

## Senate Standing Committees on Economics

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

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**Submitter:**

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This submission with not discuss the illogical watering down of responsible lending protection in direct contravention of the recommendation of the ‘Financial Services Royal Commission’ using the false premise that one must sacrifice consumer protection to ‘support economic recovery’ as I am confident that this will be covered adequately in other submissions.

This submission will address the fundamental disproportionality that makes contemporary responsible lending protection and this proposed bill moot.

The last sentence of the 147 page ‘explanatory memoranda’, 6.85 states:

*“Schedules 2 to 6 are compatible with human rights because to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.”*

The Federal Attorney General on his web site on the page titled ‘Fair trial and fair hearing rights - Public sector guidance sheet’ provides material to persons who have a role in Commonwealth legislation and policy.

<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/fair-trial-and-fair-hearing-rights>

Under the heading of **Equality** the Federal Attorney General states:

*“What constitutes a fair hearing will require recognition of the interests of the accused, the victim and the community (in a criminal trial) and of all parties (in a civil proceeding). In any event, the procedures followed in a hearing should respect the principle of ‘equality of arms’, which requires that all parties to a proceeding must have a reasonable opportunity of presenting their case under*

50 *conditions that do not disadvantage them as against other parties to the  
proceedings. The UN Human Rights Committee has found a violation of article  
14(1) in a case in which a right of appeal was open to the prosecution but not  
to the accused.”*

55 The word ‘equality’ is mentioned only five times in the 147 page ‘explanatory  
memoranda’ but only in 6.9 and 6.29 does the word have real purpose:

6.9 - Schedule 1 to the Bill engages the following rights:

- 60 • *the right to a fair trial and public hearing (Article 14 of the  
International Covenant on Civil and Political Rights (ICCPR)), and*
- *the right to equality and non-discrimination (Articles 2 and 26 of the  
ICCPR).*

And:

65 “6.29 - Article 26 of the ICCPR provides for equality before the law”

Article 2 of the ICCPR is as follows:

70 *1. Each State Party to the present Covenant undertakes to respect and to  
ensure to all individuals within its territory and subject to its jurisdiction the  
rights recognized in the present Covenant, **without distinction of any kind,**  
such as race, colour, sex, language, religion, political or other opinion, national  
or social origin, property, birth or other status.*

75 *2. Where not already provided for by existing legislative or other measures,  
each State Party to the present Covenant undertakes to take the necessary  
steps, in accordance with its constitutional processes and with the provisions of  
the present Covenant, **to adopt such laws or other measures as may be  
necessary to give effect to the rights recognized in the present Covenant.***

80 *3. Each State Party to the present Covenant undertakes:*

85 *(a) **To ensure that any person whose rights or freedoms as herein  
recognized are violated shall have an effective remedy,**  
notwithstanding that the violation has been committed by persons  
acting in an official capacity;*

90 *(b) **To ensure that any person claiming such a remedy shall have his  
right thereto determined by competent judicial, administrative or  
legislative authorities, or by any other competent authority provided for  
by the legal system of the State, and to develop the possibilities of  
judicial remedy;***

95 ***(c) To ensure that the competent authorities shall enforce such  
remedies when granted.***

Article 26 of the ICCPR is as follows:

100 ***All persons are equal before the law and are entitled without any  
discrimination to the equal protection of the law. In this respect, the law shall  
prohibit any discrimination and guarantee to all persons equal and effective  
protection against discrimination on any ground such as race, colour, sex,  
language, religion, political or other opinion, national or social origin, property,  
105 birth or other status.***

This poses the question, does the 'National Consumer Credit Protection Amendment  
(Supporting Economic Recovery) Bill 2020', comply with Article 2 and 26 of the ICCPR  
and does it conform to the Federal Attorney Generals 'Fair trial and fair hearing rights  
110 Public sector guidance sheet'

Does the 'National Consumer Credit Protection Amendment (Supporting Economic  
Recovery) Bill 2020' prohibit any discrimination and guarantee to all persons equal  
and effective protection against discrimination on any ground?

115 The legal sector has become monetarised to the extent that it is 'unaffordable and out  
of reach' to all but the wealthy and powerful. If one is dirt poor one may get access to  
some token legal advice and/or representation, but not timely, proportional or  
equitable legal representation. This is not a reflection of those community and legal  
120 aid sectors that attempt to offer this support, merely economic and factual reality.

The private company limited by guarantee known as the 'Australian Financial  
Complaints Authority' (AFCA) is the peak 'External Disputes Resolution' (EDR) in this  
country. AFCA like its predecessor the Financial Ombudsman Service (FOS) is industry  
125 captured and act as gatekeepers for their members and as such could not be deemed  
competent, or fit for purpose.

I say that there are no effective and meaningful mechanisms accessible to FSP  
consumers now, and the 'National Consumer Credit Protection Amendment  
130 (Supporting Economic Recovery) Bill 2020' does not improve, rather makes matters  
worse.

Needed is a 'Federal Office of the Public Defender' or a 'Law Force' that establishes  
'Equality of Arms' in our courts.

135 This brings me to the issue of trust in public office.

The Senate Standing Committee on Economics is entrusted with public power and is  
accountable to the public for the exercise of their trust. The following extract from 'Public  
140 Trust and Public Accountability' by Paul Finn published in Griffith Law Review (1994) Vol.3  
No.2 defines the Committees responsibility to the public as a trustee.

145 *Over the last decade Royal Commissions, Commissions of Inquiry, parliamentary  
committees and ad hoc reports have provided us with a pathology of public governance  
in this country. The Fitzgerald and W .A. Inc. Reports provide the most sustained  
illustrations of systemic failure. But our problems are not regionally isolated ones. The  
weight of our now many inquiries attests to this. And in one form or another, directly or  
indirectly, they bring us back to what is of the essence of constitutions. And this is about  
power: by whom it is to be used, to what ends, with what justifications, subject to what  
150 constraints, and on what conditions. Here we have matter which we have only  
imperfectly addressed. And it brings me to the burden of this paper...I begin with three  
simple, but very controversial, propositions. The first merely echoes Sir Anthony Mason's  
observation in the political broadcasting case. It is that:*

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- *Sovereign power resides in the people.*
  - *The second, which grows out of the first, is that:*

160 *Where the public's power is entrusted to others for the purposes of civil  
governance, the institutions and officials who are the repositories of that power  
hold it of the people to be exercised for the people. They are trustees.*

- *The third, which links the second back to the first, is that:*

165 *Those entrusted with public power are accountable to the public for the exercise  
of their trust.*

170 It is the public, not the banks or the FSP industry that are beneficiaries, and the members of  
the Senate Standing Committees on Economics is a trustee in whom the public's power is  
entrusted for the purposes of civil governance. The committee, its officials and the  
parliament generally are the repositories of that power and hold it of the people to be  
exercised for the people.

175 Finally, the purpose of this bill is to encourage additional private debt to 'support economic  
recovery'. The current level of Australian private debt is approximately 120% of GDP, second  
only to Switzerland.

180 Economic recovery can only be supported by a trade surplus or an increase in appropriately  
targeted fiscal spending, in other words deficit spending.

The committee will be aware that over the past year we have witnessed poorly targeted  
unprecedented deficit spending by Australia's Federal Government that, although poorly  
targeted did give limited support to the economy. The committee will also be aware that  
this deficit spending contrary to contemporary rhetoric did not result in the economic sky  
185 falling in. Further, if one was to use Japan as an economic example, appropriate fiscal deficit  
spending, will not cause the economic sky to fall, and private debt will not hold it up.

190 Encouraging an increase in private debt to replace federal fiscal spending by enabling the powerful private banks to further exploit their weaker customers via reducing protection is a recipe for economic disaster.

This Bill makes no economic sense, is fiscally inept, enables the powerful to exploit the weak, increases inequity and breaches public trust.

195 **Conclusion**

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

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- Breaches fundamental human rights
  - Breaches Attorney General guidelines
  - Breaches public trust obligations
  - Increases inequity where inequity is already an issue
  - Increases private debt which will not support economic recovery
  - Ignores FSRC recommendations
  - Further enables the already powerful at the expense of the already weak
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215 Contrary to the claim in S6.85, the Bill is not compatible with human rights because to the extent that they may limit human rights, those limitations are unreasonable, unnecessary and disproportionate.

This bill should be abandoned as it does not, nor could it serve its core purpose.

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**PostScript**

225 If the committee was serious about 'Supporting Economic Recovery' it would recommend full employment via a federally funded locally administered job guarantee that pays a living income. This initiative would eliminate involuntary unemployment, support the private sector, would assist in closing the gap and breathe life into dying communities. It would cost less than what has been spent by the Federal Government in the last 12 months and act as a counter cyclic bottom up fiscal stabiliser.

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Another initiative would be to have the Australian Office of Financial Management (AOFM) cease issuing corporate welfare via the unnecessary issuance of Federal Bonds and stop maintaining the constructed illusion that the currency issuing Federal Government has to borrow money that only it can issue, in order to spend.