care inc.

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Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email only: economics.sen@aph.gov.au

Dear Committee

RE: Inquiry - National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No.2)

Thank you for the opportunity to contribute to the Inquiry.

Care Inc. Financial Counselling Service and the Consumer Law Centre of the ACT (Care) has supported low to moderate and vulnerable consumers in the ACT since 1983, and through our work we regularly assist clients experiencing financial hardship arising from small amount credit contracts (SACC, and also known as payday loans) and consumer leases.

In our experience, it is often the most vulnerable and disadvantaged consumers who are targeted by payday lenders and consumer lease providers, and these forms of credit often lead consumers into further financial hardship. We regard the need to protect vulnerable consumers as paramount. Therefore, the increased protections for consumers set out in the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill (the Bill) are vital and urgent.

We are strongly supportive of the proposed legislation and we call on the Senate Committee to support this Bill and recommend that the Parliament pass these reforms as a matter of urgency.

In addition to this submission we also lend our support to the Stop the Debt Trap Alliance submission, and their on-going advocacy work in relation to this issue.

About Care

Care has been the main provider of financial counselling and legal assistance on consumer law matters for low to moderate income and vulnerable consumers in the ACT since 1983. Through our services we ensure low income consumers are treated fairly and have support to overcome debt.

Care provides information, advice, and support to clients experiencing financial stress through our financial counselling program. Through the Consumer Law Centre, Care also offers free legal advice and advocacy in the areas of consumer credit (mortgages, credit cards and personal loans), debt recovery, banking, contract, general fair trading and consumer protection. Care also has a Community Development and Education program and operates the ACT's first No Interest Loans Scheme which was established in 1997. With community support, we developed and continue to manage the Assistance Beyond Crisis (ABC) program providing microfinance loans to people impacted by domestic and family violence.

We have included below two case studies which highlight the experiences of our clients accessing consumer leases and payday loans, and the impact they have on our clients and their families.

Background

Care strongly supports the proposed reforms set out in the Bill.

As detailed in pages 2-4 of the Bill's Explanatory Memorandum, the Bill mirrors the Government's Exposure Draft Legislation released on 23 October 2017, which was informed by the 2015 Independent Review of Small Amount Credit Contracts. In November 2016 the Government accepted the majority of the Review's recommendations,[1] and the Government prepared an Exposure Draft Bill encompassing the agreed reforms.

Significant consultation was undertaken as part of the Independent Review and in relation to the Government's 2017 exposure draft bill. Care provided detailed submissions to these consultation processes. These submissions can be accessed on our website at www.carefcs.org/submissions.html

Given the extensive consultation and review processes which have occurred in relation to these reforms, and the important role such reforms will play in protecting Australians from reckless lenders, there seems little justification for further delay in implementing these important reforms.

The impact of SACC and Consumer Leases on Vulnerable Borrowers

We know from our experience working with clients, and from research, that payday lenders and consumer lease providers often target people experiencing vulnerability and disadvantage and can cause greater financial harm and exclusion for vulnerable borrowers.

Unlike mainstream lending, where borrowers generally access money for lifestyle related products, in our experience borrowers with payday loans borrow to cover necessities and essentials. Borrowers are often highly vulnerable when accessing payday loans, including due to illness, homelessness, family violence, age, disability and/or because they are in crisis, such as in Patrick's case below.

We regularly see clients turning to payday lenders to fill a gap when they are desperate and have no savings, cannot access affordable credit options and don't have family and friends to go to for support. In these circumstances, payday loans and consumer leases can trap people in a debt spiral as they struggle not only to make repayments but also to make ends meet.

[1] See https://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/media-releases/government-response-final-report-review-small-amount

Case Study – Patrick

Patrick is in his mid-30s, married with 5 children. One child has serious health issues and often requires hospitalisation. When his daughter is in hospital, he has to take time off work to look after the other children as his wife is at the hospital. Due to the frequency of admissions, he is now out of leave and has to take leave without pay. To get by, Patrick took out multiple payday loans, three of which were approved within one month. Whilst there were no defaults on the loans as a direct debit took the money out on the day he was paid, keeping on top of the expensive repayments increased financial distress for Patrick and his family. Patrick had to borrow from friends and family and seek community emergency hardship assistance to get by.

Patrick saw a Care Financial Counsellor who reviewed the loans and found significant issues with the loan assessment process. The assessment of suitability for the loans showed great variation in expenditure from one loan to another. Living expenses varied from $1350 to $803 per month between loans two weeks apart. Rent had also not been correctly factored into Patrick's loan assessment as Patrick was unable to pay rent due to his financial situation, and he and his family were facing eviction. The total living expenses included in the assessments was below the Henderson Poverty Index for a family that size. Over the course of the loans Patrick had paid back more than the principal on the four loans.

After seeing Patrick, the Financial Counsellor was able to obtain a waiver of the balance of the outstanding loans on the condition that Patrick signed a "self-ban" letter. The client accepted this.

Research indicates that since the Independent Review little has changed in the practices of payday lenders and consumer lease providers. In 2019 Stop the Debt Trap Alliance and Digital Finance Analytics (Stop the Debt Trap report) found that the number and value of payday loans written per month continued to grow nationally over 2016 to 2019.[2] In the ACT they reported that an additional 4,844 households had gone into payday loans over this period.[3] ASIC's submission to the Government's 2017 Exposure Draft Bill Consultations also highlights that there has been significant action taken by the regulator against payday lenders and lessors, and notes "…despite repeated regulatory intervention, avoidance and exploitative practices continue to occur."[4]

This is also borne out in our experience assisting people with payday loans. We find that payday lenders do the bare minimum to comply with

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[2] Stop the Debt Trap Alliance and Digital Finance Analytics, *The Dept Trap: How payday lending is costing Australians*, November 2019 (accessed at https://gallery.mailchimp.com/b72cc1fb35ce14ce83ed445ad/files/87d56319-f7d5-4318-8be1-c773bd718317/Payday_Lending_Report_FINAL_UPDATED_WEB_1.pdf) (Stop the Debt Trap Report), 9.

[3] Ibid, 16.

[4] Australian Securities & Investments Commission (ASIC), *Exposure Draft of the National Consumer Credit Protection Amendment (Small Amount credit Contracts and Consumer Leases Reforms) Bill 2017 Submission by the Australian Securities and Investments Commission*, November 2017 (accessed at https://asic.gov.au/media/4536984/asic-submission_exposure-draft-of-the-small-amount-credit-contracts-and-consumer-leases-bill-2017.pdf), 5.

regulatory standards, and we often encounter failures to meet responsible lending obligations and other poor practice with these lenders. As shown in the Stop the Debt Trap Report, the number of people applying for payday loans online has significantly increased in recent times.[5] Loans can be completed online with very little checking, and it is often difficult for clients to contact lenders if anything goes wrong or a person faces financial difficulties or hardship. Borrowers seeking assistance can be discouraged by challenges in contacting the lender, and spiral further into debt as a result.

In this context, the additional protections for consumers set out in the Bill are vital to addressing the negative impacts of payday loans and consumer leases within our community. In particular, **we strongly support the proposed cap on costs for consumer leases, and the 10% protected earnings amount for consumer leases and payday loans** as particularly critical reforms that would provide much needed protections for vulnerable borrowers.

Case Study: Merinda

Merinda is an Aboriginal woman in her early 50s. Merinda suffers serious mental and physical health conditions. She lives in public housing and her only income is the Disability Support Pension. Merinda has four adult children whom she supports emotionally and financially as she can, and she also has had care of her grand-daughter at various times. Merinda currently has nine items with a consumer lease company some of which are for her children who have no credit rating and unable to obtain their own items. She currently pays $342 per fortnight in lease repayments which is **36% of her income**. Some of the items she has on lease are a bed and bedroom furniture for her son, a dryer and heater to enable her to look after her grand-daughter, and a phone for her daughter in law while her son was in prison. The total the client will pay for the nine items is over **$32,000**.

Financial inclusion is essential to all Australians and individual financial wellbeing has impacts on wider society. People experiencing social vulnerability need access to safe and affordable financial products that meet their needs.

The proposed reforms to payday lending and consumer leases have been the subject of significant consultation and review over the last few years. It is time to take action to put these changes into effect for the benefit and protection of everyday Australians, particularly those experiencing disadvantage.

We call on the Senate Committee to support this legislation and recommend that the Parliament acts fast to pass the Bill to ensure that Australians have a safer and more appropriate range of credit products to choose from. The legislation would protect Australians from being exploited by high-cost, predatory payday lenders and rent to buy companies.

[5] Stop the Debt Trap Report, November 2019, 4.

Thank you for providing the opportunity to make a submission in relation to these important issues. If you wish to discuss this submission further, please do not hesitate to contact me.

Regards

Carmel Franklin
CEO, Care Inc. Financial Counselling Service and the Consumer Law Centre