



Liquidators and Trustees beware when dealing with proofs of debt from payday lenders

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The National Consumer Credit Protection Act 2009 (which includes the National Credit Code) requires persons to hold a credit licence to engage in credit activities such as the provision of loans. In relation to small loans or “pay day” loans, the National Credit Act provides protection to consumers to reduce the risk of falling into debt. In particular, where a small amount loan is entered into (i.e. amount borrowed is \$2,000 or less and term is between 16 days and 1 year) the credit provider must not charge interest in excess of the interest permitted under the National Credit Act.

In the recent Federal Court case of *Australian Securities and Investments Commission v Fast Access Finance Pty Ltd & Ors* [2015] FCA 1055, the Court held that Fast Access Finance breached consumer credit laws by engaging in credit activities without holding an Australian credit licence, charging consumers interest of over 240% per annum and entering into contracts for the sale and purchase of diamonds to conceal the true nature of the transaction and to avoid the statutory interest cap.

Liquidators and Trustees need to be mindful when determining proofs of debt from small loan or “pay day” lenders to ensure that the lender:

- holds an Australian credit licence;
- has charged an appropriate amount of interest in accordance with the statutory interest cap;
- has entered into a valid contract with the consumer; has
- has generally complied with consumer credit laws in their activities in relation to the consumer.

Read the ASIC release [here.\(link is external\)](#)

If you require any assistance or have any questions in relation to the National Credit Act, or the proper treatment of proofs of debt, please do not hesitate to contact a Principal of the Matthews Folbigg Insolvency and Restructuring Team:

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