

Defending Responsible Lending

Australian Council of Trade Unions submission to the Senate Standing Committee on Economics inquiry into the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020*

ACTU Submission, 3 February 2021
ACTU D. No 02/2021

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Introduction

Since its formation in 1927, the Australian Council of Trade Unions (ACTU) has been the peak trade union body in Australia. The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates. They have approximately 1.5 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector. As the voice of Australian workers, who make up the borrowers of Australian credit, the ACTU is opposed to the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020* and urges this Committee to recommend that the Bill not be passed.

It is our belief that this legislation needlessly and recklessly undermines responsible lending practices, weakens consumer protections and exposes the public and the economy to credit risk. It is disappointing that this legislation, which seeks only to further enrich some sections of the banking sector, is being presented as a response to the COVID-19 pandemic. We do not believe this measure will assist at all in the recovery from COVID-19 and that it is cynical and misleading for the Government to package it as such.

Issues with the Bill as proposed.

The Weakening of Responsible Lending Obligations

Schedule 1 of the bill contains a number of elements which the ACTU believes fundamentally undermine responsible lending obligations and would expose the public to irresponsible lending practices. This is particularly concerning given Australia's current issues with consumer debt. Australia's level of household debt continues to be among the highest in the world.¹ Nearly half of Australian workers are struggling to pay their bills and COVID has worsened the financial situations of around a third of Australians.²

While the ACTU would oppose the weakening of responsible lending obligations regardless of the economic context, it must be considered that this is a particularly inappropriate time to do so. The ACTU is concerned that the proposed legislation attacks responsible lending in a number of ways, including:

- *Removal of civil and criminal penalties regime for irresponsible lending.*
 - Under the current law, if a credit licensee provides (or recommends) an unsuitable credit product, this can attract both a criminal and civil penalty. Under this Bill, this will only apply to loans of a value less than \$2000.
 - Bank loans would, under this Bill, fall back to APRA standards only, which are designed to protect the banking system – not individual borrowers.
 - The reliance on Ministerial Standards for other (non-bank) lenders, which would be much weaker than current responsible lending obligations. This would mean there would only be civil penalties on lenders for 'repeated' or systemic breaches of these obligations and almost no legal rights for individuals attached to breaches of these standards.
- *Reduced legal rights for borrowers against banks and lenders.*
 - The removal of a penalty regime for responsible lending also removes the legal rights of borrowers. Under this Bill, borrowers would lose their right to take lenders to court for lending misconduct. Breaching APRA or Ministerial Standards (whichever apply) confers no right to the individual borrower for legal action unless

¹ Jonathan Kearns, Mike Major and David Norman, How Risky is Australian Household Debt?, Reserve Bank of Australia Research Discussion Paper RDP 2020-05, August 2020, p 4
<https://www.rba.gov.au/publications/rdp/2020/pdf/rdp2020-05.pdf>

² <https://consumeraction.org.au/debt-management-quantum-market-research/>

systemic breaches are proven (something which individual borrowers are effectively unable to prove).

- The changes this Bill introduce would also limit the ability of borrowers to utilise the Australian Financial Complaints Authority as the Authority's only remit is to resolve complaints based on the law – which this Bill waters down.
- *Reduced assessment and verification obligations.*
 - The Bill removes the overarching obligation for loans to be 'not unsuitable' for a borrower, along with the obligation to consider a borrower's requirements and objectives. Furthermore, the Bill allows lenders to rely on financial information provided by the consumer unless there are reasonable grounds to believe it is unreliable, and to use 'reasonable' estimates of expenses – as opposed to actually verifying this information.
 - These changes may also reduce the likelihood of the discovery of the use of loans as a tool of financial abuse, as well as the ability of victims/survivors of that abuse to seek redress from lenders.

The impact of these changes on the banking and finance sector workforce must also be considered. Poor lending practices, disregard for borrower wellbeing and the relentless pursuit of profit without regard to the public interest, their duty to their customers and employees, or their obligations to ensuring a stable and sustainable credit system operates, enforced from the top of lending organisations, have already been shown to cause significant harm, both moral and to mental health, to workers in the sector. The proposed changes in this Bill will worsen this issue. More information on the impact of these forces on workers in the sector can be found in the submission of our affiliated union, the Finance Sector Union, which the ACTU fully endorses and commends to the Committee.

It is our belief that Schedule 1 of this Bill is deeply flawed and must not come into effect. It is our analysis that it not only contradicts the findings of the Banking Royal Commission, which recommended the retaining of the 'not unsuitable' test and the importance of the 'twin peaks' model of regulation (which this Bill undermines), but also will cause direct harm to workers, both in the finance sector and those outside it, and their families. This Bill will contribute to an already concerning level of indebtedness in the community and seems designed to encourage irresponsible lending practices.

Inadequate Protections for Consumers.

In addition to the issues in Schedule 1 of the Bill, the ACTU is the view that Schedules 2 – 6 also introduce a number of undesirable changes. These changes fundamentally undermine crucial consumer protections, particularly with relation to small amount credit contracts (SACCs) and

consumer leases. This is particularly concerning as, with regard to consumer leases particularly, these credit products are more likely to be utilised by low paid workers – those who can least afford to be left with inadequate protections. We consider the changes below to be particularly concerning.

- *Doubling Protected Earnings amount.*
 - The Bill seeks to double the recommended protected earnings amount caps from 10% to 20%. If implemented as recommended in the SACCs review, the caps would have ensured that a person could not be required to commit more than 10% of their net income in total to repayments for payday loans at any time, with a separate 10% cap applying to consumer leases. The doubling of these caps, as occurs under this Bill, would mean an employed person could still have up to 40% of their net income taken by payday lenders and consumer lease providers – an unacceptable and unsustainable burden on the income of working Australians.
- *Extra charges in consumer lease cost cap.*
 - The Bill allows 4% monthly fees calculated on the base price plus delivery and installation fees for leased products. This means borrowers could pay up to 192% extra on these fees over a 4-year lease. This once again goes against the SACC Review which recommended a 4% monthly cost cap for consumer leases (for a maximum of 48 months) calculated on the retail price of the leased good.
 - Also contrary to the SACC Review recommendations, the Bill allows consumer lease providers to charge an extra 20% establishment fee on leases, on top of the cost cap that was recommended by the SACC Review - meaning that consumer leases could still come with an effective equivalent annual interest rate of over 100%.
- *Non-sensical scale of protections with perverse outcomes.*
 - If this Bill is passed as written, consumers would find themselves in a situation where they are provided greater protections for a loan of up to \$2000 in value than they would for one of between \$2000 and \$5000. This is not only an illogical approach to consumer protection, but may also result in an incentive for lenders to pressure borrowers to increase the value of loans to allow the lender avoid the risk of legal action for irresponsible lending from regulators or the borrower.

In Summation

Australian unions are of the view that this Bill, in its current form or any form which seeks to achieve these outcomes, cannot be passed. If implemented, these changes will fundamentally undermine responsible lending practices and leave workers vulnerable to loans which do not meet their needs and to sharp practices from bad actors in the lending system.

It is inconceivable that the Government, after hearing the stories of bad behaviour which emerged from the Banking Royal Commission has decided to ignore the recommendations of that Commission and the damage that irresponsible lending inflicted on the lives of thousands of working Australians. That the Government has attempted to cover these changes with the fig-leaf of 'pandemic recovery' is shameful. We urge the Committee to recommend that this Bill not be inflicted on the Australian public.

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