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

Maurice Blackburn Pty Limited
ABN 21 105 657 949
Level 21
380 Latrobe Street
Melbourne VIC 3000
DX 466 Melbourne
T (03) 9605 2700
F (03) 9258 9600

By electronic submission

Dear Chair

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

We welcome the opportunity to make a submission in relation to the Committee's inquiry into this Bill.

1. About Maurice Blackburn

- 1.1 Maurice Blackburn Pty Ltd is a plaintiff law firm with 33 permanent offices and 30 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial social justice practice.
- 1.2 Maurice Blackburn has had recent in-depth experience of the impacts that payday lenders and consumer lease providers can have on individuals when they do not comply with the law. This experience comes from conducting the following five class actions on behalf of around 300,000 consumers, including:
- a) two class actions on behalf of customers of Cash Converters in New South Wales brought by disability pensioner Julie Gray which settled for \$23 million (including costs) in 2015 (*Julie Gray v Cash Converters International Limited and Ors* (NSD 2089 and 2090 of 2013));
 - b) a class action on behalf of customers of Cash Converters in Queensland borrowing small amount loans of one month's duration, brought by disability pensioner Kim McKenzie, which has settled for \$16.4 million (including costs) in 2018 (*Kim McKenzie v Cash Converters International Limited and Ors* (NSD 601 of 2016));
 - c) a further class action on behalf of customers of Cash Converters in Queensland who borrowed amounts of approximately \$600-\$2,000 for 6 months, brought by disability pensioner Sean Lynch. This was heard by the Federal Court of Australia between 22 October 2018 and 9 November 2018,

and settled in principle, subject to the Court's approval, for \$42.5m in 2019 (*Sean Lynch v Cash Converters Personal Finance Pty Ltd & Anor, NSD 900 of 2015*); and

- d) a class action on behalf of customers of Radio Rentals brought by pensioner Casey Simpson which settled for \$29 million in December 2019 (including costs) (*Simpson v Thorn Australia Pty Ltd t/a Radio Rentals NSD 448/2017*).

2. Background to the Bill

2.1 We acknowledge the work of Senators Griff and McAllister in bringing this Bill forward. After the release of the Committee's damning report of the Senate Inquiry into credit and financial products targeted at Australians at risk of financial hardship¹ following its 2018 inquiry we were perplexed that legislation adopting the report's recommendations was not progressed.

2.2 This inaction will have led to a worsening of the financial situation of many Australians. The Committee's Report accurately reflected that the financial products in question are specifically and unapologetically targeted at some of Australia's most vulnerable consumers. These include:

- those already in financial distress;²
- low income earners;³
- those in regional Australia;⁴ and
- Indigenous communities.⁵

2.3 The consequences of the government's failure to act was even noted in the Committee's 2018 findings:

The delay in the introduction of the 2016 recommendations encapsulated in the exposure draft bill and the failure to pass the subsequently introduced private member's bill have allowed product providers to continue to offer products unsuitable to many of their consumers.⁶

2.4 In our submission⁷ to the abovementioned inquiry, Maurice Blackburn made four recommendations on how the law can be reformed to better protect individuals, communities and the broader financial system. In this submission, we consider whether our recommendations have been adopted and reiterate the basis for our recommendations.

¹https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Creditfinancialservices/~/media/Committees/economics_ctte/Creditfinancialservices/report.pdf

² Ibid; see for example para 1.6

³ Ibid; see for example para 1.10

⁴ Ibid; see for example Recommendation 15

⁵ Ibid, see for example para 3.18 and 3.65

⁶ Ibid; para 1.20

⁷ See Submission 60: <https://www.aph.gov.au/DocumentStore.ashx?id=aecd484a-351d-40ba-b946-87e57c25c701&subId=663293>; plus Attachments: <https://www.aph.gov.au/DocumentStore.ashx?id=53ff13b5-5f64-45c5-8078-31fcd68bfdeb&subId=663293>; <https://www.aph.gov.au/DocumentStore.ashx?id=0f6c841b-b1c4-4955-8499-9ab32971f3fe&subId=663293>

3. Maurice Blackburn Recommendations

Recommendation 1: That the National Credit Act be amended to include a broad anti-avoidance provision

- 3.1 In our submission, we argued the *National Credit Consumer Protection Act 2009* (Cth) (**National Credit Act**) should contain a provision which prohibits a person from engaging in conduct where it would be reasonable to conclude that the purpose, or one of the purposes, of the person engaging in that conduct was to avoid the application of a provision of the National Credit Act.
- 3.2 We argued that such an amendment is crucial to stop consumer lease providers and pay day lenders from exploiting loopholes in the National Credit Act to avoid its consumer protection provisions.
- 3.3 In relation to consumer lease providers, we argued that legislative change was needed to prevent consumer lease providers structuring their leases so that they avoid falling into the definition of a 'sale of goods by instalments'. We noted that a provider of a sale of goods by instalments will be restricted to charging a maximum annual cost rate of 48% under Division 4A of the National Code (the **Interest Rate Cap**). In contrast, there is no limit on the costs that can be charged on consumer leases.
- 3.4 We pointed out that consumer lease providers may seek to avoid the Interest Rate Cap by structuring their contracts so that the lessees do not have the right or obligation to purchase the goods they are leasing.
- 3.5 We further noted that payday lenders also seek to exploit loopholes in the legislation that is designed to protect Australia's most vulnerable. In particular, some payday lenders seek to avoid the Interest Rate Cap by designing various payment models that enable additional charges to be imposed so that the Interest Rate Cap is circumvented.
- 3.6 Maurice Blackburn is pleased to see that the Bill would introduce broad anti-avoidance protections to prevent credit contract and consumer lease providers from circumventing the rules and protections contained in the Credit Act and the National Credit Code (**National Code**).⁸
- 3.7 This is a significant step forward for consumers.

Recommendation 2: That Part 4A of the National Code be amended so that the Interest Rate Cap includes establishment fees and so that consumer leases are subject to the Interest Rate Cap.

- 3.8 Maurice Blackburn argued that establishment fees charged by payday lenders should be included in the calculation of the Interest Rate Cap. Currently, payday lenders are permitted to charge a 20% establishment fee for small amount credit contracts⁹ and a \$400 establishment fee for medium amount credit contracts.¹⁰ The

⁸ https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1234_ems_5b7ea0db-8571-45b1-8c46-ab6e37943f00/upload_pdf/19S16em.pdf;fileType=application%2Fpdf; p.9

⁹ National Credit Act s 5. A credit contract is a small amount credit contract if the limit of the contract is \$2,000 or less and the term of the contract is at least 16 days but not more than one year.

¹⁰ National Code s 204. A credit contract is a medium amount credit contract if the limit is at least 2,001 but not more than 5,000 and is at least 16 days but not more than two years.

exclusion of establishment and other fees from the interest rate cap hides the true costs to consumers, which amount to significantly more than 48% per annum in many cases.

- 3.9 Maurice Blackburn submits that it is unjust that the poorest people in Australia are subjected to interest rates of this scale, particularly when less vulnerable people are able to access credit at much lower rates, such as on credit cards.
- 3.10 We further recommended that consumer leases be subject to the Interest Rate Cap, in the same way as credit contracts and sale of goods by instalments.
- 3.11 Maurice Blackburn is pleased with section 175AA of the Bill which places a cap on the fees and charges for consumer leases, which is a positive step in protecting vulnerable consumers.
- 3.12 Maurice Blackburn endorses the other proposed changes to the National Credit Act and the National Code. We note that the intention of these changes, as detailed in the draft Explanatory Memorandum,¹¹ would mean that the Bill would:
- *require small amount credit contracts (SACCs) to have equal repayments and equal payment intervals;*
 - *remove the ability for SACC providers to charge monthly fees in respect of the residual term of a loan where a consumer fully repays the loan early;*
 - *prevent lessors and credit assistance providers from undertaking door-to-door selling of consumer leases at residential homes; and*
 - *strengthen penalties to increase incentives for SACC providers and lessors to comply with the law.*

We agree that these are worthy amendments to the legislation.

Recommendation 3: That consumer lease providers be excluded from Centrepay

- 3.13 Maurice Blackburn is disappointed that the Bill does not allow for this important provision.
- 3.14 Centrepay is the voluntary bill paying service provided by the Department of Human Services to Centrelink recipients.
- 3.15 Maurice Blackburn considers that the access of consumer lease providers to the Centrepay service is inconsistent with Centrepay policies and practices that appropriately exclude similar businesses.
- 3.16 Centrepay excludes financial products such as short term loan repayments to cash lenders, payday lenders or pawnbrokers; credit card payments and fees; vehicle leasing payments and expenses; and some insurance products such as life insurance and funeral insurance plans.¹² Maurice Blackburn submits that consumer lease providers should be treated the same as credit providers, and similarly excluded from accessing Centrepay.

¹¹ https://parlinfoaph.gov.au/parlInfo/download/legislation/ems/s1234_ems_5b7ea0db-8571-45b1-8c46-ab6e37943f00/upload_pdf/19S16em.pdf;fileType=application%2Fpdf; p.2 & 3

¹² Department of Human Services, Centrepay Policy and Terms, 1 July 2015, accessed at <https://www.humanservices.gov.au/organisations/business/enablers/policy-terms-and-guides/46616>, clause 4.

3.17 An important factor supporting our suggestion that consumer leasing be excluded from Centrepay is that historically, many consumer leases have had indefinite lease periods (a mischief that is not fully addressed in the Bill including in the cap on fees and charges imposed by section 175AA). In these circumstances, indefinite lease periods roll on so that consumers continue to pay the lease payments until they take some action under the contract, whether that is by purchasing the goods subject to the lease or returning those goods. Centrepay allows customers to 'set and forget' the deductions which can result in consumers not realising that they are still making payments to consumer lease providers. This results in consumers often paying more than the contract amount which is already very high to begin with.

3.18 Maurice Blackburn recognises the value that Centrepay provides to those who receive Centrelink payments. We acknowledge that it provides consumers with certainty of payments and peace of mind. We do not criticise the existence of the service. Our criticisms are focused on the way consumer lease providers are using this service as another tactic to exploit vulnerable consumers. In addition, a Government backed service with the objective of reducing financial risk to customers should not allow access to companies that have been prosecuted by the regulators for breaching responsible lending laws, such as Radio Rentals.

3.19 We note Recommendation 13 in the report of the Senate inquiry into credit and financial products targeted at Australians at risk of financial hardship:

*The committee recommends that Centrepay should only be available to entities that can demonstrate historic and ongoing compliance with relevant regulations, and that provide products at a fair price and in a fair manner.*¹³

3.20 We further note that a number of bodies were similarly critical of Centrepay in their submission to the Committee's inquiry, such as from the Salvation Army and Financial Rights Legal Centre.¹⁴

3.21 We urge the Committee to consider whether the Bill could be expanded to exclude consumer lease companies from using Centrepay or to adopt recommendation 13 above.

Recommendation 4: That the Committee recommend reform empowering regulators and government bodies to better protect vulnerable Australians

3.22 Maurice Blackburn submitted that the Committee further investigates options for empowering regulators and government bodies to enforce laws designed protect Australians from exploitative credit and other financial service providers, which will aid the effective implementation of our above recommendations.

3.23 In our experience, regulators and government bodies, for a variety of reasons and despite their statutory mandate, often fail to curb the unscrupulous behaviour of credit providers towards vulnerable consumers.

3.24 While class actions and other private enforcement options are available to consumers, Maurice Blackburn submits that the Australian community deserves to have regulators at both state and federal level with sufficient resources, expertise

¹³https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Creditfinancialservices/~medi a/Committees/economics_ctte/Creditfinancialservices/report.pdf p. 12 & 13.

¹⁴https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Creditfinancialservices/~medi a/Committees/economics_ctte/Creditfinancialservices/report.pdf p. 4.

and spirit to take meaningful protective and enforcement action against companies and uphold the integrity of consumer protection laws.

3.25 Maurice Blackburn reiterates this submission and recommends that the Committee consider whether reform of this nature could be included in the Bill.

In conclusion, we thank the Committee for the opportunity to make a submission. We urge the Committee to note the above suggestions, and to produce comprehensive recommendations that address the long-overdue need for legislative reform in this area.

Please do not hesitate to contact me by email at [REDACTED] or by telephone on [REDACTED] or if we can further assist with the Committee's important work.

Yours faithfully,

[REDACTED]

MAURICE BLACKBURN
Miranda Nagy
Principal Lawyer