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Submission

Senate Inquiry: National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019

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About Financial Counselling Australia and Financial Counselling

Financial counsellors provide advice to people with money and debt issues. Working in community organisations, their services are free, confidential and independent.

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia. FCA's members are the State and Territory financial counselling associations.

CONTENTS

| | | |
|---|--|---|
| 1 | Introduction..... | 1 |
| 2 | Summary..... | 1 |
| 3 | The SACC Review | 1 |
| 4 | The harm | 2 |
| 5 | SACC Bill..... | 3 |
| 6 | Suggested improvements for the SACC Bill | 3 |

1 Introduction

Financial Counselling Australia (FCA) welcomes the Senate Inquiry into the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (the “SACC Bill”). The proposed amendments have been in discussion since an Independent Review of the Small Amount Credit Contract Laws (the “SACC Review”) in 2015 and exposure draft legislation was released in 2017. It has been a very long wait to implement urgently needed consumer protection.

Financial counsellors assist people in financial difficulty. They advise and assist people who are often on very low incomes. There are financial counsellors all over Australia. Financial counsellors are committed to working with their clients to resolve financial problems. Financial counsellors often do budgets or money plans with their client to prioritise debts and expenses depending on the client’s needs. Financial counsellors are committed to building the financial capability of their clients.

Financial counsellors have repeatedly raised concerns about high cost and exploitative small amount credit contracts (also called pay day loans) and consumer leases over the past 20 years. The harm of this type of credit have been documented repeatedly in numerous submissions. Financial counsellors and their clients have spoken to the media about the serious harm being caused.

2 Summary

Legislation first proposed by the government in October 2017 in relation to payday loans and consumer leases must be introduced urgently. People need strong consumer protections when using these high cost and potentially harmful products.

3 The SACC Review

The SACC Review Final Report¹ made 24 recommendations for essential consumer protections. The Government accepted the large majority of the recommendations and released an exposure draft of legislation in October 2017.² This is an example of evidence-based policy where a consumer harm was identified, there was an independent review, a final report was issued with recommendations and the Government drafted legislation based on that review.

It is difficult to understand why legislation was not enacted in 2017. It is now 2020, and the harm identified in the SACC Review has now continued for a further three years. The harm identified in the recent Financial Services Royal Commission was extensive, but did not include payday lenders and consumer leases in its terms of reference. The

¹ Review of the Small Amount Credit Contract Laws, *Final Report*, March 2016, available at: https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf.

² Treasury consultation 22 October 2017 – 3 November 2017 with information available at <https://treasury.gov.au/consultation/c2017-t229374>.

Government is now acting on the most of the recommendations of the Royal Commission. It remains unclear why bank customers can expect action on recommendations and yet the many people who have fallen into a debt trap with payday loans and consumer leases are still waiting and continuing to be harmed.

4 The harm

The harm for people using pay day lending and consumer leases is extensive and has been documented in the SACC Review and the report *The Debt Trap – How payday lending is costing Australians*.³ ASIC has also taken a number of enforcement actions against specific consumer lease providers or SACCs.⁴ ASIC has also recently taken action to ban a short term lending model which exploited a loophole in the credit laws.⁵ Financial counsellors have repeatedly seen harm caused by both payday lenders and consumer lease providers.

Examples of harm:

Debt trap: Giving SACCs and consumer leases that the person cannot afford to repay or only repay with substantial hardship. Many people end up with the repayment for the SACC or lease being a substantial amount of their income. The harm includes:

- Being left with insufficient money for basic living expenses as a direct debit takes any income before rent, food and utilities (payday lenders align direct debits with the day a person is paid);
- For people in receipt of income support payments through Centrelink, consumer lease providers are paid first by setting up Centrepay arrangements. Again, this means people can be left with insufficient money for basic living expenses;
- The need to access emergency and food relief from community agencies as the person has insufficient money;
- The stress of not having enough money to cover basic needs;
- Desperately borrowing to attempt to get out of the debt trap; and
- Part IX debt agreements and/or bankruptcy.⁶

Repossession of goods: Consumer lease providers can repossess the goods under the lease if the person gets behind on repayments (and a default notice has been sent and remains unpaid). As there is no right to buy, the person may have paid the cost of the goods many times over and the goods can still be repossessed.

³ Stop the Debt Trap Alliance, *The Debt Trap – How payday lending is cost Australians* November 2019 available at <https://consumeraction.org.au/20191112-the-debt-trap-report/>

⁴ A list of the major enforcement actions can be found on pages 2 and 3 of the joint consumer submission re: Small Amount Credit Contract and Consumer Lease reforms dated 3/11/17 available at <https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/11/171103-FINAL-submission-exposure-draft-SACC-legislation.pdf>.

⁵ Media Release 19-250MR ASIC makes product intervention order banning short term lending model to protect consumers from predatory lending 12 September 2019 available at <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-250mr-asic-makes-product-intervention-order-banning-short-term-lending-model-to-protect-consumers-from-predatory-lending/>.

⁶ It is noted that some people go into a Part IX Debt Agreement then default and eventually go bankrupt.

Debt collection and enforcement: Debt collection is stressful. Repeated calls and demands wear a person down. This is particularly difficult when the person could never afford the loan and now owes default fees as well. There are also the serious consequences of enforcement through the court including garnishee of wages or savings, repossession of household goods and forced bankruptcy⁷.

5 SACC Bill

We have suggested a number of technical improvements for the SACC Bill in section 6 below. However, we want to stress that the most important action by the Senate is to recommend that the SACC Bill is passed and urgently. The reforms are critical.

We support the changes proposed being:

- A cap on total payments that can be made under a consumer lease;
- The requirement that SACCs have equal repayments and equal payment intervals;
- Void monthly fees being charged on the residual term when a SACC is repaid early;
- Prevent unsolicited home sales for consumer leases;
- Introduce anti-avoidance provisions;
- Strengthen penalties;
- Reduce the protected earnings amount from 20% of gross income to 10% of net income for SACCs; and
- Introduce a protected earnings amount of 10% of net income for consumer leases.

In particular, the proposed changes for protected earnings are a vital consumer protection to ensure that people using SACCs and consumer leases do not end up in a debt trap.

6 Suggested improvements for the SACC Bill

We have a number of suggested amendments for the SACC Bill and these are set out below.

Commencement date

The commencement date for the SACC Bill reforms should be as soon as possible given the long delay in passing the bill. The new provisions should commence six months after Royal Assent.

Consumer lease for household goods (definition)

Motor vehicle leases should not be excluded from the proposed reforms. Consumer leases for cars can have the same problems as those leases for household goods.

⁷ Forced bankruptcy is only possible if the debt is over \$5000.00.

The definition and use of the term “consumer lease for household goods” should be redefined as “consumer lease”.

Anti—avoidance provisions

Anti-avoidance provisions are essential as there is a cohort of determined and persistent lenders that work to avoid the credit laws or parts of them. The anti-avoidance provisions must apply for all types of credit regulated under the National Consumer Credit Protection Act. This is an important forward-thinking requirement as no one can predict what new avoidance scheme will be dreamed up by these kinds of lenders.