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Senate Standing Committees on Economics
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Financial Sector Reform Bill

Thank you for the opportunity to comment on *Financial Sector Reform Bill 2022* in particular Schedule 4 amending the *Credit Act* to enhance the consumer protection framework for consumers of small amount credit contracts and consumer leases.

This submission from Financial Rights Legal Centre (**Financial Rights**) draws on our experiences working with clients on the National Debt Helpline and via Mob Strong Debt Help (**Mob Strong**), an Aboriginal led program embedded in the centre.

Financial Rights has long sought the implementation of the recommendations of the 2016 Review of small amount credit contracts - Final report.¹ We regularly speak to and assist clients experiencing significant financial hardship borne of expensive small amount credit contracts and consumer leases.

We strongly support the passing of the *Financial Sector Reform Bill 2022* in this current form as soon as possible in order to stem the ongoing flow of consumer harm wrought by pay day loans and consumer leases.

While we support the entirety of the bill as it stands, we wish to particularly comment - and provide recent cases studies- on the following key elements of the bill that must not be watered down.

¹ Financial Rights has worked jointly with other consumer groups on submissions to a number of enquiries including 2021's submission on the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020* and 2017's submission on *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 (Cth)*.

Small Amount Credit Contracts (SACCs)

- **Extending the protected earnings amount to all consumers and set this amount at 10 per cent of a person's net (after tax and other deductions) income for all consumers: *Schedule 4, item 12, subsection 133CC(1)***

We note that the Bill does not set the protected earnings amount but that it will be set by regulation. It is important that when this occurs that this be set - as stated in the Explanatory Memorandum² and recommended by the SACC Review Final Report³ - at 10% and no higher given the impact high cost credit has on the lives of those least able to afford it and the current cost of living crisis. Any higher and the reforms will unlikely achieve the reduction of consumer harms sought.

Case study – Elaine's story – S263202 – March 2021

Elaine is a single parent with two children on the Carer Payment who lives in community housing. During 2020, she took out three SACCs from a SACC provider in successive months for \$900, \$600 and \$400. At the times the above loans were taken out she was already struggling with various other debts including a car loan, another short term credit contract loan, telco debts and a gym membership debt.

Based on the SACC provider's own assessment the total payments Elaine was spending on SACCs were approximately 26.5% of her net Centrelink income per fortnight and about 18.7% of her gross Centrelink income. When Elaine created a money plan with a financial counsellor it showed that she was in deficit of \$12 per fortnight, meaning she could not sustain even a very basic standard of living and repay these loans. If these loans had not been provided, she may have sought assistance from a financial counsellor sooner to deal with her other debts, rather than go into further debt and exacerbate the situation.

Case study – Jane's story – S248417 – April 2020

Jane was referred to us as she was being chased for a debt of approximately \$700 by a payday lender for two loans. Jane's only income was the Disability Support Pension and then Newstart.

² Para 4.35

³ Recommendation 1, *Review of the Small Amount Credit Contract Laws, Final Report* March 2016, https://treasury.gov.au/sites/default/files/2019-03/C2016-016_SACC-Final-Report.pdf

After reviewing the documents, it became clear over five years, Jane was granted over 46 small amount credit contracts with the same SACC provider and paid approximately \$7,000 in fees. This review also revealed that:

- on average Jane had four SACC's within the 90 days of her application and in some cases as many as six;
- in almost all instances, the SACC was unsuitable as the presumption of hardship was not disproved;
- in a number of instances, one SACC was used to payout an existing SACC with Cash Converters.

The current law provided Jane with a remedy after the event but it did not prevent her from entering a cycle of harmful debt in the first place and enduring 5 years of financial hardship and associated stress.

The existing presumptions in the law, which reference how many loans a person has had in a 90 days period prior to a loan being granted, are ineffective at preventing people from being trapped in harmful traps. Lenders use the fact that it is a presumption rather than a rule to largely ignore it. While in Jane's case above repayments did exceed the 20% of her Centrelink on a couple of occasions, in our experience this is rare. Compliance with 20% repayment cap on Centrelink payments has been fairly good. The problem is that the cap is set too high to prevent the harm and does not apply to other types of income. The 10% cap on repayments proposed would be a far more effective preventative measure.

- **Prohibit unsolicited communications including offers or invitations to enter into a SACC: *Schedule 4, item 14, subsection 133CF(1)***

This provision would address of the key problems faced by many of our clients – the debt spiral borne of constant offers for new SACCs and the ease of falling into this trap.

Case study – Rita's story – S275389 – February 2022

Rita reached out to Financial Rights for assistance with a loan she could not afford to repay. She was homeless and couch surfing and direct debits from her bank account were leaving her without enough money to live sustainably. Rita had a previous SACC with a SACC Provider which she had paid down substantially but she had given in to the temptation to take out a further loan when she received an unsolicited offer from them at Christmas. Rita had by this time separated from a DV relationship.

When Rita came to Financial Rights we found the subsequent loan was a MACC secured over her car. In any event she could not afford it and would not have taken it out but for the unsolicited offer of further credit at a vulnerable point in time. .

Consumer leases

- **Introducing a protected earnings amount for consumer leases: Schedule 4, item 26, subsection 156B(1)**

We note that the Bill does not set the protected earnings amount but that it will be set by regulation. Again, it is critical that this be set at 10% - as stated in the Explanatory Memorandum⁴ and recommended by the SACC Review⁵ - and no higher given the impact high cost credit has on the lives of those least able to afford it and the current cost of living crisis. Any higher and the reforms will unlikely achieve the reduction on consumer harms sought.

Case study – Pia’s story – S268011 – July 2021

Pia is 51 years old and relies on the DSP as her sole source of income. She was born with an intellectual disability and sustained an acquired brain injury many years ago. She has difficulty with reading, writing and comprehension.

In 2018 she entered into three consumer leases with a Consumer Lease Provider for a number of household items (including white goods, a TV and a laptop) from a shopfront in her local town.

Each time she obtained a lease she was not told the details – for example how much the rental payments were, how much she would pay over the contract period, or how much she would have to pay above the value of the goods.

She wasn’t able to afford the rental payments under the leases, paying 15% of her income on the contract payments leading to a monthly deficit in her budget for essential expenses of approximately \$40.

Case study – Sam’s story – S266921 – March 2021

Sam is an Aboriginal Elder living remotely. Sam speaks very little English and is illiterate. Sam’s only source of income is the disability support pension.

At the time of the Contract, Sam survived on a Disability Support Pension with energy, pension and remote area allowance totaling around \$930 per fortnight. However, \$450

⁴ Para 4.185

⁵ Recommendation 15, *Review of the Small Amount Credit Contract Laws, Final Report* March 2016, https://treasury.gov.au/sites/default/files/2019-03/C2016-016_SACC-Final-Report.pdf

of this pension was deducted for the purpose of the income management scheme under the *Social Security (Administration) Act 1999 (Cth)*.

In November 2018, Sam and his son went to the consumer rental provider (CRP). Sam wanted a phone and his son wanted a washing machine. The CRP staff included the phone and the washing machine on Sam's lease agreement. This meant that Sam was liable for rental payments towards both items. Sam realised after he entered into the lease that he would be paying for both items and decided to accept this.

The CRP staff completed a very poor lending assessment. The CRP substantially underestimated Sam's living expenses. The CRP did not take any steps to verify Sam's living expenses, such as reviewing the bank statements provided by Sam before approving the lease.

The CRP staff organised for the lease repayments to come out of Sam's Centrepay. Sam was unable to meet his basic needs because of the deductions from his Centrepay.

Under the Contract, Sam would pay \$200 per fortnight for 2 years making up 20% of his income – the total amount Sam would pay was \$10,350 for the three items – a speaker, a phone and a washing machine, placing him into severe financial hardship.

We were unable to estimate the value of the goods because the lease agreement contained insufficient information (eg- the lease agreement did not include information about the make and model of the goods). The CRP did not tell us the value of the goods.

Sam disposed of the phone after it stopped working. His son had possession of the washing machine. Sam was very upset to discover that he had paid \$10,350 for these items via Centrepay deductions

- **Capping the costs for consumer leases: *Schedule 4, item 50, subsection 175AA of the Code***

Introducing a 4% monthly cap on the fees that may be charged. We note that the base price of the goods hired under a lease will be prescribed by the regulations. We recommend that this base price be the recommended retail price of the good and should not be calculated on delivery, installation or other charges. Nor should there be any establishment fees be allowed. The recommended retail price already incorporates the profit margin – sought to be increased by a proliferation of fees.

As is evident from Sam's case above, the harm in many consumer leases is two-fold: there is the ongoing financial stress caused by unaffordable payments; and the unfair bargain inherent in the unreasonably large amounts paid in total for the goods. All other forms of lending under the credit law are subject to a price cap, creating a financial incentive to structure financing arrangements as consumer leases instead. A price cap for leases is both necessary to prevent this harm and long overdue.

- **Prohibit public canvassing of consumer leases: Schedule 4, item 53, subsection 179VA(1) of the Code**

We have seen aggressive and unfair sales practices used by lessors including door-to-door selling and other forms of aggressive and unsolicited selling. These have disproportionately impacted First Nations communities and continue to do so.

Case study – Erin’s story – C212120 – June 2021

Erin is 40 year old Aboriginal mother of one and living with severe mental health issues caused by past trauma. Erin has been dependent on a fortnightly Centrelink income, community services, drug and alcohol treatment and NDIS support. Erin lives in Aboriginal housing and has been reliant on short term credit loans for meeting living expenses and has defaulted on these on numerous occasions.

In late 2018, Erin received an unsolicited phone call from a Consumer Lease Provider with whom she had previously taken one consumer lease out. The staff member informed Erin that she was approved for a high end mobile phone. Erin had never sought to apply for this lease before. However, Erin was interested in getting a phone and subsequently obtained it.

Erin ended up obtaining a total of 3 consumer leases – two of which were phones – paying through Centrepay a total of 12.75% of her gross income fortnightly.

Anti-avoidance measures

- **Prohibit avoidance schemes: Part 4 of Schedule 4**

This is a critical piece of this legislation. Cigno has demonstrated the lengths that wilfully avoidant schemes have gone to perpetrate harmful credit models outside of the law. Financial Rights has made a number of submissions with multiple case studies to ASIC in its use of the product intervention power to reign in the exploitation inherent in Cigno’s business model.⁶ Even with the multiple attempts by ASIC to prevent Cigno from

⁶ Submission to ASIC Consultation Paper 316: Using the product intervention power: Short term credit, July 2019 https://financialrights.org.au/wp-content/uploads/2019/07/190730_ASICCP316CShortTermCredit_FINAL.pdf Submission re: ASIC Consultation Paper 330 – Using the product intervention power: Continuing credit contracts https://financialrights.org.au/wp-content/uploads/2020/08/200806_ASIC-PIP-continuing-credit-submission_FINAL.pdf; Addendum to submission re: ASIC Consultation Paper 330 – Using the product intervention power: Continuing credit contracts, November 2020 https://financialrights.org.au/wp-content/uploads/2020/12/201124_ASIC_CP330_PIP_consult2_FINAL.pdf, Response to consultation paper 355: Product intervention orders in credit, January 2022 https://financialrights.org.au/wp-content/uploads/2022/02/210121_ASIC_cp355-joint-sub_FINAL.pdf

continuing to operate in more and more elaborate schemes to avoid the law, we unfortunately continue to have to help those caught in their web.

Case study – Hayk’s story – C229275 – May 2022

Hayk’s only source of income is the disability pension. In May 2022, Hayk entered into a loan with **BSF**. Under the terms of the loan, Hayk borrowed \$220 and would repay credit fees of \$11.00. The loan term was 12 days. **Cigno** acted as the “service provider”. Under the terms of the service agreement, **Cigno** charged a financial supply fee of \$112, an account keeping fee of \$5.95, a default fee of \$79 and a change of payment fee of \$22.

If all payments were made on time, the total repayment amount under the loan agreement and the service agreement would have been approx. \$350

Because of issues with his direct debit, Hayk defaulted on his repayments. As a result, **Cigno** was seeking to recover a total of over \$650.

One issue we wish to raise is the centring of the avoidance on the contract or scheme on it being *more complex*, or *more costly* to the consumer: Schedule 4, item 62, subsection 323B(1). These elements will eradicate most if not all avoidance schemes. However we don’t believe it captures those schemes that may be developed to simply avoid the protected earnings cap. Such a scheme may not be more costly or complex – it may simply involve a shorter period of payments that make each separate payment higher than the protected earnings amount, making it unaffordable, but not necessarily more costly overall. Avoiding the protected earnings cap would enable lenders to continue to lend to people who could not afford their repayments, effectively enlarging their potential customer base. We believe further consideration is required here to capture the full gamut of potential avoidance strategies.

- **Prohibition on making proscribed referrals**

This is an important anti-avoidance measure and will close the gap that has allowed some firms to enter into arrangements with other firms to refer customers to unregulated credit providers. This leads to very expensive credit being offered to applicants who do not qualify for a regulated loan, thereby avoiding consumer protections provided by the Code.⁷ Section 160G is also broad enough to prevent consumers being directed to unlicensed and even riskier forms of credit, again working to prevent a debt spiral.

Case study – Ian’s story – S270273 – September 2021

Ian is 33 years old and is on the Job Seeker Allowance. He had previously been in a relationship which was characterised by domestic and family violence, including financial

⁷ See Financial Rights submissions on Cigno listed above.

abuse. Due to the abuse he sustained in that relationship he suffers from extensive mental health issues.

In about January 2020 he applied for a loan of \$500 from a licensed SACC provider. His ex-partner regularly coerced Ian to take out a loan in his name as he had a substance abuse problem and was reluctant to take out loans in his own name. Upon rejecting his application, the licensed SACC provider referred Ian to the unlicensed lender **Cigno**.

The application form was pre-filled with his personal details. Ian provided his mygov login details and his bank account details for **Cigno** to access his Centrelink Income Statement and bank account statements. He did not provide any other financial information.

He applied for a loan of \$300 but was approved for \$175.

Ian understood his repayments were \$40 per fortnight. He made sporadic payments when he could but found himself with an outstanding balance of \$800 – over 450% of the size of the original loan.

Further comments

We wish to also support the following:

- Schedule 4, item 14, subsection 133CD which would introduce a requirement that payday loan repayments and intervals be equal
- Schedule 4, item 15, subsection 31C(2) of the Code which bans SACC providers from charging unexpired monthly fees where a person pays out a loan early and
- Schedule 4, item 52, section 179GA of the Code which introduces the ability to limit the amount that can be charged by a consumer lease provider for defaults on payments.

Finally we note that consumer lease provider access to CentrePay must be reviewed with an eye for their removal as a matter of urgency. The ability for consumer lease providers to have customers deduct their exorbitant costs directly from their CentrePay income has added to the problem of consumers being locked into unaffordable consumer lease contracts and exacerbated financial hardship by ensuring consumer lease customers are left with little money for everyday essentials.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact [REDACTED].

Kind Regards,

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About Financial Rights

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.