the CIO. The CIO is free. The CIO can be a slow process. Despite this, it does often resolve the dispute. You can use the contents of your original complaint letter as a basis for filling out the CIO form.

A note on Hardship

These loans are subject to the same hardship provisions as any other contract covered by the Credit Law. If there is no breach of the responsible lending provisions you can always negotiate a hardship arrangement but beware of the cost in additional fees and charges that your client will incur by doing so.

A responsible lending dispute is different from a hardship request. Make sure that Cash Converters deals with the matter as a **responsible lending dispute** and not a hardship application.

Where to get further advice & useful contacts

VICTORIA: Consumer Action Law Centre - PH: 9602 3326 (Worker line ONLY not for clients)

NSW: Financial Rights Legal Centre - PH: 1800 650 084 (Worker line ONLY not for clients)

WA: Consumer Credit Legal Service WA - PH: 08 9221 7066

SA: Consumer Credit Law Centre - PH: 08 8342 1800 OR 1300 886 220

TAS: Hobart Community Legal Service - PH: 03 6223 2500

QUEENSLAND: Legal Aid Queensland - PH: 07 3238 3232

NT: Darwin Community Legal Service - PH: 08 8982 1111

ACT: Consumer Law Centre of the ACT - PH: 02 6257 1788