

# Consumer Credit Law Centre SA

Legal Advice and Services

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## **RE: *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2) Inquiry***

The Consumer Credit Law Centre South Australia (CCLCSA) thanks the Senate Committee for the opportunity to contribute to this Inquiry. The CCLCSA supports the proposed reforms and we are calling on the Senate Committee to recommend that Parliament pass the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No.2)* (the 'Bill'). The proposed reforms will ensure that Australians have a safer and more appropriate range of credit products to choose from. These legislative amendments would protect Australians from being exploited by high-cost, predatory payday lenders and consumer lease companies.

### **1. Background to Consumer Credit Law Centre SA (CCLCSA)**

The CCLCSA was established in 2014 to provide free legal advice, representation, legal education, advocacy and financial counselling to consumers in South Australia in the areas of credit, banking and finance. The CCLCSA is managed by Uniting Communities who also provide general 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.

#### **1.1. Uniting Communities**

Uniting Communities is an inclusive not-for-profit organisation working alongside more than 30,000 South Australians each year as they strive for bright futures and great lives. We value diversity and are committed to providing respectful, accessible services to all. Uniting Communities seeks to reduce inequality and improve wellbeing for all who are striving to overcome disadvantage – individuals, their families and communities – so that they can realise their potential and live the best lives they can. We do this in a way that is non-judgemental, generous and supportive; that embrace diversity; and that values and promotes fairness, justice and the benefits of strong communities. Our service delivery, advocacy and community-building

activities are central to achieving this. We offer more than 90 services to support the needs of both individuals and our community, across a range of areas. These include mental health and counselling; residential aged care and support for independent living; housing crisis and emergency support; disability services; services for Aboriginal and Torres Strait Island people; financial and legal; drug and alcohol counselling; family relationships; and respite and carer support.

The CCLCSA and Uniting Communities' services more broadly have experience assisting individuals and families with the ongoing harm caused by payday lenders and consumer lease providers. In addition, our experience tells us that payday loan and consumer lease providers specifically target vulnerable South Australians.

The CCLCSA provides legal advice and financial counselling assistance to clients who typically find themselves unable to afford basic necessities after entering into payday loans or consumer leases. Clients are referred to the CCLCSA by other services offered by Uniting Communities including an elder abuse legal unit, financial counsellors, general counselling services, generalist legal services, services for people with disability as well as external agencies providing assistance to clients such as financial counsellors and support workers in the community.

Many clients who have problems with their payday loans and consumer leases are also referred to our service through welfare and support workers or concerned family members, alarmed at the excessive high-cost of consumer leases and the financial difficulties placed on their clients or family members to meet essential requirements and basic expenses such as food, accommodation, medication, transport and clothing. To date, a vast majority of matters where the CCLCSA has provided legal representation for payday loans and consumer lease disputes, involve people living with disability, including intellectual disability.

## **2. History of the Bill**

The CCLCSA seeks to highlight the protracted timeline of the development of this Bill and the significant delay with amending current legislation.

A review into the effectiveness of laws governing payday loans and consumer leases was first announced by the then Assistant Treasurer, Josh Frydenberg on 7 August 2015. Following the final report of the 'Review of the Small Amount Credit Contract Laws'<sup>1</sup> presented to government in March 2016, Minister Kelly O'Dwyer said that the government supported the vast majority of the recommendations<sup>2</sup>. However, the draft legislation adopting the recommendations and which has already been through an extensive consultation process<sup>3</sup> was never introduced into

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<sup>1</sup> Australian Government, Review of the Small Amount Credit Contract Laws: Final Report, March 2016, available at: [https://treasury.gov.au/sites/default/files/2019-03/C2016-016\\_SACC-Final-Report.pdf](https://treasury.gov.au/sites/default/files/2019-03/C2016-016_SACC-Final-Report.pdf)

<sup>2</sup> The Hon Kelly O'Dwyer MP, 'Government response to the final report of the review of the small amount credit contract laws' (Media Release, 28 November 2016) available at: <http://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/mediareleases/government-response-final-report-review-small-amount>

<sup>3</sup> ASIC, Exposure Draft of the National Consumer Credit Protection Amendment (Small Amount Credit Contracts and Consumer Leases Reforms) Bill 2017, November 2017, available at: [https://download.asic.gov.au/media/4536984/asicsubmission\\_exposure-draft-of-the-small-amount-credit-contracts-andconsumer-leases-bill-2017.pdf](https://download.asic.gov.au/media/4536984/asicsubmission_exposure-draft-of-the-small-amount-credit-contracts-andconsumer-leases-bill-2017.pdf).

Parliament. The CCLCSA expresses concern that despite other Members of Parliament introducing bills replicating the same wording of the draft exposure legislation, no action has been taken to protect the most disadvantaged and vulnerable consumers from financial harm caused by payday loans and consumer leases.

The CCLCSA calls on Parliament to act urgently and immediately with the key reforms to:

- Impose a cap on total payments that can be made on a consumer lease;
- Require small amount credit contracts to have equal payments and repayment intervals;
- Remove the ability for small amount credit contract providers to charge monthly fees in respect of residual term of a loan where paid early;
- Prevent lessors and credit assistance providers from undertaking door-to-door sales;
- Introduce anti-avoidance provisions;
- Change protected earnings from 20% gross income for Centrelink recipients to 10% net income for each pay period to apply to all borrowers and not just Centrelink recipients; and
- Expand protected earnings to apply to consumer lessees as well as borrowers using payday loans.

The CCLCSA refers the Senate Committee to the joint communique issued by Ministers for Consumer Affairs<sup>4</sup> which noted that *'reforms to Small Amount Credit Contract regulation is needed to address harm caused by payday lending and to better promote financial inclusion for those that use them'*.

Further, *'Ministers recognised that Small Amount Credit Contracts are offered by lenders in a manner that places greater financial hardship [to those that use them]'* and *'acknowledged that urgent action is needed, particularly now that Small Amount Credit Contracts are being provided through cash machines and online.'*<sup>5</sup>

Amendments to rectify identified problems with legislation needs to be timely. The law needs to respond quickly to financial harm caused to vulnerable and disadvantaged consumers by inadequate safeguards.

### **3. South Australia's experience**

Payday loans and consumer leases target Australians experiencing vulnerability and cause widespread consumer harm and lead to financial exclusion. With respect to South Australia, data presented in the Stop the Debt Trap Alliance's 'The Debt Trap: How payday lending is costing Australians' report, shows that the number of new payday loan contracts being entered into in South Australia is increasing at an alarming rate<sup>6</sup>. In 2017, 168,474 new payday loan contracts

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<sup>4</sup> Legislative and Governance Forum on Consumer Affairs, Meeting of Ministers for Consumer Affairs Friday 30 August 2019, Queenstown, New Zealand (Joint Communique).

<https://consumerlaw.gov.au/sites/consumer/files/inline-files/CAFCommunique-20190830.pdf>

<sup>5</sup> Ibid.

<sup>6</sup> 'The Debt Trap: How payday lending is costing Australians' (12 November 2019)

[https://consumeraction.org.au/wp-content/uploads/2019/11/200217\\_PaydaylendingReport-1.pdf](https://consumeraction.org.au/wp-content/uploads/2019/11/200217_PaydaylendingReport-1.pdf)

were entered into in South Australia; in 2018 this figure jumped to 178,539; and from January to July 2019 alone 110,249 new payday loan contracts were entered into in South Australia<sup>7</sup>.

The CCLCSA is seeing an increasing number of clients reporting their use of digital platforms to obtain payday loans and consumer leases. Digital marketing and online loan applications are causing profits to soar for payday lenders and are making payday loans more accessible than ever. Social media and misleading online marketing are normalising payday loans by making them look like other mainstream lenders and making it difficult for consumers to know who to trust.

#### **4. Consumer leases**

The *National Consumer Credit Protection Act 2009* (Cth) does not provide any cost capping on consumer leases. This causes the greatest financial harm to consumers paying exorbitant amounts to acquire household items and appliances through consumer leases. The CCLCSA notes that the vast majority of clients who enter into consumer leases and pay the most amount of money to acquire household furniture and whitegoods, come from financially and socially disadvantaged backgrounds. Some CCLCSA clients were unable to purchase items on a credit card and turned to consumer leases, whilst other clients have had poor understanding of the true cost of the lease or general nature of the lease agreement, such as not holding legal title to the goods.

The CCLCSA is of the view that current responsible lending laws are inadequate and that the only way to protect vulnerable consumers is to make consumer leases safer by introducing safeguards such as capping total payments and extending the application of protected earnings to consumer leases. The high cost and unaffordability of consumer leases creates wide-spread consumer harm and financial exclusion. Many of the clients that the CCLCSA has assisted with consumer leases have fallen behind on their basic expenses such as electricity bills, rent, food and clothing and have turned to other services for financial assistance. Whilst a consumer may pay for their lease through direct debit payments, they are left without enough funds to cover their basic essentials.

#### **5. Payday loans**

Small amount credit contracts (also known as payday loans) are high-cost, fast loans of up to \$2,000 paid back over a period of 16 days to 12 months. Equivalent annual interest rates can be as high as 407.6%<sup>8</sup>.

The CCLCSA is receiving increasing numbers of enquiries from distressed payday borrowers who have applied for a number of payday loans online. Many of these consumers are in a debt spiral unable to manage their repayments. Some payday borrowers report of entering several online payday loans all at once, showing that current regulation regarding presumptions of unsuitability is not keeping up with the significant growth of payday lenders using digital platforms. CCLCSA notes that borrowers accessing payday loans are generally on low incomes and using them to

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<sup>7</sup> Ibid.

<sup>8</sup> 'The Debt Trap: How payday lending is costing Australians' (12 November 2019)

[https://consumeraction.org.au/wp-content/uploads/2019/11/200217\\_PaydaylendingReport-1.pdf](https://consumeraction.org.au/wp-content/uploads/2019/11/200217_PaydaylendingReport-1.pdf).

meet immediate day to day living expenses. They are repaid through direct debit that is set up to coincide with when the borrower is paid. Typically, consumers contacting our service report that after these funds have been direct debited, they do not have enough money left to pay for essential expenses such as food, bills and rent. This means that borrowers are seeking assistance from welfare organisations, going hungry, getting disconnected from utility services and in some cases jeopardising their accommodation if they are not able to keep up with their rental payments. Alternatively, clients may be tempted into entering into further payday loans and fall into a vicious debt spiral.

The CCLCSA believes that tightening the repayment cap to 10% net income will assist to prevent the harm identified and sustained to this vulnerable group of people to whom payday loans are targeted. The need for payday lending reform is greater now than ever before.

When the CCLCSA has negotiated with payday lenders, one typical response from the lenders is to dispute that the loan was unsuitable because the consumer is meeting the repayments and that this therefore indicates that the loan is affordable. The CCLCSA observes that whilst consumers are repaying their payday lenders through direct debit, they are left with insufficient funds to meet basic living expenses such as food and clothing. Often consumers report of entering payday loans because of immediate need and believing there are no other options. The CCLCSA observes that warning statements are not sufficient and that the current law needs to be reformed to tighten repayment caps and reduce protected earnings to 10% of net income for all borrowers.

## **6. Case studies**

The case studies included below have been selected to demonstrate the significant gaps that exist under the current regulatory framework with respect to consumer leases and payday loans.

### ***Case study 1 – protected earnings and uncapped consumer leases***

Jamie is 46 years old and was diagnosed with an intellectual disability as a child. Until recently, Jamie had lived at home supported by his parents. Jamie receives the Disability Support Pension and ongoing assistance from support workers through an NDIS plan. After moving into supported accommodation, Jamie went into a consumer lease store and entered into three agreements to lease six items. Jamie entered into consumer leases for a Hard Drive, PlayStation 4, Flat screen TV, gaming headset and two computers, which by the end of their terms would have amounted to total repayments over \$17,000.00 for items with a total insured value of \$7,280. One of the computers had an insurable value of \$2,600 but over the five year rental term, Jamie would have paid \$9460.00 to lease the computer. This means Jamie would have paid 3.64 times the price of the insured value of the computer. The same computer was advertised for a recommended retail price of \$1899.00. Using this retail price obtained from another retailer's website, Jamie would have paid almost five times the retail price of the computer over the five year lease term. The monthly rental Jamie paid for all the items with the same lease provider was more than \$475.00 per month. After the direct debit payments to pay for his consumer leases and accommodation, Jamie did not have enough money for basic food expenses, transport and

clothing. Jamie's parents and NDIS support workers assisted Jamie to seek help from a financial counsellor and the CCLCSA about the unaffordability of his consumer leases.

The CCLCSA is of the view that current regulations regarding responsible leasing to undertake a credit assessment are not adequately protecting consumers from paying exorbitant amounts and suffering financial harm, particularly those who are most vulnerable. The CCLCSA believes that introducing caps and protected earnings to consumer leases is urgently required to protect all consumers from the harm caused by exorbitantly high cost and unaffordable consumer leases.

### ***Case study 2 – protected earnings – pay day loan***

Jim lived in community housing and was diagnosed with an intellectual disability. Before Christmas, he went into a payday lending store and obtained a payday loan to buy Christmas presents for his nephews and nieces. Jim was receiving the Disability Support Pension and showed his bank statement to the payday lender. The payday lender did not enquire about Jim's expenses which would have showed that Jim used his pension to pay for his community housing accommodation, to buy medication, bus tickets, groceries, take away food and to go on weekly group excursions. Despite not being able to properly sign his documents which should have put the lender on notice to make further enquiries in a credit assessment as to what Jim could afford, Jim was advanced the payday loan. When Jim was unable to buy groceries, could not attend work as he could not pay for his bus travel and stopped going on group excursions due to insufficient funds, his brother assisted him to obtain copies of his bank account. It then became apparent that after repaying his payday loan and paying for his accommodation, he was unable to meet his living expenses. Jim did not have the skills to cook alternative meals to adjust to his new expenditure. If the protected earnings were 10% of Jim's income (in line with the proposed amendments to protected earnings), he would not have been subjected to the same financial harm and exclusion from his daily activities. After this incident, Jim's family and support workers applied for an administration order and Jim now has his financial affairs managed by the Public Trustee.

### ***Case study 3 – protected earnings and uncapped consumer leases***

Michael receives Newstart Allowance and lives in a remote town in South Australia. After separating from his wife, he moved into rental accommodation to start his life over again. He applied for a credit card and a payday loan and was declined. He thought about buying second-hand furniture but did not have access to a motor vehicle to collect furniture. Michael was expecting his children to come and visit and was desperate to purchase a fridge, television and fold-out lounge for their visit. Michael saw an advertisement that he could rent a fridge, television and lounge. Michael entered into an indefinite period lease. Several years later, Michael saw a financial counsellor. The financial counsellor calculated that Michael had paid over \$9,000.00 to lease the fridge, television and lounge. Michael did not know the retail price of the goods at the time but it was clear that he had paid many times above the purchase price for these essential household items. The financial counsellor tried to negotiate with the lessor for Michael

to stop paying the lease and for Michael to retain the goods, but the lessor refused to negotiate and threatened to repossess the goods and charge Michael a repossession fee if he stopped making payments.

Under the proposed reforms, it is likely that the lessor would have been prevented from offering some or all of these contracts to Michael because of the changes to the protected earnings amount given that his only income was the Newstart Allowance. Furthermore, under the Bill's proposed changes to caps on total payments that can be made under a consumer lease, the maximum Michael would have paid under the leases was 1.92 multiplied by the base price of each item.

#### ***Case study 4 – uncapped consumer lease***

Roberta has a diagnosed intellectual disability, receives the Disability Support Pension and is supported by a disability support worker. Roberta was paying for a television under a consumer lease and her support worker was alarmed that Roberta was paying \$54.00 per month over five years. Her support worker ascertained that Roberta would be paying \$3,200.00 for a television that had a retail price of \$899.00. Her support worker referred Roberta to the CCLCSA. When copies of the contract were obtained, it became apparent that Roberta also was paying \$610.00 for a surge power board. Roberta's support worker explained to Roberta that she could have purchased a power board from a retail store for \$20.00. Roberta did not understand that she did not own the items or that she was paying more than three times the retail price of the television through a consumer lease. Under the proposed Bill, the maximum Roberta would pay for the television would be \$1726.08, half the amount she agreed to pay.

#### ***Case study 5 – payday loan***

Lynette is 53 years old. Her only income is the Disability Support Pension and she owned no assets that were not otherwise protected in bankruptcy. Lynette had a sensory disability and was unable to easily negotiate hardship with her utility companies or telecommunication providers when she received unexpected bills and could not easily use the debt hotline as she had limited English. Lynette was too ashamed to ask for help from her family. She thought the only other option was to apply for payday loans to meet her immediate expenses. Lynette had entered into nine payday loans since 2016. Lynette would regularly take out payday loans and then manage to pay them back by going without food. After Lynette was admitted into hospital for emergency surgery, it became apparent that she regularly did not eat food. Upon further enquiry, she did not eat because after her repayments to the payday lender and other creditors, she regularly struggled to afford basic living expenses such as food.

Lynette was referred to the CCLCSA by a support worker who was familiar with the services of the CCLCSA. When the CCLCSA raised responsible lending complaints, the payday lender stated that Lynette had repaid several loans in the past and was meeting the repayments of each loan to dispute the allegation that the loans were unsuitable and unjust transactions.

If the protected earnings caps were tightened, Lynette would not have regularly gone without food.

Through our experience assisting vulnerable clients in South Australia, it is clearly evident that the current regulatory framework with respect to payday loans and consumer leases is not working to adequately protect vulnerable and disadvantaged consumers in the community. In addition, responsible lending obligations as they currently stand are not effectively protecting vulnerable consumers from exploitation and significant financial harm. Payday loans and consumer leases seem to be targeted and impact on members on the community who are vulnerable and disadvantaged. The CCLCSA speculates that if people who are financially disadvantaged did not have to use their limited Centrelink income to repay payday loans and consumer leases, that they would have more income to expend on other necessities. Urgent implementation of the proposed reforms under the Bill, particularly in relation to the proposed changes with respect to capping consumer leases and increasing protections with respect to protected earnings, is required to effectively protect all Australian consumers. The CCLCSA are therefore appealing to Parliament to deliver this proposed legislation as a matter of urgency.