



3 February 2021

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Senate Standing Committees on Economics  
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**By Email:** [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Secretariat

**Re: National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020**

We are grateful for the opportunity to comment on the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 (**the Bill**).

## **Introduction to Redfern Legal Centre**

Redfern Legal Centre (**RLC**) is an independent community legal centre providing access to justice for disadvantaged individuals in the Redfern area and across NSW. RLC has a particular focus on human rights and social justice, with specialised practices in credit and debt, financial abuse, tenancy, employment, for international students, for health justice partnership, and for complaints about police and other governmental agencies.

By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education, prepare publications and submissions and advocate for law reform. RLC works towards reforming our legal system for the benefit of the community.

## **RLC's work in consumer credit**

Since 1977, RLC has provided specialist assistance to people who have credit, debt and consumer law problems. In addition to RLC's Credit and Debt practice which services the local community, we provide consumer credit advice and representation through our state-wide Financial Abuse Service NSW, our state-wide International Student Legal Service NSW, and our Health Justice Partnership where we have lawyers based at Royal Prince Alfred Hospital and Sydney Dental Hospital.

In addition to being a member of various community, industry and regulator consumer advocacy groups, Redfern Legal Centre coordinates the Economic Abuse Reference Group NSW which is an informal group of community organisations which work collectively to influence government and industry responses to reduce the financial impact of family violence. Members include Domestic and Family Violence services, community legal services and financial counselling services.

## **RLC's views**

Redfern Legal Centre endorses in full the joint submission by Financial Rights Legal Centre and Consumer Action Law Centre, as well as the submission of the Economic Abuse Reference Group to which RLC's Financial Abuse Service NSW contributed expertise.

Redfern Legal Centre has strong reservations about the proposed reforms and the rollback of a responsible lending framework that has proven effective and accessible. We have examined the Bill in detail and are concerned that the reforms are a significant step backwards in progressive responsible lending laws and stand in direct contrast with the recent recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

We expect that the proposed reforms, will create significant adverse impacts for our clients. We have included below client stories which highlight the importance of responsible lending laws being applied correctly and enforced.

In addition, we would like to make the following comments in relation to the Bill and supporting Explanatory Memorandum (**EM**).

### *The need to maintain strong RLOs*

Responsible lending laws were introduced following the fallout of the Global Financial Crisis to prevent unsuitable lending. Due to the global COVID-19 pandemic, Australians have been struggling through another economic crisis. Informed by our client's stories, this can lead those experiencing financial difficulties to look for easy forms of credit when they are at their most vulnerable and susceptible to exploitation. As such, we should not be looking to shift the burden of assessing the suitability of credit to those consumers, nor is it reasonable to expect lenders to provide an acceptable standard of self-regulation to address the lack of consumer protections evident in this Bill. Our experience aligns with the recommendations of the Royal Commission which confirmed that the current regulatory framework has worked as intended when the law is applied correctly, with a strong case for RLOs to be strengthened, not weakened.

The reforms also do not provide adequate protections to consumers from other financial products and services that cause significant consumer harm (e.g. 'buy now pay later' schemes, credit repair/debt management services). Strengthening the legal framework around existing and the new forms of these high cost and financially destructive products and services has been called upon by the community and consumer groups for years.

From our casework experience, we are of the view that the selective case studies provided in the EM in support of these reforms are not representative of the most serious risks and hardship faced by consumers. Despite unsuitable lending being minimised precisely because of existence and success of RLOs, an unacceptable level remains. The recorded 5,533 responsible lending complaints made to the Australian Financial Complaints Authority (**AFCA**) since November 2018 does not include the number of complaints that have been settled directly with lenders through internal dispute resolution (**IDR**). From our experience, the true number of responsible lending complaints settled in favour of customers through IDR would dwarf the AFCA figures, confirming that non-compliance with RLOs by lenders remains a serious systemic concern that needs proper enforcement and redress for affected customers.

### *Poorer outcomes for consumers*

Shifting responsibility onto consumers when their motivation is often to obtain easy credit to get out of desperate financial situations is a system destined to lead to poorer outcomes if lenders are given less responsibility in this area. As evident from our case studies below, the reforms would encourage lenders to adopt a 'don't ask, don't tell attitude' and allow for more unsuitable loans as legal, financial and reputational repercussions for lenders remain limited.

Under the reforms complaint options and remedies will be severely restricted for consumers when seeking fair outcomes through IDR, AFCA and the courts. Experience has shown that voluntary industry codes of practice and AFCA complaints not supported by the legal force of RLOs will not provide the incentive for lenders to provide helpful IDR outcomes, or deter risk taking by financial institutions that causes consumer harm, while they are primarily driven by shareholder and profit motives.

Additionally, the reforms seek to limit the circumstances when a consumer is considered vulnerable and unsuitable for a loan. The definition of ‘substantial hardship’ should not be limited to consumers being forced to sell their home or the inability pay rent. At a minimum, ‘substantial hardship’ should incorporate all the circumstances detailed in the ASIC regulatory guide on responsible lending (RG 209), including the inability to meet any of the following commitments,

*“existing financial commitments that the consumer has little or no discretion to reduce, such as existing debts and legal liabilities (e.g. child support or spousal maintenance) .... basic outgoings that are essential to life and participation in modern Australian society, which include expenses for housing, food, clothing, health, education, transport, communication and connectivity for the consumer and their dependants.”*

This would assist families with a variety of vulnerabilities, circumstances and hardships to not fall through the gaps when seeking financial relief when impacted by unsuitable lending.

#### *Small Amount Credit Contracts*

The Bill introduces some new protections relating to SACCs or payday loans and consumer leases, however, we are concerned that it fails to implement the full suite of consumer protections the Government committed to over four years ago,<sup>1</sup> in response to the 2016 Small Amount Credit Contracts Review (**SACC Review**).<sup>2</sup>

In particular, the Bill waters down recommendations 1 and 15 which provided for a 10% ‘protected earnings cap’ (PEA Cap) on both payday loans and consumer leases. This would limit the repayments for such loans to 10% of their income to ensure that people were not falling into debt. This would form part of the loan suitability assessment for providers of these loans. Although the Bill provides for a PEA Cap through changes to the NCCP Regulations,<sup>3</sup> the explanatory memorandum contradicts this by suggesting that borrowers who receive more than 50% of their income from social security will have a PEA Cap of 10% but all other borrowers will have a PEA Cap of 20%.<sup>4</sup>

For consumer leases, the PEA Cap would be doubled to 20% for everyone apart from people who receive most of their benefits from social security payments; for those people the 20% income protection can be combined with payday loans but if they don’t have any payday loans then the full 20% can be paid towards a consumer lease.<sup>5</sup> This is concerning as the Bill and EM are not clear on how this would be implemented and would put those people who have experienced financial abuse into greater debt, or make it even harder for them to leave an abusive relationship. There is also a concern that obtaining any redress for a loan where a lessor has entered into it in breach of the PEA Cap is through a court order, and also a 30 day time limit.<sup>6</sup>

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<sup>1</sup> Per Government response 28 November 2016, available at <https://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/media-releases/government-response-final-report-review-small-amount>.

<sup>2</sup> Treasury, *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>3</sup> Schedule 2, Item 10 of the Bill, and Schedule 3, Item 7 of the Bill.

<sup>4</sup> Para 3.10 of the EM.

<sup>5</sup> Paragraph 4.59 of the EM.

<sup>6</sup> See Schedule 2, Item 11 of the Bill (proposed section 133CC(3)(b) NCCP Act), and Schedule 3, Item 7 of the Bill (proposed section 156B(3)(b) NCCP Act). Also see Schedule 2, Item 12 of the Bill (proposed section 133CF(4)(c) NCCP Act).

In relation to consumer leases, we are concerned that the Bill does not give enough clarity on how the base price of goods will be set, despite the EM suggesting that the Government would implement Recommendation 12 of the SACC Review which stated *that the Base Price for new goods should be the recommended retail price or the price agreed in store, where this price is below the recommended retail price.*<sup>7</sup> Of further concern is that the SACC Review recommended that no additional fees should be charged on top of the delivery and installation fees or establishment fees.<sup>8</sup>

We are also concerned that Recommendation 18 of the SACC review related to banning door to door selling of consumer leases however the proposed changes in section 179VA of the NCC in the Bill<sup>9</sup> do not fully address this recommendation as they allow for a prior arrangement exception.

## Conclusion

RLC is strongly of the view that the removal of RLOs will have a negative impact on vulnerable communities and those experiencing disadvantage, including low-income earners and the underemployed, elderly people, people experiencing domestic violence and financial abuse, people who have experienced educational disadvantage, people suffering from mental illness or disability, and people for whom English is not their first language.

Please see a sample of client stories below illustrating how irresponsible lending has impacted our client's lives.

Please do not hesitate to contact us if you require any further information.

We would welcome the opportunity meet with you to further discuss our submission.

Yours sincerely

**REDFERN LEGAL CENTRE**



Joanna Shulman  
Chief Executive Officer

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<sup>7</sup> See subsection 175AA(6) NCCP Act at Schedule 3, Item 31 of the Bill. See also SACC Review Final Report, p 54.

<sup>8</sup> SACC Review Final Report, p 53 – 56.

<sup>9</sup> Schedule 3, Item 34 of the Bill.

**Unmanageable debts: Amir's story**

Amir\* and his young family of four lived in low-income rental housing, where Amir was the sole breadwinner. Amir and his wife were on temporary visas, with limited English language/communication skills, and a poor understanding of financial products.

Amir had limited and unstable income due to casual shift work. As such, Amir supplemented his income with debt derived from a multitude of credit cards (including multiple low-limit increases) and payday loans. Each loan was approved with limited effort via on-line application with no face to face or verbal interaction despite Amir's insufficient income to service the accumulating levels of debt.

Amir had been further impacted and disadvantaged by COVID-19, which made his efforts to maintain and secure additional work unsuccessful. He was making the difficult choice between paying for rent and food for his children or servicing his spiralling debt obligations for 13 loans to major banks, financial institutions and payday lenders. The family faced homelessness as they were not eligible for government support.

RLC submitted multiple complaints for non-compliance with responsible lending laws to release Amir and his family from overwhelming debt.

\*Name has been changed.

**Unsuitable business loan: Laila's story**

Laila\* was a refugee who was unemployed and reliant on government benefits.

Laila could not communicate, read or write in English and had never driven or obtained a licence.

While Laila and her 14-year old daughter were browsing the internet, they clicked on a YouTube link which they thought was advertising a car for \$2,000. Shortly after providing their contact details, they received a call from a finance company representative, who persuaded Laila's daughter to sign her mother up to a business car loan using an easily obtained ABN no longer in use. Laila's hoped the car would be used to drive her kids to school once she learnt how to drive.

To Laila's surprise a new car arrived at Laila's doorstep a number of days later. Around the same time Laila also noticed payments being deducted from her bank account. The car was immediately returned to the lender but she was told she was still liable for the loan.

After the loan was sold to a third-party debt collector who commenced recovery action, Laila reached out for legal assistance and discovered she was being pursued for a \$30,000 business car loan.

The lender strongly argued responsible lending obligations did not apply in this circumstance. However, after further loan origination documentation was obtained and detailed submissions were made demonstrating that both the finance company and lender had breached their responsible lending obligations, the lender agreed to take back ownership and waive the debt in full.

\*Name has been changed.

### **Unsuitable and unjust home loan: Carl's story**

Carl\* was a young man recently out of school studies. After a period of unemployment, Carl obtained his first job. Within one year of commencing work, his bank approved an unaffordable home loan for a home located approximately 200km away from his job, which was arranged by his father and a third-party credit/mortgage broker.

Carl was particularly vulnerable due to a long history of domestic violence and financial abuse at the hands of his father. Carl was coerced by his father to enter into the home loan for his father's benefit. Carl was told by his father that he would not have to contribute to the home loan.

At a meeting with the broker, Carl was not asked questions, was not provided with any documents to read, and was not advised to obtain independent legal advice before signing pre-filled documents supplied by the broker. The broker told Carl that the mortgage would improve his credit worthiness.

Arrangements were made for Carl to attend his bank, where he was hastily asked to sign some pre-filled documents without reading the contents. At the time, Carl was undergoing documented medical and psychological treatment for depression, anxiety, and substance abuse. These afflictions were later aggravated due to the financial stress Carl endured when the home loan went into default and the bank commenced recovery action against Carl.

RLC submitted a complaint to the bank on Carl's behalf and negotiated an outcome where Carl would not be pursued for the home loan debt.

\*Name has been changed.

### **Unsuitable credit card: John's story**

John\* was a senior with multiple health problems and disabilities causing financial hardship. Despite his elderly age, limited language/communication skills, and poor understanding of financial products, John felt pressured to sign up to a credit card after many unsolicited attempts by customer representatives at his bank.

John primarily used his savings account to withdraw the majority of his weekly pay to cover his living expenses and ongoing financial obligations. There was no evidence showing that John needed an additional credit card or that he would be able to keep the credit card debt at a sustainable level.

The credit card application was prefilled electronically and did not reflect John's accurate income and expenses. The bank later increased the credit limit after further unsolicited offers. At the time of the increase, it was clear that the credit card was of little use to John. Large periods of many years followed where John did not make a single purchase on the credit card. Instead, he only used the credit card for cash withdrawals, unaware that he was being penalised with large fees and high cash advance interest. This placed John in significant financial hardship, and he was never able to keep up with the interest charges.

RLC submitted a complaint to the bank who agreed to close the credit card and waive the balance of the debt.

\*Name has been changed.

**High pressure selling: Kim's story**

Kim\* was a young single mother with four children receiving a Disability Support Pension, who was made homeless after escaping a relationship of domestic violence. After being enticed by unscrupulous online advertising promoting car finance to pensioners, she visited a car dealership to enquire about a cheap second-hand car.

Although Kim was not planning on purchasing a car on that day, the sales person took advantage of her vulnerable situation, organising a car loan for over \$20,000. At the time, it would have been clearly evident that Kim was not in the right state of mind to make big financial decisions, as she had stopped taking her medication for her severe mental health conditions, in addition to being heavily distracted due to her also having to manage her restless young child who was with her on the day.

The sales person made her sign a number of documents that she didn't read or understand, and spent most of his time with other customers.

It was only when Kim came to RLC for help that she was made aware that her loan included a number of 'junk' add-on insurance products she had not requested, and additional charges equivalent to 75% of the purchase price of the vehicle.

RLC submitted a detailed complaint to the lender on Kim's behalf and negotiated a significant waiver of the remaining balance of the loan, while also enabling Kim to retain full ownership of the vehicle.

\*Name has been changed.