



# Senate Economics Legislation Committee inquiry into National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)

Submissions by Consumer Credit Legal  
Service (WA) Inc.

February 2020

## 1 Introduction

The Consumer Credit Legal Service (WA) Inc. (CCLSWA) takes the opportunity to provide submissions to the Senate Economics Legislation Committee's Inquiry into the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No.2).

The following organisations have contributed to and endorsed this submission:

- Financial Counsellors' Association of Western Australia (FCAWA)
- Western Australian Council of Social Service (WACOSS)

Details about each contributing organisation are contained in **Appendix A**.

### About CCLSWA

CCLSWA is well placed to provide the Senate Economics Legislation Committee (the **Committee**) with insight into, and information on, how Western Australians are impacted by the operations of small amount credit contract (SACC) and consumer lease providers.

CCLSWA is a not-for-profit specialist community legal centre based in the Perth metropolitan area. CCLSWA advises and advocates for consumers in relation to consumer credit issues.

CCLSWA operates a free telephone advice line service which allows consumers to obtain information and legal advice in the areas of banking and finance. CCLSWA provides ongoing legal assistance to consumers by opening case files when the legal issues are complex and CCLSWA has capacity to do so.

CCLSWA also provides:

- (1) assistance to financial counsellors and other consumer advocates who work closely with disadvantaged and low-income individuals for the resolution of their credit and debt related problems;
- (2) community legal education programmes relating to credit and debt issues, including financial literacy programmes to high school students and select groups within the community;
- (3) contributions to relevant policy and law reform initiatives; and
- (4) a training and supervision programme for law students and graduate volunteer paralegals.

In providing these services, CCLSWA aims to create awareness, knowledge and understanding of consumer issues relating to credit and financial services.

CCLSWA's mission is to strengthen the consumer voice in WA by advocating for, and educating people about, consumer and financial, rights and responsibilities.

In these submissions CCLSWA provides its experience and views and makes recommendations as to how the issues may be resolved.

We have incorporated case studies as examples of our experiences. In these case studies, we have not named the SACC or consumer lease providers. We have made these entities anonymous to protect our clients' confidentiality. We have also made these entities

anonymous as some matters are ongoing and others are subject to confidentiality agreements. If the Committee would like to know the name of a lender or lessor or further detail on a particular case study, CCLSWA can approach the relevant client and seek his or her permission for those details to be provided.

## 2. Summary of key issues and recommendations

No.	Issue	Recommendations
1. Small Amount Credit Contracts	i) Targeting the vulnerable ii) Debt spirals iii) Irresponsible lending iv) Repeated breach without effective penalty as deterrent	a) Adopt the reforms in the <i>National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019</i> (No. 2) b) Bright Line Test c) Introduction of Database System
2. Consumer Leases	i) No cap on repayments ii) Irresponsible lending iii) High costs iv) Poor disclosure v) Exploitation of Centrepay	a) Adopt the reforms in the <i>National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019</i> (No. 2) b) Stop exploitation of Centrepay

## 3. Changes to the law & Government Response to date

- 3.1 An independent review of the laws regulating SACCs and consumer leases undertaken in 2015-2016 (the **Review**) resulted in 24 recommendations being made in a final report provided to the Government on 3 March 2016 (the **Recommendations**).
- 3.2 The Government accepted the Recommendations in November 2016 and in October 2017 Michael McCormack, the then Minister for Small Business, issued the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 as an exposure draft for comment (**Exposure Draft**).
- 3.3 This was followed up in the same month by a statement from the Minister that “*the Government will introduce legislation this year to implement the SACC and consumer lease reforms.*” Four months followed with no clear timeline for legislative implementation.
- 3.4 On 14 February 2018, Tim Hammond MP, the then Shadow Minister for Consumer Affairs introduced a Bill replicating word-for-word the Exposure Draft, being the

National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2018.

- 3.5 On 22 October 2018 Cathy McGowan MP re-introduced the Bill following the expiry of Tim Hammond's Bill.
- 3.6 On 16 September 2019, Rebekha Sharkie MP, of the Centre Alliance introduced another replica of the original draft legislation into the House of Representatives, being the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019.
- 3.7 Senator Stirling Griff introduced the current Bill, which is the subject of these submissions, on 2 December 2019 as the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (the **Senate Bill**).
- 3.8 The Senate Bill, in various guises has been treading water for too long. CCLSWA advocates for the introduction of the reforms in the Senate Bill, which replicates word for word the Exposure Draft and would implement the Recommendations of the Review.

*The Senate Economics Reference Committee's Inquiry into Credit and Financial Services Targeted at Australians at risk of financial hardship (Senate Inquiry)*

- 3.9 With the endorsement of FCAWA and FCN, CCLSWA made written submission to the Senate Inquiry in November 2018 identifying pay day loans and consumer leases as targeting vulnerable Australians and evidencing providers' flagrant disregard for their obligations under the *National Consumer Credit Protection Act 2009 (NCCPA)*<sup>1</sup>.
- 3.10 When CCLSWA appeared at the Senate Inquiry's public hearings in December 2018, we shared the experiences of our client "Trish" whose disputes regarding 24 separate advances from a single SACC provider between March 2010 and July 2016 had easily incurred over 100 hours of solicitor represented work<sup>2</sup>. We used Trish's story to highlight how SACC providers dodge their obligations and the strain this practice places on vulnerable consumers, and on the under resourced community legal centres and financial counsellors who represent them.
- 3.11 CCLSWA also explained to the Committee that we had experienced a growth in case work for clients with claims against SACC providers, however the Committee disagreed, quoting the industry as "*actually getting smaller*". The Senate Inquiry also

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<sup>1</sup> <https://cclswa.org.au/submission-to-the-senate-economics-references-committees-inquiry-into-credit-and-financial-services-targeted-at-australians-at-risk-of-financial-hardship/>

<sup>2</sup> Please refer to the transcript at <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2F7b997bf6-4395-4b32-8e6d-d0cfdcb23a92%2F0004;query=id%3A%22committees%2Fcommsen%2F7b997bf6-4395-4b32-8e6d-d0cfdcb23a92%2F0000%22> > for Trish's full story.

heard from industry asserting that, in the environs of the Royal Commission, their practices have already improved and further reform was not necessary.

- 3.12 While our evidence before the Senate Inquiry relied solely on our centre's available statistics, our position is now also supported by the new report recently released by the Stop the Debt Trap Alliance which shows just how much the SACC industry has profited from trapping people in debt<sup>3</sup>.
- 3.13 The Stop the Debt Trap Report published in December 2019 (the **Report**) shows that SACCs are growing rapidly in Western Australia with WA households showing growth rates at 13.5% from January to July 2019.
- 3.14 The Report shows a booming SACC industry experiencing growth amongst the most vulnerable in our society. The key findings of the Report include:
- a) Between April 2016 and July 2019 just over 4.7 million individual SACCs have been written, with an approx. total of \$3.09 billion and taken on by around 1.77 million household.
  - b) These loans will have generated approximately \$550 million in net profit for lenders.
  - c) Digital platforms have resulted in an explosion of loans that originate online. Ten years ago only 5.6% of SACCs originated online. In 2019, the Report predicted that figure to hit 85.8%
  - d) Data shows that over a five year period, around 15% of SACC borrowers fall into a debt spiral. On that basis, an additional 324,000 Australian households have been allowed to enter a debt path that may result in an event such as bankruptcy.
  - e) The number of women using SACCs has risen from 177,000 in 2016 to 287,000 in 2019 (representing 23.13% of all borrowers). 41% of these women are single parents.
- 3.15 For as long as the Senate Bill remains unpassed, the SACC lending industry will continue to proliferate at the expense of Australians who are most vulnerable to financial hardship. As the Report concludes, those who are most vulnerable and under the most significant financial pressure are more likely to access SACC loan services.
- 3.16 The Report and the case studies contained within this submission demonstrate that the industry is certainly not *"getting smaller"* and the problems that SACCs and

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<sup>3</sup> <http://bit.ly/the-debt-trap-report>

consumer leases are causing continue to escalate. It is now critical that the Senate Bill must pass into law.

- 3.17 It is clear that poor industry practices have not and will not change unless the Senate Bill is introduced to stop the harm.
- 3.18 CCLSWA supports the adoption of the Senate Bill and calls upon the Federal Government to pass this legislation as a matter of urgency.
- 3.19 We take this opportunity to highlight the most prevalent issues for our clients, which we consider are in most critical need of reform.

## 4 Small Amount Credit Contracts

- 4.1 CCLSWA regularly advises, and advocates for disadvantaged consumers who have been provided with unsuitable SACCs, to their serious detriment.
- 4.2 CCLSWA's experience suggests that the existing laws have failed to be effective in curbing the growth of predatory practices by the SACC industry and the frequency of consumers experiencing debt spirals.
- 4.3 The high demand for SACCs is, in most circumstances, driven by members of a low socio-economic background. SACCs appear to have become a necessary evil for many consumers who do not have access to alternative forms of credit. High levels of repeat borrowing are causing financial harm as consumers try to borrow themselves out of debt.
- 4.4 CCLSWA believes that financial literacy is vital in facilitating community awareness of the true nature of SACCs, namely that while a SACC is generally promoted as being a one-off short-term solution, the reality is that SACCs are highly likely to exacerbate a consumer's financial position, as opposed to improving it.

### *Breach of Responsible Lending Obligations & Debt Spirals*

- 4.5 CCLSWA has observed that repeat borrowers are at the greatest risk of debt spiralling and concludes that these consumers are those most vulnerable to mismanagement at the hands of lenders, as evidenced by Christina's story below.

#### Case study – Christina's story

Christina is a 74-year-old Indigenous Australian whose income is derived from a Centrelink pension and a superannuation pension. Christina experiences crippling financial difficulty. Christina has extensive expenses due to her role as guardian to eight grandchildren and three children. She lives in government housing and struggles to manage her living expenses.

All the above facts were known to Christina's lender. Over a period of approximately 30 months, the lender approved 19 SACCs and advanced a total of \$9,800 to Christina, as set out in the table below.

Christina made repayments totalling \$13,000 on these SACCs.

In CCLSWA's view, all 19 SACCs were unsuitable for Christina pursuant to the NCCPA. Christina could not afford the repayments without suffering substantial hardship. For two of the SACCs, the lender failed to obtain any form of supporting documentation before it approved and advanced the funds to Christina. The lender ostensibly discharged its obligation to make reasonable enquiries into Christina's financial position for the remaining 17 SACCs.

In CCLSWA's view, the lender's request for and purported review of the documents did not amount to a verification of Christina's financial position at the time of each SACC loan.

Date Taken Out	Amount	Date Repaid	Total Amount Paid
12/3/12	361	12/4/12	487.35
18/5/12	350	3/7/12	472.50
24/8/12	350	25/9/12	472.50
3/10/12	200	6/11/12	270
8/11/12	350	4/12/12	472.50
3/12/12	350	2/1/13	472.50
3/1/13	400	12/2/13	540
14/2/13	400	12/3/13	540
9/3/13	500	7/5/13	691.50
7/5/13	550	18/6/13	742.50
21/6/13	550	13/8/13	742.50
14/8/13	550	19/9/13	704.00
11/10/13	550	3/12/13	704.00
29/11/13	550	14/1/14	704.00
11/01/14	600	11/2/14	768.00
19/2/14	700	14/4/14	898.00
10/4/14	700	19/6/14	896.00
19/6/14	800	22/9/14	1088.00
13/10/14	960	-	580 at Nov 14
	9771		12215.85

The above table which sets out the date, amount, date repaid and amount repaid for each of Christina's loans. It shows that, with the exception of the 1<sup>st</sup> and 4<sup>th</sup> loan, each time Christina took out a loan it was either greater than or equal to the previous loan.

You can also see where the debt spiral started, i.e. where Christina started taking out a loan to repay a previous loan. This happens on about the 5<sup>th</sup> loan for \$350 that she takes out on 8 November 2012. She repays that loan on 4 December 2012, but the subsequent loan is taken out on 3 December 2012, and so on.

- 4.6 Christina's story is also illustrative of lender's lack of regard for responsible lending obligations and, how the current law fails to deter this misconduct.



- 4.7 Helen's story shows a similar debt spiral propelled by irresponsible lending.

#### Case study – Helen's Story

CCLSWA currently acts for Helen, a 34-year-old Aboriginal woman living in Perth. Helen is a single mother with three children, and her sole income is from Centrelink. Helen first came to CCLSWA for advice about an unaffordable car loan that was approved by a fringe lender in July 2016. When talking about her financial difficulty in managing the car loan repayments over the past three years, Helen mentioned she often took out SACCs with a certain lender to have some cash to cover her expenses, and her children's expenses. These SACCs were taken out in late 2016, and throughout 2017.

Trying to meet the unaffordable weekly repayments on her car loan, Helen began to take out SACCs both online and with two separate in-store SACC lenders in Perth. Helen took out at least seven SACCs from July 2016 to November 2017.

We are currently seeking documents in relation to these SACCs so we can provide Helen with advice, but at this stage, Helen has given us copies of some documents. These documents show Helen was approved for several SACCs when she already had two or more SACCs within the previous 90 days.

In one instance, in November 2017, Helen attempted to obtain advance cash through an online application for a SACC on a Saturday, and the loan application was rightfully rejected by the lender, on the grounds that 97% of her income was already allocated to existing expenses. Helen then immediately went in-store on that same Saturday and easily obtained another SACC in person from another SACC lender.

In CCLSWA's view, all of the SACCs obtained after Helen was approved the unaffordable car loan are likely to be unsuitable, pursuant to the NCCPA.

- 4.8 The current approach for breach of responsible lending is for the consumer to be put back in a position they would have been in if the unsuitable loan had not been granted.
- 4.9 Generally, this means that the consumer will remain liable for the principal amount that they are deemed to have benefitted from. However, the consumer may be relieved of liability for the costs (being interest, fees and charges) associated with the credit contract that the consumer would not have paid if the lender had complied with their responsible lending obligations and not entered into the credit contract.
- 4.10 CCLSWA believes that this does not act as a serious enough deterrent to financial service providers to provide loans or leases that are unsuitable.
- 4.11 The current approach results in no real penalty for financial service providers. Regardless of whether the loans or leases were responsible or irresponsible they will



still profit or at least maintain the status quo if the consumer remains liable for the principal.

- 4.12 Accordingly, CCLSWA welcomes the provisions of the Senate Bill that introduce tougher consequences for breaches of the law and supports the Senate Bill's strengthened penalties to incentivise SACC providers and lessors to comply with the law.
- 4.13 CCLSWA also supports the Senate Bill's amendments which permit ASIC, by legislative instrument, to determine what appropriate compliance is required.
- 4.14 We support the enhancement of ASIC's powers as a regulator including giving ASIC greater and more flexible powers of investigation and enforcement in respect of misconduct in the sector.

### Recommendations

Adopt section 4 and section 12 and insert new section 116A and 129A which introduce civil and criminal penalties for failing to record a preliminary or final assessment in writing, respectively, the contravention of which is a strict liability offence.

Adopt section 9 and 18 repealing and substituting subsection 124B(1) and 133CB(1) allowing ASIC to determine what, when and how information must be provided by a licensee.

### *Rebuttable Presumption & Protected Earnings Cap*

- 4.15 The current laws around the cap on repayments, known as the protected earnings cap, apply only to Centrelink recipients. The current cap on repayments means that anyone who receives at least 50% of their income from Centrelink has their repayments capped at no more than 20% of their gross income.
- 4.16 We refer again to Christina's story to highlight the inadequacy of the current protection. According to our calculations, Christina's lender had complied with current income cap requirements. Christina's repayments were no more than 20% of her gross income. But this failed to prevent Christina's spiralling debt.
- 4.17 Accordingly, CCLSWA supports the provisions of the Senate Bill which will facilitate regulations to implement the Review's Recommendation that protected earnings for SACCs be reduced from 20% of a consumer's net income in relation to Centrelink recipients, to 10% of a consumer's net income for each payment period.
- 4.18 Tim and Trish's stories below show the need for, not just a reduction in the amount of the protective cap, but also the need for the 'protected earnings cap' to extend to

all consumer income and not just a prescribed class of consumers, i.e., the recipients of Centrelink benefits

#### Case study – Tim’s story

Tim presented for financial counselling with six short term loans with a single SACC provider totaling of \$8000.

Tim is employed on a casual basis with a low income and the weekly repayments on the loans are \$260 per week which is 40-45% per cent of his net income. He is consistently unable to meet the repayments and as a result is incurring fees and charges from the pay day lender as well as bank fees for dishonoured direct debits.

Tim is from South East Asia and has poor English. Due to having no work over Christmas Tim’s financial counsellor requested that his SACC lender reduce the repayments to a minimal amount. While they agreed to the moratorium, it is concerning that Tim was given 6 loans based purely on his bank statements. The bank statements do not show he has an additional credit card and sends money back to his young family in overseas. The last loan was taken a few months ago so he could attend his mother’s funeral.

Source: Financial Counselling Network

- 4.19 Trish’s financial hardships prevailed despite her full time employment and earnings of approx. \$68,000 gross p.a. Her story illustrates that financial hardship is not confined to a particular ‘class of consumer’ and accordingly legislative protection should not be limited to a particular ‘class of consumer’.

#### Case study – Trish’s story

Trish was 51 years old, divorced, with one dependant son and grand-daughter she helped to care for, when she sought assistance from CCLSWA.

She had various debts including a home loan obtained in 2012 for \$450,000, personal loan obtained in 2014 for \$50,000, credit card obtained in 2007 with an initial limit of \$3,000 rising to a limit of \$22,000 as at December 2015 and medium amount credit contracts of \$3,000 and \$3,900 obtained in April 2015 and April 2016. She also presented with multiple SACCs ranging from \$250 to maximum of \$1,300 comprising of 24 separate advances from one lender between March 2010 and July 2016.

Our review and assessment of Trish’s various loan applications revealed that Trish’s need for SACCs was fuelled by her inability to service other unsuitable debt.

Once we established that Trish’s home loan was unsuitable, no sensible assessment could have determined that the 3 unsecured personal loans, 8 SACCs and 4 credit card limit increases were suitable given that they post dated and helped to service her unsuitable home loans.

Nevertheless, the suitability assessments we obtained from the various lenders reflected sufficient monthly income to service the credit contracts.

However, when we undertook our own assessments, we found that Trish had no discretionary monthly income and was in a position of financial deficit bar one of the assessments.

In the case of the SACCs, this was due mostly to the lenders' use of benchmarks or default amounts for living expenses (which we noted to be significantly less than Trish's actual expenses or even the HPI).

- 4.20 Trish's story is further evidence of SACC lender's disregard for the law and of conduct that may only be deterred by tougher penalties. It is also an example of one unsuitable loan sending a consumer into a dangerous debt spiral which the current 'rebuttable presumption' and 'protected earnings cap' do little to prevent.

### Recommendation

Adopt section 19 repealing and substituting subsection 133CC(1) which removes reference to a prescribed class of consumer and focuses on the repayment requirements to be prescribed by regulation. This section will facilitate amending the credit regulations to reduce the protected earning cap to 10% of all consumer income.

Adopt section 20 and 21 and insert section 133CC(3) and 133CD to prevent the collection of fees or debts that exceed proscribed amounts as a disincentive for over-charging and lending above the protected earnings cap.

- 4.21 Ryan's story below also supports the extension of the 'protected earnings cap' to all consumer income, not just Centrelink recipients, and illustrates the ineffectiveness of the 'rebuttable presumption' at s131(3A) of the current law.
- 4.22 While Ryan's income was sufficient to rebut the presumption of unsuitability, Ryan's other vulnerabilities made him susceptible to exploitation by predatory pay day lenders. Ryan's SACC debt spiraled from his gambling addiction.

### Case study – Ryan's story

Ryan was a 25 year old electrician who suffered from a serious gambling addiction. Ryan underwent counselling for his addiction and granted his mother enduring power of attorney to deal with his legal and financial affairs.

Between 2015 and 2017 Ryan obtained at least:

- 43 SACCs, and
- three credit cards

from 10 different lenders in order to fund his addiction.

Many of these SACCs were approved concurrently, with some lenders aware that Ryan was already servicing up to 12 other SACCs, a credit card debt and a car loan at the time of approval.

The approval of these SACCs was in clear disregard of the presumption that a SACC will be unsuitable for the applicant if they have received 2 other SACCs in the 90 days preceding an application.

Based on the documents CCLSWA managed to obtain, it appears that many of these SACC lenders failed to conduct assessments of suitability or to take reasonable steps to verify Ryan's financial situation.

This over provision of credit has caused both Ryan and his mother considerable financial and emotional stress that could have been easily avoided by compliance with the responsible lending obligations.

- 4.23 As noted above, the Exposure Draft was introduced in 2017. Despite the legislative focus on reforms in the industry at the time, Ryan's case illustrates how the industry continued its poor practice despite calls for change.
- 4.24 CCLSWA believes that these poor industry practices have not and will not change unless the Senate Bill is adopted.
- 4.25 CCLSWA endorses the removal of the rebuttable presumption that a SACC is presumed to be unsuitable if the consumer is in default under another SACC, or if the consumer has had 2 or more other SACCs in the 90 day period before the assessment – as our experience shows this presumption was often too easily rebutted in cases of clients who have higher income, such as Ryan.
- 4.26 However, we maintain, that consumers such as Ryan remain vulnerable despite their earning capacity and advocate for a bright line test to be introduced in place of the rebuttable presumption to protect consumers with vulnerabilities other than low incomes, for example consumers with drug or gambling addictions.

### Recommendation

Adopt section 5 and 13 which repeal subsections 118(3A) and 131(3A). As our submission show, the rebuttable presumption was an ineffective protection.

### *Bright line test*

4.27 In addition to the reforms in the Senate Bill, CCLSWA further suggests that the rebuttable presumption in sections 118(3A) and 131(3A) of the NCCPA be replaced with a bright line test. The bright line test would have the effect that if:

- (1) a consumer is in default under another SACC, or
- (2) in the 90-day period before the assessment, the consumer has had two or more other SACCs,

then that consumer is deemed to be only able to comply with their obligations under a SACC with substantial hardship.

4.28 A bright line test is a clearly defined standard of what a SACC lender can, and cannot do. This is superior to a rebuttable presumption from a regulatory perspective.

4.29 In theory, a bright line test would go significantly toward reducing the number of consumers trapped in debt spirals. However, CCLSWA acknowledges that there remains governance and regulatory compliance concerns that must be dealt with.

4.30 Further, many consumers are heavily reliant on a consistent stream of SACCs to fund weekly expenditure. For this class of consumer, a bright line test in place of a rebuttable presumption may have negligible material impact as it relies on the consumer informing the lender about other SACCs. For this reason CCLSWA advocates for the introduction of a database system.

### *Database system*

4.31 CCLSWA strongly believes that SACC laws can be made significantly more effective if they are supplemented by a system of oversight, enforcement and community education. CCLSWA recommends that a SACC database be created to provide a system of supervision for SACC lending.

4.32 A regulated SACC database has been successfully implemented in numerous jurisdictions in the United States and a regulated SACC database was supported by a number of credit providers, consumer advocate groups, and the Australian Securities and Investments Commission (ASIC).

4.33 A regulated database would serve to strictly enforce the proposed bright line test, and provide important governance and oversight to all regulated SACC lenders.

4.34 CCLSWA has assisted numerous clients who were and are in severe financial hardship due to debt spirals directly resulting from predatory lending. In the majority of these cases, a SACC database is highly likely to have ensured compliance with responsible lending, where instead the clients were merely asked whether they had two or more SACCs on foot. This behaviour suggests a clear and consistent pattern of avoidance, and exemplifies the ability of credit providers to circumvent responsible lending obligations.

- 4.35 CCLSWA acknowledges the cost to the industry,<sup>4</sup> however CCLSWA avers that the benefits and protections consumers would experience as a result of a regulated database, far outweigh the potential costs to lenders.

#### *Unsolicited Small Amount Credit Contract Invitations*

- 4.36 Consumers should only apply for a SACC when they proactively choose to do so, rather than being prompted by a SACC provider. We believe that prohibiting third party unsolicited SACC invitations would reduce incidences of repeat borrowing and debt spirals.
- 4.37 We are aware of vulnerable consumer that we have assisted to escape their debt spirals who continued to be contacted by SACC lenders. We see this as particular predatory lending to very vulnerable consumers, especially our clients with drug or gambling addictions.
- 4.38 For consumers with addictions, unsolicited small amount credit contract invitations can be particularly hard to resist. The inability to resist offers is exemplified by Colin's story.

#### **Case study – Colin's story**

Colin was a recovering drug addict and unemployed.

He obtained several SACCs from 8 different SACC lenders to buy illegal drugs.

CCLSWA negotiated debt waivers with 6 of Colin's lenders. Additionally, one of the lenders was also obliged to refund Colin as a result of an initiative agreed with ASIC. However, in order to claim the refund, Colin was required to log in to the lenders website.

Colin was prepared to forgo the refund rather than face temptation by initiating contact with the lender.

- 4.39 Based on the experiences of clients such as Colin and Ryan, we support the provisions of the Senate Bill that prohibits licensees from making third party unsolicited small amount credit contract invitations.

#### **Recommendation**

Adopt sections 3 and 16 repealing and substituting paragraphs relating to Division 7 and Division 2, respectively.

Adopt sections 10 and 22 adding section 124C, 133CF and 133CG making it a strict liability offence to make a third party unsolicited small amount contract invitation with civil and criminal penalties, and voiding any fee or charge imposed by any such contract.

<sup>4</sup> Review of the small amount credit contract laws – Final report (March 2016) *The Treasury, Commonwealth of Australia*, p 28-29 [https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016\\_SACC-Final-Report.pdf](https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf).

### *Hardship and family violence*

- 4.40 It is well known that financial abuse is the most common form of abuse in family and domestic violence. CCLSWA speaks to clients on a regular basis who have experienced financial abuse.
- 4.41 For consumers like June, the financial effect of family violence can continue to impact their lives and prevent them from moving on even after they have separated from the perpetrator.

#### **Case Study – June’s Story**

June, a 56 year old single female, was referred by Domestic Violence Advocacy Service (DVAS) for financial counselling as she was struggling with SACCs and credit card debts.

June was on the Disability Support Pension (DSP), which she has been on for several years. She has one dependent child (12 years) and an 18-year-old daughter who she had to support at times.

June’s debts accumulated while she was with her ex-partner. Her debts totaled \$35,700 and she had a deficit of \$269 in her budget each fortnight.

The latest SACC was obtained in January 2018 to purchase an iPad for her daughter’s school and car repairs.

The repayments were severely impacting the June’s ability to afford essentials. Given her extenuating circumstances the financial counsellor requested a full waiver of all debts.

Source: Financial Counselling Network

- 4.42 CCLSWA welcomes the Senate Bill’s specific reference to “family violence” as a reasonable cause of financial hardship and hopes that this will encourage SACC and consumer lease providers to be more aware of the warning signs of abuse and engage more effectively with consumer experiencing family violence.

#### **Recommendation**

Adopt section 43 and 59 inserting “family violence” at subsection 72(3) and 177B(3) (paragraph(a) of the notes) of the *National Credit Code*.



## 5 Consumer leases

- 5.1 We repeatedly see vulnerable consumers grappling with the numerous issues surrounding consumer leases. Problems with consumer leases include:
- 5.1.1 no cap on fees,
  - 5.1.2 poor disclosure of costs,
  - 5.1.3 irresponsible lending,
  - 5.1.4 exploitation of Centrepay (a bill payment service for people receiving Centrelink payments) where many consumer lease providers take their fees automatically from Centrelink payments so that consumer leases are taking priority over essential living expenses; and
  - 5.1.5 consumers paying on average three times the retail value of basic household goods.

### *Irresponsible lending*

- 5.2 Consumer leases tend to attract a similar demographic to SACCs: low-income earners from low socio-economic backgrounds who are usually the recipients of Centrelink benefits.
- 5.3 Accordingly, we recall Christina's story at 4.5 above and were not surprised to learn that Christina also had 2 unsuitable consumer leases.

#### **Case study – Christina's story – part 2.**

In 2013 Christina entered into a consumer lease for the rental of a computer. In 2014 Christina entered into a second consumer lease with the same provider for the rental of a television.

At the time of each of the leases, in addition to general living expenses, Christina had a number of other debts, including the SACCs set out at para 4.5 above.

Christina was told by representatives of her consumer lease provider that at the end of the lease period, she could make an extra month's payment and she would own the goods.

At the time Christina came to CCLSWA she had paid \$2060 for the computer and still owed \$800. For the television, Christina had paid \$900 and still owed \$1400.

CCLSWA advised Christina that even if she paid an extra month she would still not own the goods, unless her offers to purchase the goods were accepted by the provider. CCLSWA also advised Christina that she would likely be required to pay an amount higher than one month's repayment.

- 5.4 CCLSWA support the provisions of the Senate Bill that strengthen lessor's obligations to verify consumer's financial situation including recording a written assessment as prescribed by ASIC, and an obligation to obtain and consider account statements for the immediately preceding 90 days.
- 5.5 These obligations, coupled with strict liability, civil and criminal penalties, will encourage compliance by lessors with responsible lending obligations and reduce instances of consumers entering into unsuitable consumer lease agreements.

#### Recommendation

Adopt section 25 and 31 inserting 139A and 152(A) to the NCCPA requiring written record of assessment with civil and criminal penalties applying with strict liability for contravention.

Adopt section 26 and 32 inserting section 140(1) and 153 (1) to the NCCPA to bolster requirements to make inquiries and verify a lessee's financial situation.

#### *Unsolicited Consumer Leases*

##### Case study – Jill's story

Jill was a 25 year-old mother of two living in Meekatharra, a small remote town in the Mid West region of Western Australian, 764km north east of Perth. She was enticed to rent a TV which was offered from a van visiting in her area. Jill signed a contract to rent the TV for \$186 a fortnight.

These repayments became unaffordable for Jill with the expenses of her young children. Jill started falling behind on payments and ended up owing \$4000 for the TV. She cannot keep up with the payments and keeps falling into more debt. Paying \$4000 for a TV is ridiculous.

Source: CCLSWA outreach – Mission Australia Meekatharra

- 5.6 As illustrated by the Stop the Debt Trap Report, Jill fits the growing demographic of women, and particularly single mothers, who are reliant on these types of harmful credit products.
- 5.7 Jill also shows how susceptible regional and remote consumers are to unsolicited offers as these 'mobile providers' deliver a perceivably convenient alternative to traveling great distances to obtain similar products. We maintain the price of these unsolicited consumer leases is too great a price to pay for convenience.
- 5.8 Accordingly we support the provisions of the Senate Bill that will operate to prohibit canvassing of consumer leases at home.

## Recommendation

Adopt section 62 adding section 179VA and 179VB to the *National Credit Code* (NCC) making canvassing of consumer leases at home a strict liability offence with civil and criminal penalties and voiding any liability above the base price for goods hired under a consumer lease in such circumstances.

- 5.9 CCLSWA's outreach trips to regional Western Australia regaled stories of consumer leave providers trawling suburban streets and servicing consumers from the back of a truck. Accordingly we believe more effective protection may be provided by expanding the scope of the Senate Bill and extending the prohibition of canvassing at home to align with the definition of an *unsolicited consumer agreement* under *Australian Consumer Law*<sup>5</sup>.

## Poor disclosure

- 5.10 Luke's story is typical of many consumers who enter into consumer leases without being fully aware of their rights and obligations under the credit contract.

## Case study – Luke's story

Luke was 60 years old when he entered into a consumer lease for a computer. He did so instore at an electronics and homewares retailer. The credit contract was for \$235 a month over 2 years. The computer was worth \$3,800 but this arrangement meant Luke would pay \$6000.

Luke contacted CCLSWA January 2019 seeking advice regarding terminating this consumer lease when he became unemployed and the credit contract became unaffordable on his sole income of Centrelink benefits. He was unaware of the total cost of the credit contract and his rights regarding returning or buying the computer.

- 5.11 Christina's and Luke's stories are illustrative of a common misconception among consumers that they may simply terminate the consumer lease and return the goods without any further liability, or that they are entitled to own the goods or buy the goods.
- 5.12 We maintain that imposing strict disclosure requirements will allow consumers to make more informed decisions before entering into a consumer lease and would reduce the incidence of consumers entering into unsuitable consumer leases.
- 5.13 Christina, Jill and Luke's stories also show the massive amounts paid by consumers over and above the retail value of the goods leased. They highlight the very

<sup>5</sup> The Australian Consumer Law, Schedule 2 of *Competition and Consumer Act 2010 (CTH)* s 69 [[http://classic.austlii.edu.au/au/legis/cth/consol\\_act/caca2010265/sch2.html#\\_Toc31807851](http://classic.austlii.edu.au/au/legis/cth/consol_act/caca2010265/sch2.html#_Toc31807851)]

problematic public perception that consumer leases are a fair affordable alternative, when in reality they are one of the most expensive ways of accessing credit.

- 5.14 These common misconceptions could be curbed by improved upfront disclosure requirements.
- 5.15 We support the provisions in the Senate Bill that require full disclosure of the base price of the goods hired and the difference between the base price of the goods and the amount payable under the consumer lease.
- 5.16 We also support the Senate Bill providing ASIC with the means, by legislative instrument, to determine any further information that must be disclosed and the form of the disclosure.

### **Recommendation**

Adopt section 55 inserting 174(1A) & (1B) to the NCC to improve disclosure and reveal to consumers the true costs of hiring household goods.

Adopt section 57 giving ASIC the power, by legislative instrument, to decide what, how and when information is to be provided.

### ***Caps on fees***

- 5.17 As well as making consumers expressly aware of the extortionate costs of hiring household goods through improved disclosure, CCLSWA also strongly supports the introduction of a cap on the total payments that can be made under a consumer lease to prevent the continued charge of extortionate prices to those most vulnerable consumers who are the least able to afford it.
- 5.18 Cathy's story further illustrates how a low income earner can become trapped by consumer lease debt.

### **Case study – Cathy's story**

Cathy is a young woman in her 30s. She took out a consumer lease in 2016 for a washing machine.

The two year agreement was for a total cost of \$3470. From the start of the credit contract Cathy struggled to make repayments. Even when she negotiated a reduced repayment plan, she could not make the repayments.

She contacted CCLSWA after she received a default notice. She had offered to return the washing machine but was told by the provider that she would still be liable for the outstanding debt.

Cathy still has \$1300 outstanding on the loan and is struggling to even make payments of \$30 a fortnight on a Newstart allowance.

- 5.19 We acknowledge that consumer leases may be a necessary evil for some consumers who may feel they have no other viable option, despite full disclosure of the costs, for example regional and remote consumers who have limited or no access to alternatives. It is necessary to cap fees and charges to minimise harm to these kinds of vulnerable consumers.
- 5.20 We support the provisions of the Senate Bill that place a cap on fees and charges for consumer leases. We also support those provisions that impose consequences for breaches, such as voiding monetary liability above the base price of the goods as a genuine deterrent to consumer lease providers entering into consumer lease agreements with costs above the *permitted cap*.

### Recommendation

Adopt section 58 inserting 175AA and 175AB into the NCC introducing a *permitted cap* on the total payments that can be made under a consumer lease and making it a criminal offence to impose fees above the *permitted cap*, voiding liability on the lessee in excess of the *base price*.

- 5.21 The cap, calculated in accordance with s175AA, would mean that a 2 year consumer lease for TV valued at \$500 would be limited to total payment of \$980. Referring again to Christina's story, this provision would have meant the payments she was required to make for her TV and computer would have been far less.
- 5.22 Further, the *base price* defined in s175AA will prevent consumers like Christina, Cathy, Luke and Jill from paying exorbitant prices for products.

### Protected earning cap

- 5.23 We welcome the provisions in the Senate Bill that will facilitate regulations to establish a protected earnings cap for consumer leases.
- 5.24 Similar to the new protected earnings cap for SACC's, the regulation making power will be used to introduce a cap whereby lessors cannot enter into a consumer lease agreement that would result in the consumer paying more than 10% of their net income in rental payments for the household goods.
- 5.25 This is will also curtail the exploitation of Centrepay.

### Recommendation

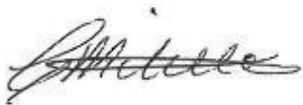
Adopt section 34 adding Division 5 to Chapter 3, Part 3 – 4 of the NCCPA to facilitate credit regulations introducing a protected earning cap whereby lessors can not enter in consumer lease agreements where the consumer would be paying more than 10% of net income in rental payments.

## 6. Conclusion

CCLSWA is grateful for the opportunity to provide submissions to the Committee. We would be happy to provide further assistance and attend at public hearings.

If you have any questions or would like to discuss these submissions, please contact Managing Solicitor, Gemma Mitchell on (08) 6336 7020.

Yours faithfully



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Consumer Credit Legal Service (WA) Inc.



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Executive Officer  
Financial Counsellors' Association of  
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Louise Giolitto  
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Western Australian Council of  
Social Service

## **Appendix A**

### **Financial Counsellors' Association of Western Australia**

The Financial Counsellors' Association of WA (FCAWA) represents financial counsellors who are practicing in WA, and have a current membership of over 150 people including financial capability workers.. FCWA provides training, support, policy and advocacy advice to the financial counselling sector, government, key stakeholders and consumers. They also deliver financial hardship training to local government, government and the community sector.

### **Western Australian Council of Social Service (WACOSS)**

As the peak body for the community service sector in Western Australia, WACOSS collaborate for meaningful action to end poverty, inequality and social injustices. They represent three hundred member organisations and individuals and approximately five hundred organisations involved in the provision of community services to the Western Australian community. They also partner with the national Council of Social Service (COSS) network, as one of nine peak councils of the community services sector across Australia to ensure that there is a Western Australian perspective on the national stage.