



SUBMISSION TO TREASURY

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

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INTRODUCTION

Safe lending laws protect people and the Australian economy. If passed, the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020* (the Bill) will dismantle consumer protections that have been developed through decades of considered consultation and policy development.

In January 2020, CHOICE asked members of the community to share with us why safe lending laws matter. Over 1300 people from every state and territory across Australia responded. Many shared powerful stories of being directly impacted by harmful lending, including:

- family members and friends of people with severe disabilities who were sold debt they could never repay;
- school-leavers who were sold into expensive credit cards;
- former bank staff members who lifted a lid on the high-pressure sales culture inside many bank branches;
- people on disability pensions who were targeted by lenders with high-cost loans;
- front-line charity workers, including financial counsellors and suicide prevention workers, who have seen first-hand the devastating impact that poor lending practices has on families and the community; and
- concerned parents, grandparents, and great-grandparents who worry about the future for their family if this harmful law is passed.

These stories speak of the devastation that unfair lending has caused and will continue to cause on the Australian community. Many lenders continue to show a disregard for obeying existing lending laws. The Banking Royal Commission revealed that between the years 2010 and 2018, lenders remediated over \$350 million to 590,000 people for breaches of lending laws.¹ It is clear that safe lending laws need to be strengthened, not removed. The government's proposal to gut safe lending laws would contradict the very first recommendation of the Banking Royal Commission and would hail a new dark era of reckless lending.

There is a large amount of community opposition towards axing safe lending laws. Over 20,000 members of the community, including prominent academics, former regulators have signed on to an open letter calling on Senators to block the passage of this legislation.²

125 community sector organisations, including CHOICE, financial counselling organisations, family violence organisations, faith-based organisations, and charities have also endorsed the

¹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report, p.36

² The open letter available at choice.com.au/safelending

open letter. These organisations have witnessed first-hand the destruction caused by dangerous lending. They have come out against the policy because they know the impact on the community if this harmful policy is enacted.

CHOICE's November 2020 submission to Treasury outlines five overarching concerns with the exposure draft legislation:

- Axing safe lending laws will be harmful for our economy.
- People will lose individual legal rights.
- Protections against credit card selling will be scrapped.
- Penalties for banks will be scrapped entirely or significantly weakened.
- Consumer protections for mortgage brokers will be weakened.³

CHOICE does not support the government's proposal to axe safe lending laws.

We have included stories of members of the community so that people have the opportunity to share with Senators in their own words the human impact of harmful lending. The Senate Economics Committee should recommend that the government's proposal to axe safe lending be blocked.

³ CHOICE submission to Treasury, 'Protect safe lending laws', November 2020, <https://www.choice.com.au/consumer-advocacy/policy-submissions/2020/november/submission-to-treasury-to-protect-safe-lending-laws>

Unanswered questions about the legislation

The development of this legislation was extremely rushed. Important questions that will affect Australian households and the economy remain unanswered. In the interest of public transparency and accountability, we urge Senators to explore the following questions as part of this inquiry.

Questions for the Commonwealth Treasury:

- What is the objective of weakening or removing penalties for irresponsible lending?
- Australia already has the second highest personal household debt level in the world.⁴ Has Treasury modelled the impact on personal household debt in Australia if the Bill is passed? How many people would take on debt that then default?
- Has Treasury considered the potential impacts of the Bill on the credit card and personal loan market, as well as the housing market?
- Over 40% of Australians are currently experiencing mortgage stress.⁵ What will be the impact of household debt and overindebtedness if interest rates in Australia increase?
- In 2019, the Reserve Bank of Australia (RBA) found Australia has a “debt overhang” effect.⁶ Across all mortgage borrowers, the RBA found that increased debt results in reduced household expenditure. What modelling has the Treasury undertaken to establish the impact of the debt overhang effect if the Bill proceeds?
- ANZ economists have predicted that house prices in 2021 will rise by 8.8% in Sydney, 7.8% in Melbourne, 9.5% in Brisbane and 12% in Perth.⁷ What modelling has the Treasury undertaken to measure the impact of the Bill and the assumed increased lending on housing affordability?
- What modelling has the Treasury undertaken to measure the impact of the Bill on first-home buyer housing affordability?

⁴ Australian Parliamentary Library, 2020, 'Monthly Statistical Bulletin - September 2020', p.18
https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/WUKX6/upload_binary/WUKX6.pdf;fileType=application/pdf

⁵ Digital Finance Analytics 2020, 'Household Financial Stress Reaches New High', October,
<https://digitalfinanceanalytics.com/blog/household-financial-stress-reaches-new-high>

⁶ Reserve Bank of Australia, 2019, 'The effect of mortgage debt on consumer spending: evidence from household-level data', July,
<https://www.rba.gov.au/publications/rdp/2019/2019-06.html>

⁷ R Wells, 2021, 'Australian housing prices tipped to bounce back in 2021, except inner-city units: economists',
<https://www.domain.com.au/news/australian-housing-prices-tipped-to-bounce-back-in-2021-except-inner-city-units-economists-1016800/>

- The Australian Bureau of Statistics reported that the total value of new home loan commitments in December 2020 reached record highs.⁸ Given this data, how have existing safe lending laws restricted the flow of credit in Australia?
- What impact will the new Consumer Data Right have on the speed and efficiency of loan applications?

Questions for the Australian Prudential Regulation Authority:

- In October 2020, APRA Chair Wayne Byres said that tightening of credit standards during COVID-19 was “not regulatory induced.”⁹ Does APRA still support this position?
- The Australian Bureau of Statistics reported that the total value of new home loan commitments in December 2020 reached record highs.¹⁰ Does APRA believe there is an issue with credit flowing in Australia?
- Over 1.9 million people in Australia have persistent credit card debt.¹¹ If these laws are passed, APRA will be given the power to regulate bank-issued credit cards. What efforts would APRA undertake to reduce persistent credit card debt in Australia?
- APRA’s approach to enforcement was heavily criticised by the recent APRA Capability Review. They were criticised for a “behind the scenes” approach to regulation that was “out of step with public expectations of regulators following the Hayne Royal Commission.” The Panel concluded that, “APRA’s preference to engage with regulated entities behind the scenes limits its scope to deter poor outcomes.”¹² Why can members of the community trust APRA to prosecute lenders who break the law?
- Given that APRA standards focus on prudential and systemic behaviour of institutions, how will APRA assist individual borrowers who have been sold into unaffordable loans?
- How will APRA prosecute individual cases of irresponsible lending of mortgages, credit cards and personal loans?

⁸ Australian Bureau of Statistics, 2021, ‘Lending indicators’,
<https://www.abs.gov.au/statistics/economy/finance/lending-indicators/dec-2020>

⁹ Hansard, Senate Economics Legislation Committee, Public Estimates, 27 October 2020, , p 78
https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/1403e6ab-f62d-4093-a7d6-db1c8f98177d/toc_pdf/Economics%20Legislation%20Committee_2020_10_27_8253.pdf;fileType=application%2Fpdf#search=%22Wayne%20Byres%20committees%202020s%22.

¹⁰ Australian Bureau of Statistics, 2021, ‘Lending indicators’,
<https://www.abs.gov.au/statistics/economy/finance/lending-indicators/dec-2020>

¹¹ ASIC 2018, REP 580 Credit card lending in Australia

¹² Treasury, 2019, ‘Capability Review of the Australian Prudential Regulation Authority’, p.115
https://treasury.gov.au/sites/default/files/2019-07/190715_APRA%20Capability%20Review.pdf

Questions for the Australian Securities and Investment Commission:

- Have safe lending laws restricted the flow of credit in Australia?
- What impact will the new Consumer Data Right have on the speed and efficiency of loan applications?
- What evidence has ASIC found about the scope of persistent credit card debt in Australia?
- What work is ASIC undertaking to reduce persistent credit card debt?

Aggressive and predatory marketing by lenders will be exacerbated by this Bill

Axing safe lending laws will signal a green light to lenders to market even more aggressively to people, particularly vulnerable people. It will signal to non-bank lenders that important consumer protections, such as considering a borrower's capacity to repay, ensuring that a loan meets an individual's requirements and objectives, and checking incomes and expenses, are no longer relevant before marketing a high-interest loan.

In January 2020, CHOICE asked members of the community to investigate the online advertising claims of lenders in Australia. We found examples that show quick turn around times and promises of simple application processes that ignore financial situations. This demonstrates to us that the state of lending in Australia is far from restrained or limited. It is in some sectors aggressive. This aggressive lending will grow if the Bill proceeds.

Members of the public uncovered numerous examples of aggressive and predatory marketing by lenders. This conduct was especially prevalent for non-bank lenders. Many lenders guaranteed that money can be in people's accounts "within minutes". We found examples of lenders advertising:

- car loans up to \$50,000 for people who are "current or discharged bankrupt" with 5 minutes pre-approval;¹³
- car loans for "Low Doc or No Doc Applicants" that are "designed to assist people who are struggling to provide evidence of their income";¹⁴ and
- "Apply and get approved in 60 seconds" for personal loans.¹⁵

With the scale of aggressive and predatory marketing by lenders, it's clear that we need stronger and fairer lending laws, not weaker laws.

¹³ Appendix 1

¹⁴ Appendix 2

¹⁵ Appendix 4

Why safe lending laws matter

In January 2020, CHOICE asked members of the Australian community to share why safe lending laws matter to them. Over 1300 people shared their personal experiences, many of whom have been personally impacted by irresponsible lending.

We have included stories from each state and territory to demonstrate the wide-ranging and devastating impact that harmful lending has across Australia.¹⁶ Many people describe lending practices that were outlawed by the National Consumer Credit Protection Act in 2009, like unsolicited credit card offers or aggressive lending. These practices have impacts on people for many years. We are deeply worried that these harmful practices would return to the Australian market if the Bill is passed.

Stories shared by supporters from South Australia

“Safe lending laws are a vital safeguard against unscrupulous lending practices. I was once in receipt of a disability pension, which was my only income, yet my bank sent me a pre-approved \$5000 credit card - all I had to do was go to the bank and sign. As my pension was paid into the same bank, the bank was clearly aware of my income and capacity to service any type of loan. I find this unconscionable. In today's buy now pay later society, unsafe lending targets vulnerable people who may not have the capacity or resources to make an informed decision about the longer term consequences of repaying the 'easy money' that's being irresponsibly pedalled.”

Debby, postcode: 5275

“My son, who is on a disability pension, was able to reach a debt in excess of \$10,000 on his credit card with no questions asked until he had difficulty just making small payments.”

Ellis, 5061

“Lending laws are important to me for a number of reasons including but not limited to the following; Because my family have been victims of aggressive financial product marketing and the pitfalls of so called quick loans. This has had seriously negative impacts on all of the immediate family relationship structure. It could have all been avoided if the proper check was in place and official procedures were more robust.”

Mark, 5108

¹⁶ Please note names have been changed for confidentiality reasons

Stories shared by supporters from Queensland

“Having been on the Board of a Not for Profit organisation in Logan Queensland and seen the negative impact of uncontrolled lending on the lives of many vulnerable Australians, I strongly believe that the safe lending law protections should remain and not be watered down. In addition the recommendations of the Banking Royal Commission need to be implemented soonest.”

Thomas, 4019

“I taught at TAFE where the majority of our students were from a low income demographic. I experienced the difficulties some of my students experienced from loans they would never be able to pay. They lost homes, cars and their marriages and relationships broke down due to the financial stress these inappropriate loans caused. Sadly, it was also the children that had to suffer.”

Michael, 4164

“Dangerous lending practices can lead ordinary people into life changing debt, some cautionary control is beneficial to the general population. I went to refinance my \$500,000 home and was offered \$1,000,000, the excess to be at my discretion, not good.”

Lachlan, 4565

“I have seen the effects of easy credit on the lives of several of my adult children. Without safe lending laws they were able to run up very large debts that they had no ability to repay in a managed fashion and the high interest rates meant that they continued to fall into greater debt. Fortunately I had enough reserves to be able to rescue them and arrange for gradual repayment to me without interest. I fear to think of what would have happened if I had not been able to bail them out.”

Marc, 4068

“My husband and I almost got stuck with a home loan we couldn't afford. The group was offering us a home loan even though I was on the disability pension and my husband was earning about \$1000 a week before tax. When we applied for the loan we actually didn't think they would take us on. So when they did I read the fine print and seen that they had said I was receiving all of my disability pension which I was not. Due to my husband's earnings my pension was not at the full rate. I had told them that and sent them details saying exactly that. It turned out they didn't care. We were just surviving without a home loan. I told them that we were not be able to afford a repayment bigger than our rent. They didn't care and offered us a home loan that would have been 50% of our actual income. We said no thanks but they were not happy. I ended up calling the ACCC and made a complaints about them. This is why we need safe lending laws. This should not have be legal.”

June, 4030

Stories shared by supporters from Tasmania

“Banks will try to loan people more than what they can afford to pay. I was once offered a credit card with \$10,000 dollars on it. I would if not being able to pay it back on a pension.”

Brett, 7018

“My career ended with the 2008 financial crisis which had its basis in the unsafe lending that was happening in the US and here in Australia. Let’s not go through that again.”

Jillian, 7004

“Having worked in a bank I know that giving a person extra credit when they can’t really afford it hurts him/her and their family.”

Gregory, 7250

“Encouraging people to borrow without adequate safeguards will result in bankruptcies when interest rates rise. Increased bankruptcies will cause interest rates to rise further as banks try to cover their losses - resulting in even more bankruptcies. We need safe lending laws to protect our economy now and into the future.”

Mark, 7054

“I would like to see Government act responsibly with these lending laws and build in safety checks to ensure the vulnerable get fair treatment. I think you’ll agree the elderly, the young and other sectors of the community have been failed in a major way in the past. The existing system is overwhelmingly inadequate as highlighted by the recent Royal Commission and I trust our elected members to redress this on this occasion.”

Steven, 7277

“The Banking Royal Commission exposed the unscrupulous predatory lending by some of Australia's biggest banks. These banks have amply demonstrated the depths to which they are prepared to sink in search of profits. Maintaining the safe lending laws recommended by the Royal Commission is vital to protect Australians from such behaviour by banks in the future.”

Alexander, 7277



Stories shared by supporters from Western Australia



“As a retired minister and community leader I am aware of many who have fallen victim to bad lending advice. I am deeply concerned at the prospect of the recommendations of the Royal Commission being overridden by a perceived economic necessity at the expense of our society's most vulnerable. Ultimately, this is bad economics because it damages the common good.”

Sidney, 6065

“I have worked with families from disadvantaged backgrounds who sometimes are forced to go into debt to pay daily living costs, I have witnessed the distress when they can't meet their obligations. It is so unfair and predatory lending is immoral and should be illegal. Such lending practices are aimed at these groups of our community!”

Rita, 6021

“Before I retired I was a WA Government Supreme Court Bailiff with the Sheriffs Officer - I encountered many cases where major banks had taken legal action to seize cars and properties when it was blatantly clear that the banks had over committed the borrower and the fees and charges for late payment compounded the situation. Some banks were ruthless and offered no negotiation relating to execution of the warrant”

Jonathan, 6232

“Quite a few years ago a younger relative of mine at the age of 16 and still at school was provided with a few credit cards that enable spending sprees. Again exploitation of the vulnerable. A minor!! And a \$35 charge every time he missed his monthly payment. How could he pay when he was still at school.”

Mohammad, 6166

“As a financial educator, I am bombarded with stories from students about how they ended up in bad debt. Two common themes emerge as we delve into how they got into that situation: (1) they didn't understand what they were signing up for, and (2) had they fully understood, they would not have signed. Responsible lending laws are all that stands between more people ending up with avoidable bad debt. Any roll-back of responsible lending laws would make this government as negligent as the bank executives it sought (and failed) to hold accountable through the Banking Royal Commission. Please don't undo the good work that's been done on this to date. To do so would be a travesty.”

Francesca, 6158

Stories shared by supporters from New South Wales

“I was 18 when I got my first credit card and by 19 I was blacklisted and in huge debt. I didn’t have a job, no income and I was able to access a credit card. This experience hurt me for future years to come as I was unable to get a mobile phone plan, access and personal loans. I was a full time student trying to find my way back to being financially stable. Removing safe lending laws hurt people and jeopardise their future finances.”

Elizabeth, 2193



“I have a 36 year old son, who suffers from a severe and chronic mental illness. He and others with similar problems need safe lending laws in order to protect them. Without safe lending laws he could lose what little income he has, or possessions.”

Farhad, 2560

“These laws are very important to me as when I was just 18 years old a bank encouraged me to apply for a credit card. I had no employment and every couple of months the bank would call and offer me another \$1000 on my limit. I ended up owing \$5000 that I did not have a hope of repaying.”

Sophie, 2283

“I have spent most of my working life as a nurse/midwife working for women in precarious financial positions. They are desperate to secure housing for themselves and their families, and can be easy targets for lenders who do not consider how a single life event can lead to loan default. I'm talking about women in low paid jobs who would once have been called the working poor. The government has not put enough safeguards in place to protect vulnerable borrowers, and have allowed banks to go on their merry way with business as usual.”

Ruth, 2043

“For many years I was a Face-face counsellor with Lifeline. I worked out of three centres in The Hunter; Singleton, Muswellbrook and Maitland, all places affected by the coal-boom. When the boom ended I saw the havoc wrought to the lives of people who had taken on huge debt when earnings were high but incredible anguish and heartache when the money no longer flowed. Such people need the protection of stronger lending legislation to prevent the irresponsible imposition of debt on people ill-equipped to realise the potential consequences of such debt.”

Clara, 2330

Stories shared by supporters from the Australian Capital Territory

“My Brother got into debt over a period of time and kept increasing his Credit Card(s) debt in the hope he could eventually repay all debt, but circumstances impeded his plan and he eventually went bankrupt and lost his house. Safe lending laws MUST tightly control credit card limits. In my brother's case, the banks recovered about 75% of their loans, and had already pocketed substantial interest. It seems as if the banks are not too concerned about bankruptcy as they still get some return on their loans! Otherwise why would they be so lax in increasing credit limits, or offering them so regularly.”

Bobby, 2617



“I have worked in the finance industry and seen how short term optimistic outlooks and financing lead to financial and personal distress. Remember banks charge for defaults, that can be additional punitive fees that raise the actual cost of borrowing at the most painful moment. Then banks can seize assets and forcibly sell them at a loss. The loss is to the customer who still has to pay the shortfall . The most profitable part of a bank can be in these debt recovery actions which means banks and others make the most money out of higher risk loans. Thus banks and others want lending rules relaxed because that's where the money is. The markets are awash with cheap capital so the banks etc are targeting people who don't have access to this because they are higher risk, rely on low doc lending or are after the payroll lending reliant customer.

Manuel, 2611

“Predatory lending practices have been shown to have devastating effects on the most vulnerable, inexperienced and disadvantaged members of our society. It should be illegal for banks or other lenders to profit from those usually least able to recover from the resulting losses and trauma.”

Catherine, 2614

Stories shared by supporters from Victoria

“Several years ago I worked in a major bank and was encouraged with gifts for the employee who 'sold' the most products i.e. personal loans, credit cards etc. No thought or care whether people could afford the payments. We need better consumer protection to avoid people being thrown into poverty when they suddenly can no longer keep up the payments.”

Jessie, 3324



“I work with people living with disability. I have been approached by some of these people who have been subjected to over the phone hard sell from banks, credit card companies, energy companies, solar power companies, you name it, they try to flog it. Some companies clearly sense they have a vulnerable person and will ring daily trying to build a friendship which they can then abuse. These companies are disgraceful. People have a right to be protected from this sort of sophisticated hard sell.”

Stella, 3135

“Some of the stories we heard in the banking royal commission were frightening. We need to listen and act on the recommendations of the banking royal commission! Safe lending laws protect everyone, especially the vulnerable. There are vulnerable people in my family and I want them protected. There are many vulnerable people who do not have the support of families and they also need to be protected. But it's not just vulnerable people. The banks need to behave in an ethical way towards all users. They have shown that they cannot be trusted so regulation is essential so that we can all feel safe.”

Ruby, 3044

“I work with vulnerable people with disabilities, psychosocial and physical and who are on the disability pension. Most struggle daily to keep a roof over their head and food on the table but like all of us they need more. More means high interest loans from sweet talking sellers with the participant not realising how that loan will impact on their lives. Some have nearly lost their homes, some just stop direct credit and a vicious circle of struggle just gets worse, that is with the safeguards in place. We don't need an axing of safe lending laws, we need them strengthened.”

Linda, 3971

“My niece has been victim to unsafe lending practices, where she was permitted to borrow more money than she could afford to pay back. She found herself in a debt spiral with interest charges and monthly fees getting her further and further into debt. I helped her refinance but not everyone has access to helpful and financially literate family members who are in a position to help.”

Deborah, 3337

Stories shared by supporters from the Northern Territory



“We need safe lending laws for the future of my children and grandchildren who need this protection”


Carol, 0820

“I am appalled that the government is seriously considering removing safe lending laws. These are critical to our community and must not be graded off for the excuse of supposed economic gain. Any such gain is at the expense of people who can't afford it and actually be detrimental to the economy. The government should follow the recommendations of the banking royal commission and strengthen support in the financial sector for consumers - not erode it. This move would go against the very first recommendation which would be terrible. Banks are very difficult to deal with and I have certainly had several bad experiences with financial institutions that cost me money.”

Edward, 0830

Appendix

Appendix 1 - Fox Symes¹⁷

The advertisement features a background image of a road with a white arrow pointing forward. The text is overlaid on this image. At the top, the title 'Bad Credit Car Loans*' is in large, bold, black font, followed by 'PURCHASE OR REFINANCE' in a slightly smaller, bold, black font. Below this, a paragraph states: 'Fox Symes may be able to assist you with a loan to purchase a car or to refinance an existing car loan even if you have unique circumstances like a bad credit history.' There are six bullet points arranged in two columns, each with a checkmark icon: 'Been Declined? Have Bad Credit?', 'Purchase or Refinance', 'Current or Discharged Bankrupt' in the left column; and 'Up to \$50,000 Car Loans', '\$0 Deposit Required', '~5 Minute Pre-Approval' in the right column. A green button with the text 'Apply Now' is positioned below the left column of bullet points. At the bottom, a small disclaimer reads: '* All applications for credit are subject to our normal credit approval criteria. Terms and conditions are available on application. Fees and charges apply.'

Appendix 2 - rapidfinance¹⁸

Low Doc and No Doc Applicants

Another option for car loan applicants who do not have financials are Low Doc or No Doc facilities. These are designed to assist people who are struggling to provide evidence of their income.

On the other hand, if you already have a car loan with a perfect history of repayment, it may be possible to obtain a replacement loan without income documentation.

¹⁷ Fox Symes, 2020, https://www.foxsymescarloans.com.au/?gclid=CjwKCAiAu8SABhAxEiwAsodSZE6qu5D66dZaibhRZSTq8Re-I_BM1-I_Tkok7k5iWHNwv4jc3FJbCORoCPSoQAvD_BwE, last accessed 1 February 2020

¹⁸ rapidfinance, 2020, <https://gorapid.com.au/resources/information-centre/car-loan-requirements> accessed 1 February 2020

Appendix 3 - Savvy Loans¹⁹



¹⁹ Savvy Loans, 2020, <https://www.savvy.com.au/personal-loans/best-small-loans-australia>, accessed 1 February 2020