

Article Information

Authors: Andrea Beatty, Chelsea Payne, Chloe Kim

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Cashed up consumers from Cash Converters settlement

The Federal Court has recently approved a \$42.5 million settlement for a class action against Cash Converters.

The Federal Court approved a \$42.5 million settlement in March for a class action against Cash Converters concerning the charging of excessive fees on personal loans. Cash Converters were accused of acting unconscionably for breaching the maximum interest cap under the consumer credit laws.

This settlement follows a \$16.4 million settlement approved by the Federal Court in 2018 in a separate class action regarding interest charged on small amount credit contracts.

Original action

It was alleged that for one-month loans between April 2010 and June 2013, Cash Converters charged more than 400% interest despite there being a legal cap at 48%.

Lead plaintiff disability pensioner Kim McKenzie brought a claim against Cash Converters in 2016 on behalf of 30,000 Queensland borrowers.^[1] Ms McKenzie was charged \$700 in brokerage fees across 15 loans which were meant to be short-term solutions. Consequently, the high interest rates on the loans were leading consumers into further debt. As a result of this claim, Cash Converters settled for \$16.4 million without admitting fault.

Current action

During the periods between July 2009 and June 2013, Cash Converters required borrowers to appoint a broker which had a brokerage charge of 35%. This contravened an amendment to Queensland's *Consumer Credit (Queensland) Special Provision Regulation 2008* (QLD) law in 2008 which required brokerage fees to be included in the contract's real interest rate.

Due to this model, lead plaintiff Sean Lynch represented by Maurice Blackburn brought the class action against Cash Converters in 2015.^[2] Mr Lynch, a disability pensioner, had taken out three loans with Cash Converters as he needed monetary assistance. Mr Lynch alleged he was forced to appoint a broker under Cash Converters' model when he took out a \$600 personal loan which would cost him a \$210 brokerage fee. Therefore, when signing the contract he would pay the \$600 for the loan and the additional fees.

Mr Lynch's claim was based on Cash Converters' brokerage model contravening:

1. the 48% interest rate cap as per s 21(1)(a) and (c) of the *Consumer Credit (Queensland) Code*; and
2. s 12CB(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) for being unconscionable and utilising unfair tactics.

Under the settlement, it is expected that the majority of the class will recover approximately 69% of the charged brokerage fees, with Mr Lynch receiving an additional \$15,000 payment in recognition for his time as lead plaintiff.

Key Takeaways

It is important when developing credit products to ensure that the fees and charges under the contract comply with the National Credit Code. The courts have been previously inclined to read into fee structuring and categorisation to

determine whether a fee or charge is being reasonably charged.

Piper Alderman's financial services team can assist you in structuring and developing new credit products in your business to ensure compliance with the National Credit Code. If you would like further information, please get in contact with the author.

[\[1\]](#) Kim McKenzie v Cash Converters International Limited and Ors (NSD 601 of 2016).

[\[2\]](#) Sean Lynch v Cash Converters Personal Finance Pty Ltd & Anor (NSD 900 of 2015).