Submission to the Senate Standing Committee on Economics into the

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

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About UnitingCare Australia

UnitingCare Australia is the national body for the Uniting Church's community services network and is an agency of the Assembly of the Uniting Church in Australia.

We give voice to the Uniting Church's commitment to social justice through advocacy and by strengthening community service provision.

We are the largest network of social service providers in Australia, supporting 1.4 million people every year across urban, rural and remote communities.

We focus on articulating and meeting the needs of people at all stages of life and those that are most vulnerable.

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Introduction

UnitingCare Australia welcomes the opportunity to provide feedback on the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020* (the Bill).

We oppose the Bill and urge the Committee to recommend that it be rejected in its entirety. Every day, the organisations in our network hear from people who are trapped in crippling debt and financial hardship due to irresponsible lending. By weakening responsible lending laws, this Bill will result in more people falling into financial stress and over-indebtedness due to unsuitable and unaffordable loans, while at the same time removing critical avenues of redress and remedy. Weakening current safeguards will make it easier for lenders to take advantage of people under financial pressure or in vulnerable circumstances because of family violence, poor mental health, low financial literacy or other factors. Community organisations will be left to pick up the pieces through increased demand for emergency relief, financial counselling, mental health services, and housing and homelessness support.

UnitingCare Australia also believe provisions in the Bill that relate to small amount credit contracts (SACCs) and consumer leases are inadequate and will do little to curb the growing harms arising from predatory payday lending and consumer leases. For more than four years, the Federal Government not progressed draft legislation that would ensure robust protections for people who use payday loans or consumer leases. Instead of implementing these reforms, this Bill proposes changes that do little to improve consumer protections. Furthermore, the harm that will result from repealing responsible lending obligations will only fuel financial hardship, and this is likely to result in more people seeking unaffordable credit and falling victim to predatory lending.

With the uneven economic fallout from the pandemic and the winding back of support measures to households, it is vital the Parliament retains current responsible lending protections, while implementing further reforms to protect people from exploitative lenders who seek to take advantage of their financial vulnerability.

UnitingCare Australia are not arguing for overly-cautious lending, or limited lending – just responsible lending. We recognise that maintaining the flow of credit through the economy is a legitimate aim, however we do not believe the changes proposed in this Bill are necessary to achieve this. Australia already has one of the highest levels of household debt in the world. It is far from apparent that there is a problem with access to credit, with owner-occupied home lending at record highs and the major banks reporting the flow of credit is above pre-COVID levels and growing at a strong pace. Providing people with unaffordable credit will do nothing to hasten the economic recovery from COVID-19. It will only lead to vulnerable people suffering greater harm and distress in the long run, while creating wider financial instability. As Australia seeks to rebuild and recover from the pandemic, now is when we should be heeding the lessons learned during the global financial crisis and ensuring responsible lending. A consumer-led recovery that is fair, safe and inclusive will build a more resilient economy and community coming out the other side of this crisis.

This submission is informed by the insights and expertise of financial counsellors working across UnitingCare Australia's network of organisations. It also draws on case studies from our services that illustrate the potential consequences of proceeding with the Bill. We believe the most compelling argument for retaining responsible lending protections and curbing predatory payday lending can be found in the voices of those affected by irresponsible lending. We urge the Committee to listen to those voices and to recommend that the Bill be opposed.

Key concerns with the Bill

The reduction of responsible lending obligations (schedule 1)

Escalation in household debt and harms to individuals and families

The impact of unaffordable debt on individuals, families and communities is immense. Financial counsellors from across our network of organisations speak to people every day who are struggling to pay their debts, while juggling other daily expenses such as energy bills, groceries and healthcare costs. As Lorraine's story below shows, over-indebtedness can have devastating and lasting effects on individuals and their families, eroding wellbeing and leading to a cascade of financial, health and relationship problems. Debt can also increase isolation and exacerbate mental health issues. Uniting NSW.ACT, who operate the National Debt Helpline in NSW, report receiving an average of two calls a month where the caller discloses that they are thinking of ending their life because the effects of unaffordable debt are so overwhelming.

Case study: Lorraine and Lucy

Lorraine and Lucy are sisters who purchased an investment property together. The bank that ultimately provided the loan advised the sisters on how to manipulate lending restrictions so that they could borrow the highest amount possible, which at the time was nine times their combined annual income. This occurred prior to the enforcement of the current responsible lending laws.

A few years later there was a significant downturn in the property market. The sisters' investment property was empty for a few months and the lesser rent no longer came close to meeting the mortgage. Both Lucy and Lorraine found themselves in financial trouble, unable to meet their mortgage repayments. This created immense stress and Lucy was subsequently diagnosed with anxiety and depression. Feeling responsible, Lorraine who was the older sister borrowed against the family home and the family business in order to buy Lucy out. This placed Lorraine in an untenable financial position, and her increased indebtedness negatively impacted all areas of her life. Her marriage broke down and ended in divorce, and Lorraine lost the family home and business. She was now solely responsible for a large debt.

Unfortunately, the accounts from financial counsellors across our network indicate that the irresponsible lending practices experienced by Lorraine and Lucy are not isolated or uncommon. The Royal Commission into misconduct in the financial services sector exposed numerous instances of lenders, including banks who promote customer-oriented values, offering high-limit credit products that were clearly unaffordable to their customers. The first recommendation from the Royal Commission was that our responsible lending laws be retained and should *not* be amended to alter the obligation to assess the unsuitability of loans. The Bill currently under consideration, however, contradicts this recommendation and appears to disregard the lessons from the Royal Commission. The economic fallout of COVID-19 does not make the Royal Commission's recommendations any less relevant. If anything, the increased economic vulnerability and uncertainty in the community means the need for a regulated credit sector with incentives to comply with consumer protection standards is greater than ever.

Undermining economic resilience and recovery

We are deeply concerned there will be an escalation in over-indebtedness if responsible lending obligations for banks and other Authorised Deposit-taking Institutions (ADIs) are repealed. Levels of household debt in Australia are already among the highest in the world, with the latest OECD figures showing the ratio of Australian household debt to net disposable income stands at 217 per cent.[1,2] In this context, weakening responsible lending laws will only add to the risk of a looming debt disaster.

The fallout from repealing responsible lending laws is likely to be exacerbated by the current economic context and wider policy settings. As noted in a recent internal analysis by the Reserve Bank of Australia, there is a risk that "looser lending standards" and "optimistic assessments of risk", combined with low interest rates and soaring house prices, will entice more people to take on debt that they simply cannot afford.[3] In addition, pressures on low-income and financially stressed households will likely increase with the withdrawal of JobKeeper and the Coronavirus Supplement, combined with the lifting of debt repayment deferrals by the banks, the end of moratoriums on rental evictions, the unfreezing of utility prices, and the resumption of debt recovery by Centrelink. Early access to superannuation funds is no longer available to those experiencing financial stress. Temporary changes to bankruptcy laws, which included increased debt thresholds and timeframes to respond, have also ended and returned to pre-COVID settings.

These measures had effectively put economic obligations on pause, allowing individuals and families breathing space. As they are wound back, financial pressures will increase, and our network anticipates that any weakening in responsible lending laws will result in an escalation of people with unaffordable debt. This will have flow on consequences for the wider economy, hindering recovery and contributing to economic inequality. As stated by a financial counsellor from one of our network organisations, "winding back responsible lending laws is not the solution to our economic problems – it is a tool to make it worse".

Removal of protections against financial abuse

UnitingCare Australia is deeply concerned the proposed reforms will have a detrimental impact on survivors of domestic violence and financial abuse. Around 85 per cent of women who access domestic and family violence services in Australia say they have experienced financial abuse as part of the coercive control in their relationship.[4] Coerced debt, such as that experienced by Eleni in the case study below, is a common factor that prevents survivors from leaving a violent or abusive relationship and re-establishing their lives. Women fleeing family violence often have limited financial resources and may turn to risky financial products at a time of great vulnerability. Where perpetrators are engaging in financial abuse, these credit products can be turned into a tool of abuse.

Compliance with responsible lending obligations can help to prevent financial abuse because the lender is required to make reasonable inquiries about each applicant's financial position and assess their requirements and objectives. If done properly, this process can expose undue influence and imbalances in bargaining power. Under the changes proposed in the Bill, the obligation to verify certain information will be removed for ADIs, and with it, the opportunity to identify indicators of economic abuse. We understand one of the drivers for relaxing responsible lending obligations is to allow banks to introduce faster and fully-automated online credit applications. However, this will provide little capacity to engage in any kind of check beyond a cursory algorithmic assessment. There will be less opportunity to verify consent for joint applications or to identify whether a loan benefits the borrower.

Critically, the reforms proposed in the Bill remove avenues of redress and remedy for people who have experienced financial abuse. If these reforms proceed, it will be much more difficult for survivors of abuse to seek redress such as compensation, debt waivers and alternative payment arrangements. It may also make it more likely that those subject to financial abuse will be compelled to return to or remain in an abusive relationship as the financial barriers to leaving may prove insurmountable.

As the case study below illustrates, the responsible lending laws provide a backbone for survivors of financial abuse to make complaints to financial institutions and achieve some form of redress. Without responsible lending obligations, many of those subject to such abuse would be overwhelmed with debt for years, struggling to pay off credit contracts they cannot afford, do not benefit from, and should never have been given.

Case study: Eleni

Eleni is a 24-year-old woman, living in regional NSW, and with a two-year-old child. Her only income is from Centrelink.

Eleni is a survivor of domestic violence, and her former partner is now in jail as a result of this violence. While living with her former partner, she was forced to put utilities accounts (including several phone contracts) and all credit in her name due to her partner not being able to get any form of credit as a result of a bad credit rating. Under duress from her violent partner, Eleni took out numerous small amount credit contracts (SACCs). She held more than four loans at any given time.

Eleni was struggling with unaffordable debt, and her credit providers had clearly engaged in irresponsible lending by providing her with unsuitable and unaffordable loans. Her financial counsellor was able to gain waivers on Eleni's debts by providing evidence of domestic violence and improper and inadequate assessments by creditors. Without responsible lending laws, it is unlikely this outcome would have been achieved and Eleni would have spent years burdened by debt.

Concerns with specific provisions

Reduction of assessment and verification obligations

The Bill reduces the requirement for lenders to assess the financial situation of borrowers, verify information, and consider whether a loan meets a borrowers' requirements and objectives. Lenders will not be required to fully understand the financial position of the borrower and whether they can repay their loan without substantial hardship. This will increase the risk of people taking out loans that they cannot afford. It will also mean important avenues of redress are removed, as borrowers will not be able to seeks remedies by demonstrating their credit provider failed to undertake the necessary verification and assessment obligations.

As the case study below illustrates, the failure by banks to undertake appropriate checks and assessments can lead to severe over-indebtedness and financial harm and, without appropriate avenues for redress, borrowers will find themselves trapped in crippling debt.

Case study: Dan and Jenny

Dan and Jenny are a middle-aged couple who normally work as fruit pickers in regional Australia. English is not their first language and Dan has difficulties communicating in English.

In 2007 they took out a first mortgage of $220,000 to buy a house close to where they were working. However, 12 months later they needed to relocate for work and rented for several years. They kept their original house and rented it out, although there were periods when they were not able to find tenants. In 2010 they purchased another property closer to their new jobs and took out another mortgage with the same back for $320,000.

Both mortgages were approved by the bank even though when applying for the second loan it was clear that Dan and Jenny had experienced hardship numerous times, as well as periods when their first property was not rented. When paperwork from the bank was reviewed by their financial counsellor it was clear that when applying for the second mortgage some forms were not fully completed with correct information regarding Dan and Jenny's personal and financial situation.

As a result of the floods in Queensland, Dan and Jenny lost their fruit picking jobs and had to move onto Newstart. They were unable to meet their financial commitments for both mortgages and, in 2015, they handed back their second property and moved into the first. The property was sold with a $60,000 shortfall which meant they had to utilise the capital in the first property to address this. Shortly afterwards, Dan and Jenny received a notice to say they had to vacate the first property within seven days for not complying with an arrears notice, which was later found to have been sent in error.

The accrual of debts had led to escalating hardship and stress for Dan and Jenny, however with assistance from financial counsellors they lodged a complaint with the Financial Ombudsmen and were able to demonstrate the bank had failed to meet responsible lending obligations. Based on this, they were able to negotiate with their bank and receive a waiver on some of their debts. Had the responsible lending laws not been in place, Dan and Jenny would have likely faced years of crippling debt and financial stress.

Removing the obligation to assess and verify the suitability of a loan shifts the onus from credit providers and onto borrowers. Many people who seek assistance from our financial counselling services are in extremely vulnerable circumstances. This includes people with cognitive impairment, language or literacy issues, low levels of education, gambling or addiction issues, and those experiencing domestic and family violence and elder abuse. Often people find themselves in a spiral of debt because they cannot bridge the gap between their income and their basic needs, or save enough to absorb the ordinary financial shocks that strike family budgets. As the Royal Commission into financial services revealed, 'consumer vulnerability' arises not just from personal factors but is also shaped by the features and practices of the financial services industry, including complexity and poor product and service design, deliberate exploitation of people's behavioural biases, information asymmetry, and targeted exploitation of particular communities.

Given these various layers of potential vulnerability, it is unrealistic to simply expect people to rationally assess and understand the terms and conditions of a loan and their capacity to repay it. As stated by one of the financial counsellors in our network:

> If financial institutions are not checking who (requires the loan), what (are they purchasing) and why (they require the purchase and are prepared to accept a debt to obtain the service/object etc), how are the vulnerable and disadvantaged in our society protected? Domestic and financial abusers will have greater opportunity with unchallenged pathways accessing loans in joint names or in their partner's/parent's/child's name for that which is not in the best interest of the vulnerable party. People with an intellectual disability, a mental illness, who English is a second language for, who experience gambling problems, who are unable to afford basic necessities or who have limited understanding of financial matters; will feature more prominently in those falling victim to easily obtained loans and credit cards. Unethical lending bodies will have greater scope to expand unsuitable lending availability and charge higher rates further exacerbating the problem.

These concerns are illustrated by the case studies below, which underscore how irresponsible lending practices can have devastating effects on those experiencing problem gambling or those with cognitive impairment and complex health issues.

Case study: Violet

Violet is a 52-year-old woman who lives alone. In late 2019 she lost her job, primarily due to issues with problem gambling.

Violet subsequently sought financial counselling from one of our network services. She presented with a $40,000 personal loan and an $8,000 credit card, as well as mortgage payments of $700 per month. The personal loan was increased on several occasions and the credit card was paid out (onto the personal loan).

Violet left secondary schooling in Year 10 and has basic literacy. The bank's decision to lend to Violet was highly questionable given it was unclear she understood the credit contracts. There was also a clear failure to assess the suitability of the loans. Her problematic spending behaviours would have been readily apparent in Violet's bank records (she did all her transactional banking with the same bank). At one point, Violet was even behind on her loan repayments when the loan limit was increased.

The financial counsellor referred Violet to Centrelink to apply for Newstart Allowance and referred her to the local Gambler's Help service for counselling. The financial counsellor also worked with Violet to identify a trusted family friend to assist her manage her money and to minimise the risk of her losing it to further gambling, while she engaged in counselling. Violet's friend also helped her to raise concerns with the bank about responsible lending issues and, on the basis of this, advocate to the bank to get payment moratoriums on her account. The bank agreed to provide three-month payment moratoriums.

Violet was able to secure another job by this time, but it was apparent she would struggle to make the minimum monthly repayments on the credit card and personal loan. Her financial counsellor raised the issues of responsible lending with the bank, and suggested the bank waive the unsecured debts, which would allow Violet to concentrate on her mortgage payments. The bank agreed to waive the $40,000 personal loan and reduced the credit card debt from $8,000 to $2000. They also provided a three-month payment holiday on the mortgage to allow Violet to catch up with her other household bills (ESL levy, electricity, gas, water and rates.)

This example illustrates the potential harms that would arise if existing National Consumer Credit laws were weakened, particularly for problem gamblers. As Violet's case shows, the financial harms experienced by gamblers are enabled by Financial Service Providers who fail to apply credit laws that are designed to protect consumers from products that are unaffordable and unsuitable for their needs. Without these laws, it is unlikely Violet would have been able to secure a waiver of debts and more appropriate repayment conditions.

Case study: Nancy

Nancy is a 63-year-old woman who contacted the Uniting National Debt Helpline to make inquiries on behalf of her son who has an acquired brain injury. Previously, the bank had approved a 30-year mortgage of $110,000 for her son and her 70-year-old husband. The mortgage was to purchase a house for Nancy's son and was combined with a $350,000 compensation payment he had received.

At the time of the loan application, Nancy's son was on income support due to his acquired brain injury and her husband had terminal cancer. The decision to approve the loan was clearly inappropriate given the father would not be present for the entire term of the loan and the son lacked the life skills to manage the debt on his own. Six months later, Nancy's husband died, and the loan went unpaid. Nancy's requests to communicate with the bank were rejected due to privacy and confidentiality issues.

This situation contributed to increasing stress levels for Nancy, who felt helpless, frustrated, angry and powerless to stop an ever-worsening set of circumstances. To recoup the $110,000 debt, the bank sold the house, which was worth approximately $450,000. Nancy felt they had been mistreated by the bank and cannot understand how the bank was able to sell their asset, worth four times the debt. Her son's financial position has been further eroded by interest and legal costs.

Removal of penalties and restricted access to redress and remedies for borrowers

The Bill removes civil and criminal penalties against credit licensees for irresponsible lending. It will also be much harder for people with unsuitable and unaffordable loans to obtain redress through the independent dispute body, the Australian Financial Complaints Authority (AFCA). There will also be no rights for individuals to take breaches of responsible lending laws to court. In place of responsible lending obligations, loans from banks and other ADIs will only be subject to Australian Prudential Regulation Authority (APRA) standards. These standards are aimed at maintaining the overall 'safety and soundness' of banks – not protecting individual borrowers or guarding against specific instances of misconduct. The Bill further proposes that Ministerial Standards will replace responsible lending obligations for non-ADI lenders, such as payday lenders, however these would be much weaker than current responsible lending obligations and it is unclear how such standards would be enforced in individual cases.

The removal of effective avenues for redress and remedy is of profound concern. As the stories of Harry and Patricia reveal, without such mechanisms people will be left in crippling debt and have few avenues for recourse and justice. By removing responsible lending laws, people will have far fewer rights to enforce at AFCA, and the removal of penalties will reduce the incentive for lenders to ensure people are not sold harmful credit.

Case study: Harry

Harry is a 73-year-old man, now retired, who has accumulated a debt of $100,000 over the past twenty years. Harry has two credit cards, each with an $18,000 limit, two more credit cards with $10,000 limits, and a personal loan which he has used to meet spending costs over the past twenty years. As each debt facility reached its limit and Harry was unsuccessful in paying down the principal debt, he applied for and was approved another credit card or personal loan. Harry was able to continue to access new lines of debt from the age of fifty-three into his late sixties.

Harry has hidden the situation from his wife by having the statements and correspondence mailed to his post office box. Harry is now retired and no longer has any income, having exhausted his superannuation savings. His wife receives $600 per week.

Harry rang the National Debt Helpline NSW when he started to consider suicide as a solution to his financial situation. He is going to meet face-to-face with a financial counsellor to review what extent of the debt is interest and to determine a course of action. If the lenders had investigated Harry's existing loans and credit card debt, some of the four credit cards may not have been approved. Either way, Harry does have avenues of legal redress because he is currently protected by responsible lending laws.

If the legal avenues to address unconscionable lending are removed, as proposed in the Bill, the path of redress will be nullified and people such as Harry will have limited opportunities to restore balance and financial fairness.

Case study: Patricia

Patricia is a 70-year-old Age Pensioner who lives alone in a home she owns in a coastal town in South Australia.

In late 2014, Patricia was working in Adelaide in a job involving rolling annual contracts. Finding the commute from regional South Australia difficult, she approached her bank for a loan to purchase a property closer to her place of employment. Patricia was expecting her bank to refuse her loan application, but they accepted it. In early 2015 (a few months before turning 65), Patricia purchased a small unit in an inner suburb of Adelaide. This added $200,000 to her mortgage and involved $67,500 being taken from her first home to finance the purchase.

In mid-2017 (aged 67), Patricia's employment contract was not renewed, and she found herself on the Age Pension, trying to service a $400,000 mortgage. She cashed in her swuperannuation, which reduced the debt to approximately $300,000, but struggled to service the two mortgages on her limited income.

In 2019 Patricia became a client of one of the financial counselling services in our network. After seeing the financial counsellor and weighing up her options, Patricia decided to redouble her efforts to sell the property, however she encountered difficulties selling the unit due to its small size. The difficulties she faced selling the unit were foreseeable and known by the bank at the time of the lend (given the inherent difficulties of financing small apartments), but Patricia was not apprised of this by the bank. Had she known (i.e. had the bank told her) she would have abandoned the purchase.

After consultation with her financial counsellor, Patricia lodged a complaint with AFCA, the external dispute resolution (EDR) scheme, on the basis that she has been provided with an increase to her mortgage that she could not afford. AFCA initially interpreted her complaint to be about hardship – *not* responsible lending – and were about to close the case in favour of the Financial Institution on the basis that Patricia's bank had made some financial hardship concessions (they had refunded $11,000 interest back to Patricia when she first lodged her complaint with AFCA). With the help of her financial counsellor and legal assistance, Patricia appealed the preliminary finding. AFCA's final determination found against the financial institution on the basis that they had not meet their responsible lending obligations. As a result, Patricia received compensation of nearly $60,000 (on top of the $11,000 already repaid to her).

Without responsible lending laws, a financial counsellor and an EDR scheme, Patricia would have been facing a retirement of relative financial hardship, living on an Age Pension and struggling to pay off a mortgage of over $120,000. Because of the avenues of redress provided under current responsible lending laws, she is now facing a somewhat more affordable mortgage of $50,000-$60,000.

No transparency or consistent standards for risk assessment

In place of responsible lending obligations, the Bill proposes that each lender (including non-ADIs) will develop their own systems, policies and processes, which will in turn be scalable depending on the credit being provided. This move toward 'risk-based lending' shifts the focus from individual contract-level conduct requirements to procedural obligations. It will create ambiguity and uncertainty, making it difficult to hold lenders to account for risk assessments as each loan and each lender will be unique. The changes will also make irrelevant case law that has developed over time under the existing *National Consumer Credit Protection Act*, and which provides clarity to lenders about what is expected of them in order to comply with responsible lending obligations. It is also not clear from the Bill that lenders' systems, policies and processes will be made available to the public, making it difficult for consumers (and financial counsellors) to know if a lender has failed to apply those systems, policies and processes. The proposed changes will therefore make it much more difficult to demonstrate unsuitable lending by credit providers.

Removal of credit card protections

UnitingCare Australia has significant concerns about the removal of responsible lending obligations for credit cards. Credit cards are one of the forms of credit that commonly involve higher interest rates and represent a significant risk to consumers. As Sarah's story below demonstrates, credit cards are readily accessible and frequently place people experiencing vulnerability and hardship at a significant risk of entering a debt spiral.

Case study: Sarah

Sarah is 62-year-old single woman living in a regional NSW. Sarah was diagnosed with severe depression and anxiety in 2004 and her only income is the Disability Support Pension.

Sarah applied for a credit card in 2016, which was approved with a $4000 limit. The card was quickly maxed out and Sarah's mental and physical health declined. As her health issues compounded Sarah's list of medications grew, with some not covered by the PBS and with one medication alone costing $50 per script.

Sarah applied for an increase to her credit card limit via email. The limit was subsequently increased to $8000 without any proper assessment being conducted. With these additional funds, Sarah purchased a car for $2000, but she quickly sold it for $800 as she was unable to meet her expenses. Sarah fell into deep hardship due to the approval of the increase and escalating debt.

Given the financial service provider failed to meet responsible lending obligations and did not conduct appropriate assessments and checks, Sarah's financial counsellor was able to address her situation and receive a full debt waiver from her creditors.

We are particularly concerned about the proposed two-tier consumer protection system regarding credit cards issued by ADIs (such as banks) and non-ADIs. This proposal unwinds consumer protections that were recently introduced in relation to credit cards, via the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018 (Cth)*. The Bill removes the most important consumer protections in that Act in relation to bank cards, which require an affordability assessment based on repaying the entire credit card limit within three years. Dispensing with these important protections is particularly hard to justify given the systemic misconduct exposed by the Financial Services Royal Commission in relation to credit card lending by banks. The following case study illustrates the importance of retaining responsible lending obligations for credit cards issued by banks and other ADIs.

Case study: Seiji

Seiji is a Japanese immigrant who has been living in Australia for six years. He obtained a credit card soon after arriving in Australia, and the bank offered him automatic limit increases, which Seiji accepted until his credit card reached a limit of $40,000. At this time, Seiji's annual income was $45,000. Seiji eventually reached the card limit and payments began to get difficult. He was unable to meet minimum payments and the interest component of his debt continued to grow.

At the time of his call to the National Debt Helpline, Seiji had not made any payments for two years and the total debt had blown out to $70,000. He had also been affected by the economic downturn caused by COVID and currently had no income. He had avoided contacting the bank or replying to correspondence because he was unable to service the debt. In Japan, inability to pay debts can result in incarceration, and Seiji was fearful of the consequences. The debt was now with a debt collection agency who had located Seiji.

Empowered by the information from financial counsellors, Seiji resolved to contact the debt collection agency himself to negotiate the following:

- stop the interest accumulating
- ask for the interest on the $40,000 to be waived
- inquire if the debt was granted in his best interest.

Reduced protections for small business loans

We believe the removal of the 'dominant purpose' test in relation to small business loans will have detrimental consequences. The effect of this change will be that a loan that is primarily for a personal purpose, but has some marginal connection with the borrower's small business, will be exempt from responsible lending requirements (and standards for non-ADI lenders). The proposed test will effectively remove consumer protections for a whole suite of loans that are primarily for consumer purposes. By carving out even more forms of credit from the responsible lending obligations and the application of non-ADI Standards, the proposed change will likely increase the number of people encouraged to take out sham business loans when they are unable to access personal credit.

The Financial Services Royal Commission highlighted the various ways in which many lenders dodge and skirt their obligations to lend responsibly. The removal of the 'dominant purpose' test will facilitate this, opening up additional regulatory loopholes that will allow lenders to evade consumer credit protections. Critically, this change risks increasing the potential for financial abuse and the detriment caused to third party guarantors who may have a business loan yet receive no direct benefit. These guarantors are often family members who provide a guarantee as a favour (or under coercion) and have no understanding of the risks of the loan.

Weakening regulatory oversight and enforcement

We have concerns about the Australian Prudential Regulation Authority (APRA) being the sole regulator responsible for monitoring bank and other ADI compliance with consumer credit laws. As a prudential regulator, APRA's remit relates to credit risk and the overall safety of the banks: it has no mandate for (nor expertise in) investigating individual instances of misconduct or irresponsible lending. The Bill provides for no expansion of APRA's enforcement powers to enable it to adequately protect individual consumers. The Financial Services Royal Commission underscored the importance of effective enforcement and a robust regulatory framework – yet this Bill only muddies and weakens the existing framework, increasing the likelihood that systemic misconduct and unscrupulous lending practices will proliferate unchecked.

Inadequate protections for SACCs and consumers leases (schedules 2-6)

The need for strong and robust protections

UnitingCare Australia has consistently spoken out about the devastating effects of predatory payday lending and consumer leases and the need to legislate robust consumer protections. Despite the current responsible lending laws, non-compliance among these high-cost lenders is widespread, and our services regularly see individuals and families crippled by debt from exorbitant payday loans and exploitative consumer leases. We continue to support the recommendations from the independent review into Small Amount Credit Contracts in 2016 (the SACCs Review)[5], and have previously urged Parliament to pass the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2018*.[6] The harms arising from exploitative and predatory SACCs are widespread and well documented, and it is vital the Federal Parliament enact the reforms needed to protect people from exploitative lenders who take advantage of their financial vulnerability.

Unfortunately, schedules 2-6 of the Bill fail to provide the protections that are so urgently needed. The measures proposed are inconsistent with the recommendations made by the SACCs Review, and they are weaker than the reforms the Government included in its draft bill in 2018. We do not believe this Bill will protect against the harms caused by irresponsible payday lenders and consumer lease providers, and we therefore urge the Committee to recommend against the Bill in its entirety. Our concerns with two of the provisions relating to SACCs and consumer leases are outlined below.

Concerns with specific provisions

Doubling the protected earnings caps

A central recommendation from the SACCs Review was to introduce ‘protected earnings amount caps’ for both payday loans and consumer leases. These caps would ensure a person cannot be required to commit more than 10 per cent of their net income in total repayments for payday loans at any time, with a separate 10 per cent cap applying to consumer leases. Instituting these caps is vital to prevent people from falling into debt spirals where they progressively commit more of their income to successive loans.

The Bill, however, disregards the recommendation of the SACCs review. It proposes instead to *double* the caps for people whose income is not predominantly from Centrelink, with a cap of 20 per cent each for payday loans and leases. We strongly oppose these more lenient caps, which would fail to protect against financial harm. Under the proposed arrangements, a person with a payday loan and a consumer lease could end up paying 40 per cent of their income to payday lenders and consumer lease providers, placing them in an untenable financial position. Importantly, they would still risk falling victim to a debt spiral. With such lenient caps, people facing escalating debt and experiencing vulnerability could still be tempted back for further borrowing simply to meet the repayments on their existing loans or leases.

Changes to the consumer lease cost cap

The exorbitant cost of consumer leases for household goods causes significant financial harm, with excessive lease payments often taking up a large portion of a person’s income. To address this issue, the SACCs Review recommended a 4 per cent monthly cost cap for consumer leases (for a maximum of 48 months), calculated on the retail price of the leased good. However, the Bill allows four per cent monthly fees to be calculated on the base price *plus* delivery and installation fees. This means borrowers could pay up to 192 per cent extra on these fees over a four-year lease. Also contrary to the SAACs review, the Bill allows consumer lease providers to charge an extra 20 per cent establishment fee on leases, on top of the cost cap that was recommended by the Review. This means that consumer leases could still come with an effective equivalent annual interest rate of more than 100 per cent.

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