ASIC
Australian Securities & Investments Commission

Falling short: Compliance with the small amount credit contract obligations

Report 805 | March 2025

About this report

This report summarises findings and observations from ASIC's review of Australian credit licensees who offered small amount credit contracts from December 2022 to August 2024.

Contents

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Executive summary

ASIC has reviewed the practices of lenders that provide small amount credit contracts (sometimes known as 'payday loans') in light of the reforms introduced by the *Financial Sector Reform Act 2022* (FSR Act).

The reforms aimed to 'reduce the risk that consumers of these credit arrangements—many of whom are financially vulnerable—will be unable to meet their basic needs or default on other necessary commitments as a result of entering into these arrangements': see paragraph 4.1 of the [Explanatory Memorandum to the Financial Sector Reform Bill 2022](#).

Based on our review of changes in the sector, we are concerned that some small and medium amount credit contract providers may be falling short of their obligations by:

› entering into unsuitable contracts with consumers, or

› failing to identify an appropriate target market and distribute their products accordingly.

We will also be concerned about any signs of business models that may be attempting to avoid the additional consumer protections imposed on small amount credit contracts.

We noted changes to the structure of the sector following the recent reforms. In particular, there has been a reduction in the number and total value of small amount credit contracts being provided to consumers, and an increase in lending through other products. Notably there has been an increase in medium amount credit contacts.

This report is the latest step in a significant body of work by ASIC over several years in relation to small amount credit contracts and other types of products that involve providing small amounts of credit to consumers.

We will continue to focus on reducing consumer harm caused by small amounts of credit, regardless of the product through which the credit is offered.

What we did

In our review, we undertook a range of activities to better understand how small amount credit contract (SACC) lenders were responding to the reforms and their existing obligations, and how consumers are likely to be affected.

- We discussed emerging issues and concerns with consumer advocates.
- We met with industry representatives and obtained information from SACC lenders about business models and product types.
- We reviewed intelligence and data held by ASIC.
- We examined data from other ASIC work on target market determinations (TMDs) and the design and distribution obligations, which included a review of medium amount credit contract providers.
- We obtained data and information about practices from five SACC lenders (sample group) who offered small amount credit contracts before the reforms commenced, covering the period 1 December 2022 to 31 August 2024 (review period).
- We reviewed websites of 14 of the largest small and medium amount credit contract lenders.

What we found

Changes in the small amount credit sector

After the reforms came into effect in December 2022 and June 2023, we saw a number of changes in the small amount credit sector.

These changes included:

- a reduction in the number of small amount credit contracts provided
- an increase in the number of medium amount credit contracts provided, and
- an increase in the total number of missed repayments for medium amount credit contracts, but a decline in the total number of missed repayments for small amount credit contracts.

The following snapshot of the small amount credit sector summarises the key changes we observed and other findings from our review.

Snapshot of the small amount credit sector

A small amount credit contract is a high-cost, short-term loan that:

- has a credit limit of up to **$2,000**
- has a loan term between **16 days and 12 months**
- is not a **continuing credit contract**
- is not provided by an **authorised deposit-taking institution** (ADI)
- has **no security** for the debtor's obligations under the contract.

$1.3 billion

Total value of small and medium amount credit contracts provided to consumers in the 2023–24 financial year

Average loans entered into between December 2022 and August 2024 for five selected providers (sample group)

Small amount credit contracts

Average loan amount **$767.52**

Average loan term **20.94 weeks**

Medium amount credit contracts

Average loan amount **$2,499.19**

Average loan term **30.46 weeks**

Key findings

Shortfalls in compliance

Small and medium amount credit contract providers may be falling short of their obligations by potentially:

- entering into unsuitable contracts with consumers
- failing to identify an appropriate target market and distribute their products accordingly.

We will also be concerned about any signs of business models that may be attempting to avoid the additional consumer protections imposed on small amount credit contracts.

Changes in the small amount credit sector

- A reduction in the number of small amount credit contracts provided
- An increase in the number of medium amount credit contracts provided
- An increase in the total number of missed repayments for medium amount credit contracts, but a decline in the total number of missed repayments for small amount credit contracts

Background to the reforms

In 2015 the Australian Government established an independent review into the laws governing small amount credit contracts.

ASIC made several submissions, which noted our significant compliance and enforcement work on:

- responsible lending
- avoidance conduct, and
- misleading advertising.

We suggested that objective, unambiguous obligations were more likely to achieve consistent and desired outcomes and reduce complexity and compliance costs for business.

The review panel made 24 recommendations with 16 applying to small amount credit contracts.

Note: See Treasury, *Review of small amount credit contracts*, 2016 (final report).

In its final report, the review panel noted a range of conduct raised in submissions that suggested the need for reforms.

This conduct included:

- high levels of repeat lending to consumers through small amount credit contracts with concerns about debt spirals
- repeated SMS messages being sent to consumers who were vulnerable (or vulnerable at certain times) encouraging them to apply for further small amount credit contracts
- rejected application information being sold to other lenders, noting that these consumers were likely to be already experiencing financial difficulty.

The FSR Act reforms were introduced in response to the review panel's recommendations.

> A key objective of the review panel's recommendations was to '[p]romote financial inclusion by ensuring that consumers do not enter into unaffordable small amount credit contracts that absorb too large a proportion of their net income'.
>
> **Final report** | *Review of small amount credit contracts*

ASIC's work in relation to small amounts of credit

Since ASIC became the national regulator for consumer credit in 2010, we have undertaken a significant number of enforcement and compliance actions relating to credit for small amounts, in response to evidence of consumer harm. These actions have targeted credit regulated under the *National Consumer Credit Protection Act 2009* (National Credit Act) and credit that purported to sit outside the regulatory perimeter.

ASIC continues to focus on this area of consumer lending and has several investigations underway in this sector.

Consumer harms

Small amounts of credit can often have a significant impact on financially vulnerable and disadvantaged consumers. This is because these consumers can have:

› limited access to credit and be excluded from other (usually lower cost) credit products

› fewer financial resources to draw on, and

› fewer alternative options if they experience greater difficulty in making repayments, and the consequences of non-payment and/or default can be more significant.

Cost of living pressures are likely to affect Australians on lower incomes even more severely as a larger percentage of their income may be devoted to non-discretionary expenditure with less flexibility and resources to respond to increasing costs.

This impact is heightened by the use of multiple forms of credit for small amounts (each with their own costs) to meet basic needs.

ASIC's ongoing surveillance and enforcement action

Following on from the Government's independent review in 2015, ASIC has continued to receive information and intelligence from sources such as consumer advocates about the difficulties faced by vulnerable consumers when accessing credit for small amounts.

We have taken significant action to disrupt harmful conduct in these sectors. Our current review follows numerous surveillance activities and enforcement action, including:

› collecting and analysing data and records from credit providers to identify potential misconduct and problematic themes

› reviewing compliance with the reasonable steps obligation under the design and distribution obligations by a range of entities, including providers of medium amount credit contracts

› issuing stop orders on TMDs where we identified concerns about a breach of the design and distribution obligations, and

› making product intervention orders where significant consumer detriment was identified.

We have also undertaken civil proceedings against lenders where we held concerns that they were breaking the law, including in relation to responsible lending, charging prohibited fees and failing to comply with the design and distribution obligations.

Note: For examples of recent ASIC enforcement action and civil proceedings, see Appendix 1 to this report. See also Report 754 *Target market determinations for small amount credit contracts* (REP 754) and Report 795 *Design and distribution obligations: Compliance with the reasonable steps obligation* (REP 795).

Changes in the small amount credit sector

As part of our regular data collection processes, ASIC gathers data from Australian credit licensees (credit licensees) offering small and medium amount credit contracts. We used this data and the data from our review to create a snapshot of the small amount credit contract sector.

We observed a contraction in the market and a rapid shift away from providing small amount credit contracts. This is consistent with the findings in our 2015 report on payday lending when specific provisions such as cost of credit caps were first introduced: see Report 426 *Payday lenders and the new small amount lending provisions* (REP 426).

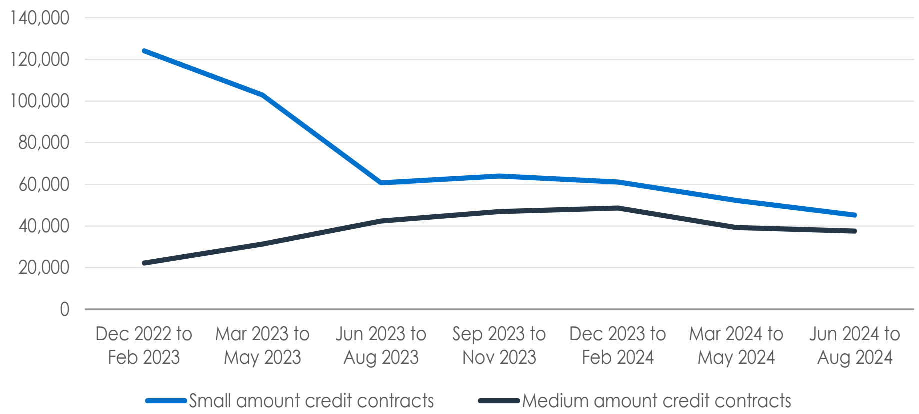
SACC lenders have responded to the tightening of laws applying to small amount credit contracts in a variety of ways. Examples include:

- ceasing to offer these contracts
- reducing the amount of credit and/or increasing the length of loan terms for small amount credit contracts for some consumers, and
- offering alternate credit products, such as medium amount and continuing credit contracts – while most SACC lenders already offered other types of credit in addition to small amount credit contracts, four out of the five lenders we reviewed introduced additional products after December 2022.

We conducted a website review of 14 of the largest small and medium amount credit contract providers, which showed that none of the lenders offer small amount credit contracts exclusively.

Figure 1 highlights the transition from small to medium amount credit contracts over the review period. While new small amount credit contracts are still being entered into, there was a significant drop-off in these contracts in early 2023, with a corresponding increase in medium amount credit contracts.

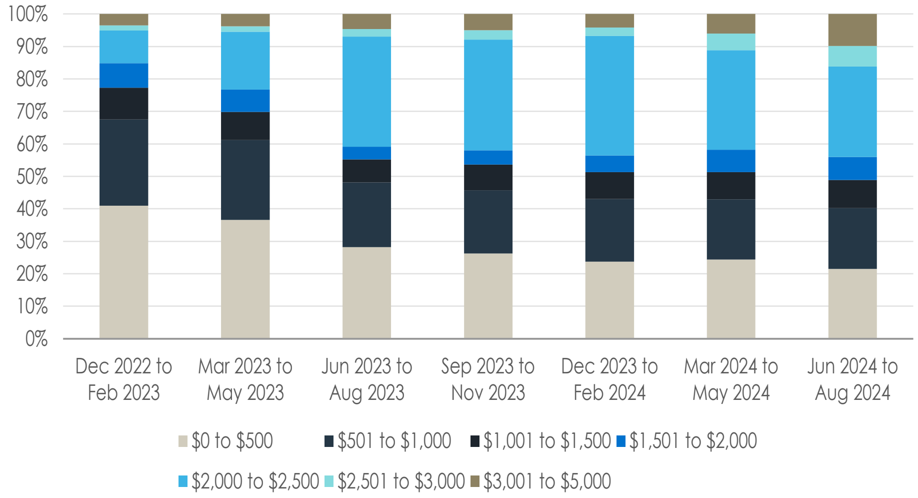
Figure 1: Number of medium and small amount credit contracts entered into by providers in our sample group, by quarter



Note: For the data in this figure, see Table 1 in Appendix 2 (accessible version).

Figure 2 highlights the percentages of small and medium amount credit contacts entered into at varying dollar ranges. More than 80% of these loans in the December 2022 quarter were small amount credit contracts. However, this changed to less than 60% of loans by the August 2023 quarter when more than 30% of all small and medium amount credit contacts entered into were between $2,000 to $2,500 (up from around 10% six months earlier).

Figure 2: Number of loans entered into by size of loans by providers in our sample group, by quarter

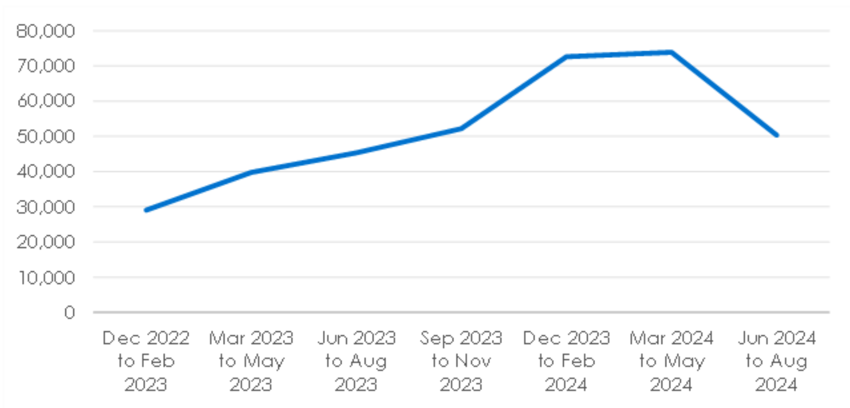


Note: For the data shown in this figure, see Table 3 in Appendix 2 (accessible version).

Figure 3 highlights a significant spike in the number of missed repayments for medium amount credit contracts. The number of missed repayments has since reduced but remains significantly higher than in December 2022.

While many of these changes are likely to be in response to the reforms, there may be a number of other factors that affect the products offered by lenders and used by consumers (e.g. continued competition through other products such as buy now pay later and wage advance products).

Figure 3: Number of missed repayments for all medium amount credit contracts entered into by providers in our sample group, by quarter



Note: For the data shown in this figure, see Table 2 in Appendix 2 (accessible version).

Meeting the responsible lending obligations

In our review, we observed that some SACC lenders have made changes to their business models or practices that increase the risk of breaching the responsible lending obligations.

Before entering into a credit contract, or increasing the credit limit of a credit contract, credit providers (including SACC lenders) are required to assess whether a credit contract will be unsuitable for a consumer either because:

- it is likely that the consumer will be unable to make the repayments under the proposed contract, or could only make repayments with substantial hardship, or
- the proposed contract will not meet the consumer's requirements and objectives.

If a loan is unsuitable, a credit provider is prohibited from entering into or increasing the credit.

Ensuring the credit contract meets the consumer's requirements and objectives

We observed conduct that raises concerns about lenders' practices to ensure that a credit contract meets the consumer's requirements and objectives.

Of particular note, two of the five lenders in our sample group were offering alternative credit products to consumers who had applied for a small amount credit contract but were ineligible because of the protected earnings amount.

Other practices we observed included:

- asking consumers to consent to being provided with a higher credit amount than initially sought
- providing medium amount credit contracts for loan amounts just above the small amount credit contract threshold with relatively short repayment periods
- consolidating existing debts under a small amount credit contract into an alternative credit contract (potentially with additional funds required by the consumer), and
- offering continuing credit contracts.

Example: Offering alternative products that may be unsuitable

We observed at least one lender offering continuing credit contracts to consumers in circumstances that may suggest that these consumers previously obtained a small amount credit contract.

Unlike small and medium amount credit contracts, which provide credit over a fixed period of time, continuing credit contracts provide an open-ended, revolving line of credit. This product type is likely to be unsuitable for a consumer seeking credit for a one-off or short-term expense.

Example: Offering more credit than initially requested

We observed that at least one lender may be offering consumers more credit than the consumer had initially requested, which may be inconsistent with the consumer's requirements and objectives. The amount of credit sought by consumers is a critical component of the consumer's requirements and objectives.

ASIC's expectations

Effective responsible lending controls improve outcomes for both consumers and lenders. SACC lenders should regularly review their business models and practices, including in response to changes in regulation or market conditions.

We expect that all credit providers making changes to their product offerings will:

- carefully consider and calibrate their approach to responsible lending to allow for differences between the products and the consumer cohorts accessing them
- have processes and practices that ensure they review consumers' individual circumstances rather than having a 'one-size-fits-all' approach to offering new loan types, and
- not enter into credit contacts that are unsuitable for consumers.

While consumers may modify their requirements and objectives in the course of applying for credit, we expect any adjustments to the consumer's requirements and objectives to be:

- carefully documented
- defensible in light of the initially stated requirements and objectives, and
- genuinely reflective of what the consumer requires.

The consumer's ability to make repayments

The FSR Act reforms—in particular, changes to the protected earnings amount—mean that some consumers who could previously obtain a small amount credit contract can no longer do so, or only for a smaller amount and/or for a longer term.

ASIC's observations

We are concerned with practices by SACC lenders that appear to be offering alternate forms of credit to consumers, particularly for larger amounts, where the consumer is not eligible for a small amount credit contract.

Where we have information that suggests SACC lenders are rolling significant numbers of consumers with previous small amount credit contracts into larger or continuing credit contracts, we will consider further regulatory action.

Interaction with the design and distribution obligations

While our review did not focus on the design and distribution obligations, we observed conduct that raises concerns about lenders' TMDs, including whether lenders are appropriately determining their target market (i.e. whether the product is likely to be consistent with the particular class of consumers' likely objectives, financial situation and needs).

Figure 2 highlights the significant increase for the five lenders in our sample group in loans valued between $2,001 to $2,500 (slightly above the maximum loan amount allowable for small amount credit contracts). This corresponds with a sizeable decline in the number of small amount credit contracts entered into.

This finding supports our concerns that some consumers who previously obtained small amount credit contracts are entering into loans for larger amounts.

ASIC's expectations

We expect that all credit providers making changes to their product offerings will:

- adjust their TMDs to take into account product changes and the likely target market for the new or altered product
- consider whether consumers have previously used small amount credit contracts and if so, whether the product is appropriate and understandable for the targeted consumers, and
- ensure their review triggers and distribution of the product remain appropriate.

Additional obligations for SACC lenders

For the additional obligations relating to small amount credit contracts, we identified some areas where we consider lenders may be at greater risk of not meeting their obligations. We will follow up on our observations with individual entities as needed and consider a range of regulatory options in response to concerns identified.

Note: See s2 of the FSR Act for commencement dates for the new provisions. These reforms apply in addition to the existing provisions for small amount credit contracts, including the responsible lending obligations, disclosure requirements, hardship obligations, and limits on the amount and types of fees that may be charged.

Conduct designed to avoid the obligations

The FSR Act introduced a broad prohibition on conduct with an avoidance purpose: see s323A of the National Credit Act. This prohibition serves to minimise financial harm, disincentivise businesses from undertaking avoidance practices, and drive competition by ensuring all providers are meeting the same obligations for small amount credit contracts.

Factors that must be considered when determining whether a person has entered into or carried out a scheme for an avoidance purpose (regardless of whether credit is regulated under the National Credit Act or not) include whether:

- a scheme or contract is or would be more complex or costly than a small amount credit contract would have been
- representations made about a scheme or contract, such as in advertising, are similar to those made about small amount credit contracts, and/or
- representations or advertisements about the scheme or contract are targeted towards the same or similar groups of people as those to whom representations about small amount credit contracts are made: see s323B of the National Credit Act.

ASIC's observations

We are considering the changes SACC lenders have made to business models or products and their intersection with other provisions that apply to small amount credit contracts and other forms of credit.

For example, we observed the following practices in the sector:

- Some credit providers that previously offered only small amount credit contracts are now offering only medium amount credit contracts and some SACC lenders have significantly increased the number of medium amount credit contracts entered into. Some consumers who previously obtained credit for amounts of $2,000 or less can now only obtain credit from the same provider for greater than this amount.
- Some credit providers are offering medium amount credit contracts close to $2,000 with relatively short repayment periods. While these amounts are nearly equal in value to a small amount credit contract, consumers do not have the benefit of the additional SACC protections.
- As shown in Figure 3, there was an upward trend in the number of missed repayments and default rates for medium amount credit contracts offered by current or previous SACC lenders.

We will continue to review business models that may be attempting to avoid provisions that apply to small amount credit contracts.

Prohibition on proscribed referrals

SACC lenders must not refer a consumer to another person if the referral is likely to, directly or indirectly, result in the consumer entering into a credit contract or arrangement where the credit that is (or may be) provided is not regulated by the National Credit Code: see s160G of the National Credit Act.

ASIC's observations

We observed that SACC lenders are generally aware of this obligation and appear to have taken steps to mitigate the risk of a contravention. Three of the five lenders in our sample group had arrangements to refer their declined applications to an external platform that matches loan applications with credit licensees.

We understand that some SACC lenders may be entering into written agreements with lead purchasers that provide a level of assurance that a consumer referred by the SACC lender is not reasonably likely to be offered an unlicensed credit product.

Where such arrangements are in place, we consider it is prudent for SACC lenders to regularly audit the practices and processes of the lead purchasers and ensure that adequate governance arrangement and controls are in place. This can help to prevent prohibited referrals being made. SACC lenders who solely rely on contractual agreements with third parties to not make prohibited referrals, and who do not take further steps, may be at risk of breaching their obligations.

Unsolicited communications

SACC lenders must not make unsolicited communications to current or previous small amount credit contract consumers or applicants enclosing offers or invitations to apply for such loans: see s133CF of the National Credit Act. This prohibition ensures that a decision to apply for a small amount credit contract is the result of an unsolicited choice made by the consumer rather than in response to a lender's prompt.

ASIC's observations

All five lenders in our sample group stopped sending their consumer base offers inviting them to apply for a small amount credit contract.

Restrictions on repayments and fees

Repayment amounts and the intervals between repayment dates for small amount credit contracts must be equal: see s133CD of the National Credit Act.

There are limited exceptions to this requirement. For example:

- where all other repayments are the same amount, the last repayment can be up to 5% less than the other repayment, and
- the interval between the credit being provided and the first repayment cannot be more than twice the length of the interval between the first and second repayments.

A credit provider also cannot require or accept payment of monthly fees for a month that commences after the date on which the loan is repaid: see s31C of the National Credit Code. This addresses the consumer harm resulting from having to pay a higher cost for credit due to an artificial lengthening in the term of the contract and provides a benefit for early repayment.

ASIC's observations

We are concerned by arrangements where consumers are entering into back-to-back credit contracts, which can increase the risk of consumer harm. We will continue taking regulatory action where this practice is causing consumer harm.

Revised protected earnings regime (income cap)

Lenders must not enter, or offer to enter, into a small amount credit contract with a borrower if the total repayments under the contract, and any other small amount credit contracts that the borrower has with any SACC lender, would exceed 10% of the borrower's net income: see s133CC(1) of the National Credit Act and reg 28LCA of the *National Consumer Credit Protection Regulations 2010*.

ASICs observations

The income cap was previously set at 20% of a consumer's gross income. This change further limits the amount of a consumer's income that can be used to make repayments for a small amount credit contract.

As indicated earlier, we have observed some SACC lenders responding to this change by:

- reducing the amount they lend to consumers and/or increasing loan terms for small amount credit contracts, and/or
- offering alternative products to consumers.

We will continue to review these practices to ensure that in providing alternative products lenders are not breaching their obligations.

Appendix 1: ASIC's enforcement action

Examples of ASIC action on credit offered for small amounts

- Extending product intervention orders on short term credit and continuing credit contracts (see 24-001MR)
- Taking Federal Court action on businesses ASIC alleged were operating without an Australian credit licence (see 24-111MR)
- Successful Federal Court action on a business model used to sell everyday goods, which contravened the 48% annual rate cap and other requirements under the Credit Act (see 24-195MR)
- Making interim stop orders on a buy now pay later and a credit-for-rent product (see 23-142MR and 23-031MR)
- Accepting a court enforceable undertaking from a pawnbroking business due to concerns it was engaging in unlicensed credit (see 24-270MR)

Examples of recent civil proceedings by ASIC

- In June 2024, the Federal Court ordered Ferratum Australia Pty Ltd (in liquidation) to pay a total of $16 million in penalties for numerous contraventions of the National Credit Act and the National Credit Code (see 24-141MR).
- In June 2022, ASIC commenced civil penalty proceedings in the Federal Court against Sunshine loans Pty Ltd for collecting over $320,000 in fees ASIC alleged it was prohibited from charging when providing small amount credit contracts. These proceedings are ongoing (see 22-132MR).
- In December 2024, ASIC filed civil penalty proceedings in the Federal Court against Ausfinancial Pty Ltd, trading as Swoosh Finance, for allegedly breaching its responsible lending and design and distribution obligations (see 24-285MR).

Appendix 2: Accessible versions of figures

Table 1: Number of medium and small amount credit contracts entered into by providers in our sample group, by quarter

Quarter	Small amount credit contracts	Medium amount credit contracts
Dec 2022 to Feb 2023	124,138	22,114
Mar 2023 to May 2023	102,898	31,247
Jun 2023 to Aug 2023	60,681	42,309
Sep 2023 to Nov 2023	63,987	46,930
Dec 2023 to Feb 2024	61,035	48,607
Mar 2024 to May 2024	52,194	39,238
Jun 2024 to Aug 2024	45,268	37,529

Note: This is the data shown in Figure 1.

Table 2: Number of missed repayments for all medium amount credit contracts entered into by providers in our sample group, by quarter

Quarter	Loans entered into	Loans with more than one missed payment
Dec 2022 to Feb 2023	22,114	29,075
Mar 2023 to May 2023	31,247	39,782
Jun 2023 to Aug 2023	42,309	45,352
Sep 2023 to Nov 2023	46,930	52,181
Dec 2023 to Feb 2024	48,607	72,634
Mar 2024 to May 2024	39,238	73,863
Jun 2024 to Aug 2024	37,529	50,355

Note: This is the data shown in Figure 3.

Table 3: Number of loans entered into by size of loans by providers in our sample group, by quarter

Quarter	$0 to $500	$501 to $1,000	$1,001 to $1,500	$1,501 to $2,000	$2,000 to $2,500	$2,501 to $3,000	$3,001 to $5,000
Dec 2022 to Feb 2023	40.99%	26.51%	9.79%	7.58%	10.04%	1.56%	3.52%
Mar 2023 to May 2023	36.58%	24.64%	8.60%	6.89%	17.87%	1.62%	3.80%
Jun 2023 to Aug 2023	28.19%	19.94%	7.07%	3.93%	33.92%	2.34%	4.61%
Sep 2023 to Nov 2023	26.29%	19.39%	7.95%	4.41%	34.11%	2.80%	5.03%
Dec 2023 to Feb 2024	23.73%	19.27%	8.27%	5.17%	36.81%	2.62%	4.13%
Mar 2024 to May 2024	24.35%	18.56%	8.37%	6.93%	30.67%	5.06%	6.05%
Jun 2024 to Aug 2024	21.49%	18.72%	8.71%	7.01%	27.91%	6.36%	9.79%

Note: This is the data shown in Figure 2.

Key terms and related information

Key terms

credit licensee	The holder of an Australian credit licence
continuing credit contract	Has the meaning given in s 204 of the National Credit Code
FSR Act	*Financial Sector Reform Act 2022*
National Credit Act	*National Consumer Credit Protection Act 2009*
National Credit Code	Schedule 1 to the National Credit Act
medium amount credit contract	Has the meaning given in s204 of the National Credit Code
proscribed referral	Has the meaning given in s160G(2) of the National Credit Act
review period	December 2022 to August 2024
SACC lender	A credit licensee who provides small amount credit contracts
small amount credit contract	Has the meaning given in s5 of the National Credit Act
TMD	Target market determination

Related information

Headnotes

continuing credit contract, Financial Sector Reform Act, medium amount credit contract, SACC lender, small amount credit contract

Legislation

Financial Sector Reform Act 2022

National Consumer Credit Protection Act 2009

National Consumer Credit Protection Regulations 2010

ASIC documents

REP 426 *Payday lenders and the new small amount lending provisions*

REP 754 *Target market determinations for small amount credit contracts*

REP 795 *Design and distribution obligations: Compliance with the reasonable steps obligation*