

# SUBMISSION

**TO |** Senate Economics Legislation Committee

**TOPIC |** 

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

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**DATE |** 3<sup>rd</sup> February 2021

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## Executive Summary

The Consumer Credit Law Centre SA (CCLCSA) strongly opposes the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 (the Bill). The CCLCSA urges the Senate Economics Legislation Committee (the Committee) to recommend that the Senate reject the Bill in its entirety, particularly in relation to the proposed repeal of responsible lending obligations (RLOs). The CCLCSA further does not support the proposed amendments relating to small amount credit contracts (SACCs) and consumer leases.

The Bill will not contribute effectively to the stated objective of supporting (post-COVID) economic recovery.

The CCLCSA's primary concerns with respect to the Bill are:

1. The harm and detriment caused to individuals, families and the community at large through the provision of unaffordable and unsuitable credit;
2. The clear abandonment and disregard for recommendations 1.1 and 6.1 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission);
3. The real risk that the Bill will lead to a 'debt disaster' in the medium to longer term; and
4. Reduced and less sustainable economic recovery.

A series of case studies from the ongoing work of the CCLCSA are included to reinforce these concerns.

## Consumer Credit Law Centre SA

The CCLCSA was established in 2014 to provide free legal advice, representation, legal education, advocacy and financial counselling to consumers in South Australia in the areas of credit, banking and finance. The CCLCSA is managed by Uniting Communities who also provide general community legal services, as well as a range of services to low income and disadvantaged people including mental health, drug and alcohol and disability services.

## Uniting Communities

Uniting Communities is an inclusive not-for-profit organisation, working alongside more than 80,000 South Australians each year as they strive for bright futures and great lives. We value diversity and are committed to providing respectful, accessible services for all.

We offer more than 90 services to support the needs of both individuals and our community, across a range of areas. These include mental health and counselling; residential aged care and support for independent living; housing crisis and emergency support; disability services; services for Aboriginal and Torres Strait Islander peoples; financial and legal; drug and alcohol counselling; family relationships' and respite and carer support.

The CCLCSA and Uniting Communities' services more broadly have experience assisting individuals and families with the ongoing harm caused by the provision of unsuitable credit and consumer leases. The CCLCSA provides legal advice and financial counselling assistance to clients who typically find themselves unable to afford basic necessities after entering into unsuitable credit contracts or consumer leases. Some clients are referred to the CCLCSA by other services offered by Uniting Communities including an elder abuse legal unit, financial counsellors, general counselling services, generalist legal services, services for people with disability as well as external agencies providing assistance to clients such as financial counsellors and support workers in the community.

## South Australia's experience

The South Australian experience with respect to credit and debt reflects the reported experiences of community lawyers and financial counsellors across Australia.

The CCLCSA assists vulnerable South Australians in relation to problems they have in relation to the wide spectrum of consumer credit, including personal loans, car loans, home loans, small amount credit contracts, consumer leases, credit cards, lines of credit, pawnbroking and buy now pay later. Through our work, we have seen that despite the commencement of the NCCP Act and the introduction of RLOs ten years ago, consumer credit has continued to flow at high rates, often when it is not appropriate or suitable. Many CCLCSA clients report prioritising loan payments over essential spending on items such as food, energy bills and rent.

Among other important provisions of the NCCP Act, RLOs are critical in our work assisting vulnerable clients when they have been provided credit that they cannot afford or that does not meet their specific needs. We are very concerned about the impact on vulnerable South Australians if this Bill is passed into law. For example, by removing RLOs, consumers will lose the ability to claim compensation, under existing civil penalty provisions, for loss and damages suffered.

The CCLCSA notes the conflicting interests that exist between lenders and borrowers. The commercial incentive to not lend to a borrower who cannot repay does not adequately protect

consumers and should not replace vital protections contained in the NCCP Act. For example, a loan that might appear to be affordable based on income reported by the borrower, but can only in reality be paid through sale of assets and the forgoing of essential living expenses. A common presentation at the CCLCSA is a client who has accessed emergency relief assistance for basic expenditure, such as food, because their income has been used to repay unaffordable loans.

The CCLCSA notes that scientific evidence with respect to basic human behaviour indicates that ‘consumers demonstrate a bias toward what they will receive immediately, and tend to pay less attention to future consequences, or develop overly optimistic assumptions about their future situation.’<sup>1</sup> Furthermore, a recent impact statement by Treasury outlined that ‘consumers may underestimate or misunderstand their repayment capacity, leading to them obtaining credit they may otherwise not have obtained’.<sup>2</sup> The impact statement also stated that ‘without every application subjected to the current intense inquiry and verification process, there is the potential for some consumers to get extended credit they previously would not have received’.<sup>3</sup>

The average Australian consumer is not well acquainted with loan applications and contracts when compared with lenders. Further, consumers often do not understand how their future preferences will evolve to make them vulnerable to opportunistic exploitation by lenders. The CCLCSA frequently see consumers who are unable to protect themselves, for example consumers being unaware when a broker has inflated their income or has been overly optimistic about a consumer’s true financial position. This demonstrates that it is imperative for lenders to verify information provided by brokers and borrowers. The CCLCSA urges the Committee to have regard to behavioural research prior to making such a dramatic reduction in consumer protections under Australian law.

## **1. The harm and detriment caused to individuals, families and the community at large through the provision of unaffordable and unsuitable credit**

This Bill will cause harm and detriment to Australians as a result of increased levels of over-indebtedness. By shifting responsibility for unaffordable and unsuitable loans onto borrowers, this will lead to some borrowers being left not only with unserviceable debt, but also with limited legal avenues to combat bad lender behaviour (as evidenced in evidence heard during the Royal Commission).

### **a. Schedule 1 of the Bill and the curtailment of consumer protections**

The CCLCSA anticipates the reduction of legal rights for individual borrowers through the Bill’s proposed removal of current civil and criminal penalties. This will lead to an increase in the provision of unaffordable and unsuitable loans without adequate deterrence. Even under the existing NCCP Act regime, the CCLCSA sees instances of harm caused to borrowers through the

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<sup>1</sup> Mazer, Rafe, Katharine McKee, and Alexandra Fiorillo. 2014. “Applying Behavioral Insights in Consumer Protection Policy.” Focus Note 95. Washington, D.C.: CGAP, June <https://www.cgap.org/sites/default/files/Focus-Note-Applying-Behavioral-Insights-in-Consumer-Protection-Policy-Jun-2014.pdf> (accessed on 28 January 2021).

<sup>2</sup> Cliona O’Dowd, ‘Loan shake-up ‘could hurt borrowers’, *The Australian* (online), 25 January 2021 < <https://www.theaustralian.com.au/business/financial-services/will-easier-lending-increase-the-risk-of-consumer-harm/news-story/a2f3ba9f01aff6dbffbe1bbf77d30b62>>.

<sup>3</sup> Ibid.

provision of unaffordable and unsuitable loans. However, the current regime provides for legal remedies at an individual borrower level that are accessible to the everyday consumer. The Bill proposes to remove the rights of borrowers. The CCLCSA is deeply concerned that we will see a widespread increase in unaffordable or unsuitable lending, without consumers having access to practical remedies.

The CCLCSA anticipates that if the Bill is passed, the role AFCA plays in providing practical and fair outcomes to borrowers will be significantly constrained. Although borrowers will still have the option of pursuing a complaint through the Australian Financial Complaints Authority (AFCA), rather than commencing costly legal action through the courts, their legal grounds for complaint under the Bill will be significantly curtailed. If the NCCP Act RLOs are repealed, complainants will be left with the residue of legal principles which not only are complex but may be difficult to access/understand (for example, commercially-sensitive internal lender policy documents). Furthermore, the CCLCSA is concerned that absent of legislative provisions relating to borrowing at the individual level, AFCA will not have adequate legal precedent to fulfil their mandate to provide fair outcomes to borrowers.

The CCLCSA regularly sees the harmful effects caused to clients by the provision of unsuitable and unaffordable loans. These loans are not only harmful to the individual, but are also harmful to their families and the community at large, even though they were not involved in the loan application process. The flow on effects of the provision of unaffordable and unsuitable loans, include the weakening of a borrower's capacity to provide for housing, health, education and retirement. Over-indebtedness can also have a harmful effect on relationships with family and friends, increase isolation and exacerbate mental health and other general health issues. Uniting Communities provides a number of community services to assist families of clients who are impacted by over-indebtedness, such as children and parents impacted by family separation, family/domestic violence, homelessness and elder abuse.

By allowing lenders to rely on information submitted by borrowers without the requirement to make reasonable inquiries and verification, vulnerable people - including people impacted by violence, people living with disability (for example case study one), people with low financial literacy and mental health issues, CALD communities and non-English speakers, people impacted by elder abuse (for example case study two) – are at significant risk of harm, given that the removal of the statutory obligations on lenders will enable these loans and further make it harder to seek redress for unsuitable and unaffordable loans.

**Case study one - Anne Marie – financial abuse**

(See <https://www.abc.net.au/news/2020-06-20/police-investigate-money-drained-from-bank-account-of-ann-smith/12376670>)

Anne Marie was 54 years old and lived with cerebral palsy. She received an NDIS package to live at home after her parents died. Anne-Marie died of septic shock and organ failure after being neglected in a chair, after her carers allegedly financially abused her.

Police investigations found financial irregularities including \$70,000.00 of loans entered in Anne-Marie's name. This was despite Anne-Marie being left an inheritance.

The removal of RLOs to verify a borrower's requirements and objectives will significantly increase the risk of financial abuse to people living with disability. This will also heighten the risk of physical harm and emotional abuse to people living with disability and/or impacted by elder abuse as demonstrated by the case of Anne-Marie Smith who died.

RLOs are an important legislative safeguard to reduce the incidence of financial abuse to those living with disability or elder abuse in our community.

**Case study two – Colin and Faye – elder abuse**

Colin and Faye are self-funded retirees who owned their home freehold. They were approached by their son Greg asking them to go guarantor to purchase a fish and chip shop interstate. Greg dealt with an interstate lender by himself and presented documents to Colin and Faye to sign. Greg did not explain the contents of the documents and only showed them where to sign their names. Greg ultimately lost his employment and defaulted on the loan. When Colin and Faye sought legal assistance from the CCLCSA they discovered that they had unknowingly transferred an interest in their home to Greg and that they were in fact co-borrowers for the fish and chip shop. Further, the value of the interstate loan exceeded the value of the fish and chip shop. As a result of this, the lender commenced legal enforcement against Colin and Faye and sought possession of their home. Colin and Faye were unaware that they had transferred an interest in their home to Greg and that they were co-borrowers on the interstate fish and chip shop loan.

This case study is an example of a loan that is currently not subject to RLOs, and demonstrates the vulnerability of senior Australians who have equity in their homes. The CCLCSA is concerned that we will see more cases like this where senior Australians are facing homelessness should RLOs be removed from the NCCP Act and consumer lending is commensurate with business purpose lending.

**Case study three – RLOs help safeguard against elder abuse**

Donald is 83 years old, receives the Age Pension and lives in an aged care facility. Prior to losing legal capacity, he entered into a Power of Attorney appointing his eldest daughter, Heather, to manage his financial and legal affairs.

Donald's other family members visited and took him out for a day excursion from the nursing home. Donald's other daughter, Mary, was experiencing financial difficulty and organised for Donald to change his contact details with the bank. Mary downloaded an app to her smart phone to access and transfer funds out of Donald's account into her own account. Mary then applied for a \$5,000 loan using her father Donald's details. The bank identified that Donald had not made the online application and denied the loan.

Heather saw the transactions in Donald's accounts and sought assistance from the Elder Abuse unit at the Uniting Communities Law Centre. CCLCSA was able to assist provide advice with how Heather could implement measures to protect Donald from further attempts by his family members to apply for loans from other credit providers using Donald's name.

The current RLOs serve as protective measures to prevent elder financial abuse. The removal of RLOs will allow lenders to rely on information provided by borrowers without obligations to assess affordability and verify information. This will heighten and increase the vulnerability of senior Australians to financial elder abuse. Financial institutions are encouraging all customers to use digital platforms, regardless of their digital literacy, and this combined with removal of RLOs will significantly increase the incidence of elder abuse and harm to senior Australians.

With respect to Schedule 1 of the Bill, the CCLCSA seeks to highlight the significant holes that would remain in our lending consumer protection regime if the Bill is passed which will lead to consumer harm:

- Complete removal of current civil and criminal penalties for irresponsible lending by ADIs;
- Reduced legal rights for borrowers against ADIs and brokers;
- No consideration of a borrower's requirements and objectives;
- Removal of specific protections relating to credit card assessments;
- Reduced requirements for banks to properly verify loan applications, including permitting estimates of expenses; and
- Dismantling the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) 'twin peaks' regulatory model for bank lending.

**Case study four – point-of-sale credit card and RLOs**

Bianca is twenty two years old and lives at home with her parents. Bianca has been living with diagnosed mental health illness and is a recipient of the Disability Support Pension. Bianca attended a major retailer to purchase a laptop and at the counter, an unlicensed and untrained sales assistant offered Bianca a credit card. Bianca was only using credit to finance the \$990.00 laptop, however the retail sales assistant insisted that she apply for a credit card with a credit limit of \$5,000.00. Bianca was given a credit card and did not understand that the credit card operated differently to her debit card and that if she withdrew cash using the credit card, that a 29% interest rate would apply. Bianca was never contacted by or spoke to the credit provider to check or assess her objectives and requirements which would have revealed that she wanted a laptop to use during her hospital admissions. If the credit provider had spoken to Bianca, it would have been apparent that she was experiencing episodes with her mental health and was in and out of hospital receiving treatment at the time the credit contract was entered and was not in a position to understand the terms of the credit contract.

Bianca sought the assistance of the CCLCSA who assisted Bianca with a responsible lending dispute.

Without RLOs, Bianca would have faced financial ruin from the interest compounding on the amounts she withdrew from the ATM and exacerbation of her mental health condition. Further, Bianca would not have the legal recourse to pursue the credit provider for contraventions of RLOs.

At the CCLCSA we have assisted many clients who have been pressured by sales people who are not required to be licensed or trained in the provision of credit to take on unaffordable credit cards with extremely high interest rates. These sales people are incentivised through the provision of bonus payments to push unaffordable credit cards on to consumers at point of sale.



**Case study five – credit card credit limit increase and RLOs**

Peter took out a credit card when he was 19 years of age and the credit limit increased to a sum of \$22,000.00. Peter had difficulty making payments as he was offered the credit limit increases when he was not in stable work and receiving Centrelink benefits at the time. Peter lived with disability that made using telephone banking and securing employment more difficult. Eventually, Peter went into a branch and asked the bank about the credit card. The bank teller looked up on the system and Peter was told that it no longer existed.

When Peter was in his early 30s, he had purchased an established home and was a single parent of two young children. Peter then received a letter from the Sheriff's Officer that they were coming around to examine his personal property to enforce a default judgment. After further enquiries, Peter established that the credit card debt was sold to a credit collection agency who had obtained a default judgment for the sum of \$42,000.00.

Peter did not own any personal property that would be subject to bankruptcy which meant the judgment creditor could seek a warrant of sale over his real property being the family home. Peter did not have any family members who could lend him funds to enter into negotiations with the judgment creditor. The judgment creditor was threatening to seek a warrant of sale over the family home in order for Peter to pay the original credit card debt which had substantially grown over time.

If RLOs are repealed, vulnerable people including the young and people living with disability will face financial ruin into the future.

### **Case study six – car loan and RLOs**

Joshua is eighteen years old. He lives with his grandparents and works as a permanent part-time employee for a local fast-food franchise. Joshua was interested in buying a second-hand motor vehicle and went to the local car dealership with his grandfather. Joshua was introduced to the finance person who asked Joshua to present his payslips. Joshua brought in all of his payslips since he started working six months earlier. Joshua believed he was doing the right thing. The finance person filled in the loan application form for Joshua and asked him to sign the documents. Joshua did not know the finance person had selected only some of his payslips where he had worked overtime and that the income stated on the loan application was based on weeks that he had been offered overtime hours.

Joshua very quickly fell into financial difficulty as he was unable to manage the car repayments and the usual expenses associated with owning a vehicle such as insurance, tyres, maintenance and registration on his usual permanent part-time income.

As Joshua was naïve to commercial transactions and his only experience was entering into a mobile phone contract, he did not realise that he could negotiate the price to purchase the car from the car dealership and agreed to pay a price higher than the average market value for the vehicle. Further, he did not realise that the finance person would enter an inflated amount on the loan application for his income and trusted the finance person.

Joshua received a Notice of Default and was referred to the CCLCSA. The CCLCSA was able to represent Joshua for a responsible lending dispute against the lender for failing to verify the information stated on his loan application. With the assistance of the CCLCSA, Joshua entered into a settlement agreement to return the car and for the credit provider to discharge and release Joshua from the contract without further payment. The car sold at auction only twelve months after Joshua purchased the car for less than half of the price he purchased the vehicle.

Without RLOs, Joshua would have had a shortfall debt of \$20,000.00 and would have faced financial ruin into his future.

This case study about Joshua also demonstrates what is occurring with RLOs. The RLOs provide a remedy for consumers against lenders that do not abide by RLOs. Removing RLOs and the detriment that will be caused is reprehensible.

### **b. Schedules 2 – 6 – SACCs and consumer leases**

The CCLCSA does not support Schedules 2 – 6 of the Bill. We note that this is only a partial adoption of the SACC Review and leaves out vital protections for consumers as contained in several earlier Commonwealth and state bills. The CCLCSA urges the Committee to review and implement all of the recommendations from the SACC Review, as a matter of urgency.

The CCLCSA seeks to highlight the protracted timeline of the development of consumer protection laws relating to SACCs and consumer leases by the Commonwealth Government. A review into the effectiveness of laws governing payday loans and consumer leases was first announced by the then Assistant Treasurer, Josh Frydenberg on 7 August 2015. Following the final report of the ‘Review of the Small Amount Credit Contract Laws’<sup>4</sup> (the SACC Review) presented to government in March

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<sup>4</sup> Australian Government, Review of the Small Amount Credit Contract Laws: Final Report, March 2016, available at: [https://treasury.gov.au/sites/default/files/2019-03/C2016-016\\_SACC-Final-Report.pdf](https://treasury.gov.au/sites/default/files/2019-03/C2016-016_SACC-Final-Report.pdf)

2016, Minister Kelly O'Dwyer said that the federal government supported the vast majority of the recommendations<sup>5</sup>. The CCLCSA expresses frustration that despite other Federal members of Parliament introducing bills which have fully adopted recommendations from the SACC Review, the Bill provides inadequate protections in regards to SACCs and consumer leases. The CCLCSA is particularly concerned about the following inadequacies contained in the Bill:

*i) Doubling the protected earnings amount cap*

With respect to protected earnings amount caps, the Bill would in practice allow for a consumer to devote up to 40% of their net income towards consumer leases and payday loans. This can be compared with the SACC Review's recommended caps that an individual could not be required to commit more than 10% of their net income in total to repayments for payday loans at any time, with a separate 10% cap applying to consumer leases. By not fully adopting the SACC Review's recommendations with respect to protect earnings caps, the Bill does not go far enough to protect Australian consumers from harm.

We note that the current South Australian *Fair Trading (Small Amount Credit Contracts and Consumer Leases) Amendment Bill 2020* proposes to cap the amount of net income that can be allocated to payday loans or consumer leases at 10%, thereby providing better protections for South Australian consumers. Consumers who we see entering SACCs are generally the most vulnerable and financially disadvantaged clients that we see at the CCLCSA, and therefore require the most protection.

*ii) Extra charges in consumer lease cost cap*

The CCLCSA is concerned that the Bill varies from the SACC Review recommendations:

- The Bill allowing 4% monthly fees calculated on the base price plus delivery and installation fees;
- The Bill allows consumer lease providers to charge an extra 20% establishment fee on leases, in addition to the cost cap.

People who enter into consumer leases are generally financially disadvantaged and often do not understand the true cost of the item that they are leasing. In fact, a significant portion of CCLCSA clients with consumer leases do not understand that they do not have a right to own the goods they are leasing. Consumer leases foster financial inequality by locking consumers into a debt spiral.

*iii) Opportunity and incentive to upsell loans*

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<sup>5</sup> The Hon Kelly O'Dwyer MP, 'Government response to the final report of the review of the small amount credit contract laws' (Media Release, 28 November 2016) available at: <http://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/mediareleases/government-response-final-report-review-small-amount>

The Bill proposes to apply RLOs on lenders who provide SACCs (i.e. loans of \$2,000 or less). Under the Bill, lenders of loans of \$2,001 to \$5,000 (known as medium amount credit contracts (MACCs)) would not be required to abide by RLOs.

The CCLCSA is concerned that industry will take advantage of this opportunity to upsell and provide unaffordable and unsuitable credit without being subject to RLOs. It is likely that most consumers would not be aware that by entering into a MACC, they would be eroding their consumer rights.

**Case study seven – protected earnings and uncapped consumer leases**

Jamie is 46 years old and was diagnosed with an intellectual disability as a child. Until recently, Jamie had lived at home supported by his parents. Jamie receives the Disability Support Pension and ongoing assistance from support workers through an NDIS plan. After moving into supported accommodation, Jamie went into a consumer lease store and entered into three agreements to lease six items. Jamie entered into consumer leases for a Hard Drive, PlayStation 4, Flat screen TV, gaming headset and two computers, which by the end of their terms would have amounted to total repayments over \$17,000.00 for items with a total insured value of \$7,280. One of the computers had an insurable value of \$2,600 but over the five year rental term, Jamie would have paid \$9460.00 to lease the computer. This means Jamie would have paid 3.64 times the price of the insured value of the computer. The same computer was advertised for a recommended retail price of \$1899.00. Using this retail price obtained from another retailer's website, Jamie would have paid almost five times the retail price of the computer over the five year lease term. The monthly rental Jamie paid for all the items with the same lease provider was more than \$475.00 per month. After the direct debit payments to pay for his consumer leases and accommodation, Jamie did not have enough money for basic food expenses, transport and clothing. Jamie's parents and NDIS support workers assisted Jamie to seek help from a financial counsellor and the CCLCSA about the unaffordability of his consumer leases.

The consumer lease cost caps under the SACC Review recommendations would provide better protection to people like Jamie.

**Case study eight – protected earnings – SACC**

Jim lived in community housing and was diagnosed with an intellectual disability. Before Christmas, he went into a payday lending store and obtained a payday loan to buy Christmas presents for his nephews and nieces. Jim was receiving the Disability Support Pension and showed his bank statement to the payday lender. The payday lender did not enquire about Jim's expenses which would have showed that Jim used his pension to pay for his community housing accommodation, to buy medication, bus tickets, groceries, take away food and to go on weekly group excursions. Despite not being able to properly sign his documents which should have put the lender on notice to make further enquiries in a credit assessment as to what Jim could afford, Jim was advanced the payday loan. When Jim was unable to buy groceries, could not attend work as he could not pay for his bus travel and stopped going on group excursions due to insufficient funds, his brother assisted him to obtain copies of his bank account. It then became apparent that after repaying his payday loan and paying for his accommodation, he was unable to meet his living expenses. Jim did not have the skills to cook alternative meals to adjust to his new expenditure. If the protected earnings were 10% of Jim's income (in line with the SACC Review's recommendation with regards to protected earnings), he would not have been subjected to the same financial harm and exclusion from his daily activities. After this incident, Jim's family and support workers applied for an administration order and Jim now has his financial affairs managed by the Public Trustee.

### **Case study nine – protected earnings and uncapped consumer leases**

Michael receives Newstart Allowance and lives in a remote town in South Australia. After separating from his wife, he moved into rental accommodation to start his life over again. He applied for a credit card and a payday loan and was declined. He thought about buying second-hand furniture but did not have access to a motor vehicle to collect furniture. Michael was expecting his children to come visit and was desperate to purchase a fridge, television and fold-out lounge for their visit. Michael saw an advertisement that he could rent a fridge, television and lounge. Michael entered into an indefinite period lease. Several years later, Michael saw a financial counsellor. The financial counsellor calculated that Michael had paid over \$9,000.00 to lease the fridge, television and lounge. Michael did not know the retail price of the goods at the time but it was clear that he had paid many times above the purchase price for these essential household items. The financial counsellor tried to negotiate with the lessor for Michael to stop paying the lease and for Michael to retain the goods, but the lessor refused to negotiate and threatened to repossess the goods and charge Michael a repossession fee if he stopped making payments.

Under the SACC Review's recommendation in relation to caps on total payments that can be made under a consumer lease, the maximum Michael would have paid under the leases was 1.92 multiplied by the base price of each item.

Under the Bill, Michael could have also been liable to pay up to 192% extra on fees if delivery and installation are included. This is concerning for Michael who lives in a remote community and would be required to pay an extraordinary amount more for delivery and installation.

## **2. The proposed legislation is contrary to the key recommendations from the Hayne Banking Royal Commission**

At the time the Final Report from the Royal Commission was delivered to government, the Treasurer noted the Government's:

*"principal focus is on restoring trust in our financial system and delivering better consumer outcomes, while maintaining the flow of credit and continuing to promote competition."<sup>6</sup>*

As outlined above, the Bill does not deliver better consumer outcomes and data provided by the ABS as well as public hearings held by ASIC in 2019 show that RLOs were not a real impediment to lending.

Recommendation 1.1 of Commissioner Hayne's final report of the Royal Commission was that the 'NCCP Act should not be amended to alter the obligation to assess unsuitability'. The Bill's

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<sup>6</sup> Joint media release with the Hon Scott Morrison MP Prime Minister on 4 February 2019, <ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/007-2019> as accessed on 2 February 2021.

proposal to dispense with RLOs directly contradicts this recommendation and disregards the evidence of consumer detriment presented not only at the Royal Commission, but also through our extensive case work at the CCLCSA.

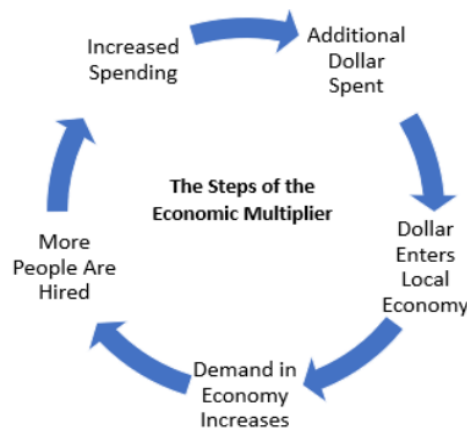
Furthermore, the Bill also effectively seeks to dismantle the ‘twin peaks’ regulatory system, which contradicts recommendation 6.1 of the Royal Commission, namely that ‘the ‘twin peaks’ model of financial regulation should be retained’. Under the twin peaks model, APRA is responsible for financial system stability, while ASIC is responsible for good market conduct and consumer protection. However, the Bill proposes that non-authorised dispute-taking institutions (ADIs) lending conduct be regulated by ASIC, while ADI lending conduct be regulated by APRA. This puts our world-leading regulatory framework at risk.

The CCLCSA is concerned about how consumer protection will be integrated into APRA’s functions and powers – namely balancing the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, is to promote financial system stability in Australia.<sup>7</sup> We also note that in closing submissions of the Royal Commission, it was suggested that evidence from case studies presented demonstrated APRA’s reluctance to commence court proceeding and to take on public enforcement action.<sup>8</sup>

### 3. The real risk that the Bill will lead to a ‘debt disaster’ in the medium to longer term

One of the key arguments proposed for winding back RLOs is given in the title of the Bill; it is about “Supporting Economic Recovery.” The strong desire of governments to help with a rapid economic recovery is understood and appreciated.

A part of the rationale for this approach is the application of the economic multiplier, starting with “additional dollar spent” which, though cycling through an economy with a chain of transactions means that spending is increased by more than the additional dollar that was the initial injection. The process is summarised by the following graphic:



In this section we consider some of the implications of reduced RLOs as a means to help stimulate economic activity.

<sup>7</sup> *Australian Prudential Regulation Authority Act 1998* (Cth) s 8.

<sup>8</sup> Module 5 - Superannuation closing submissions 24 August 2018, 814/page 216 – Banking Royal Commission.

### 3.1 There is no “credit squeeze,” necessitating lending stimuli

The current Australian ‘cash rate’ for interest rates is 0.10% as retained at the Reserve Bank of Australia (RBA) Board meeting in December 2020. This is a continuation of the lowest ‘official’ RBA set interest rates over past decades as indicated in the following graph:



Source: RBA

Figure 1, Source Reserve bank of Australia<sup>9</sup>

The following figure shows lending data for new personal fixed term loans for smaller purposes from 2002 to 2020.

#### New loan commitments, personal fixed term loans (seasonally adjusted), values, Australia - smaller purposes

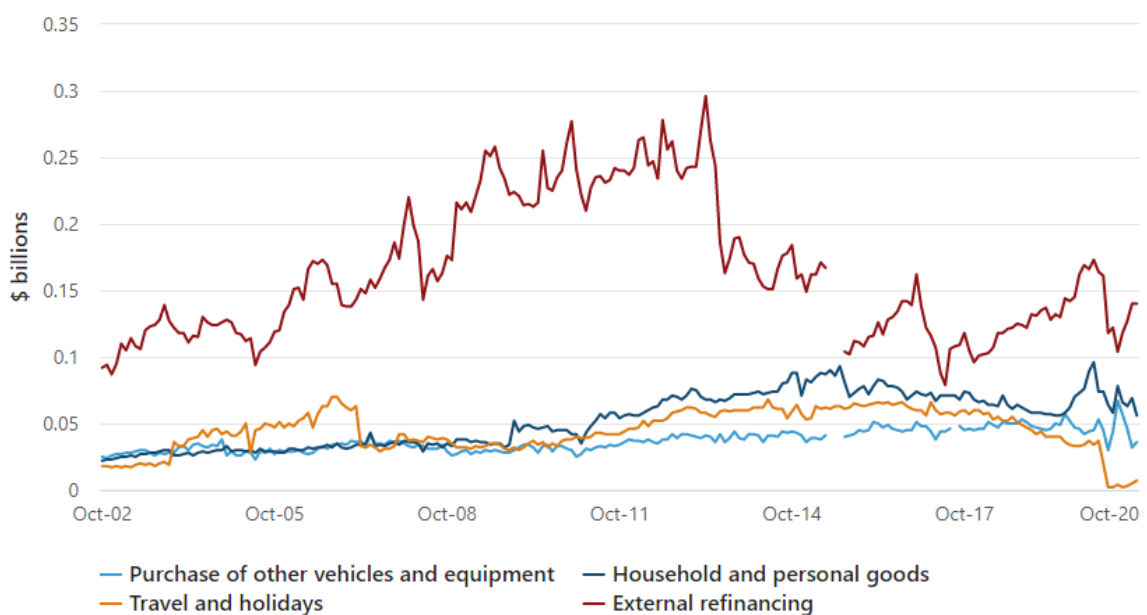


Figure 2, Source ABS Lending Indicators, December 2020<sup>10</sup>

<sup>9</sup> <https://www.rba.gov.au/statistics/cash-rate/> viewed 1/2/2021.

<sup>10</sup> <https://www.abs.gov.au/statistics/economy/finance/lending-indicators/latest-release>.



We observe from this graph that lending for all but one of the smaller purpose loan categories has remained steady (trend) or improved since the outbreak of COVID-19. The one category of lending that has declined and not recovered is travel and holidays. This is not surprising given lockdown arrangements, the inability for Australians to travel overseas and the closure of interstate borders, to varying degrees, over much of 2020.

We observe from these two pieces of information:

- That historically low interest rates mean that money is ‘cheap’ for borrowing; and
- Lending for “smaller purpose” loans has been strong during 2020, including for household and personal goods and external refinancing.

This data and the broader experience of recent economic activity in Australia strongly indicates that there is no “credit squeeze,” with loans being affordable due to low interest rates and lending continuing and increasing for some categories.

The CCLCSA is well aware of difficulties for many people in purchasing housing at the moment, but this is function of supply shortages rather than finance availability. Indeed, lending for housing has also increased over the last couple of months.<sup>11</sup>

### **3.2 Localised economic multiplier impacts**

A part of the desirability of economic recovery measures is that spending is maximised in local communities, so that the economic multiplier will drive demand for local goods and services increasing local level employment across Australia.

A likely adverse outcome of repealing RLOs is that as people are encouraged to take out unsuitable and unaffordable loans that are not the subject of RLOs. This will result in people paying discretionary and nondiscretionary income to aggressive collections agencies operating on behalf of lenders. This takes money out of a local economy as many lenders are part of national or international financial companies. Profits are then collected and centralised either in large Australian cities or offshore.

This means that a negative multiplier operates in local communities as money that would otherwise be spent locally is clawed away by lenders that have not applied RLOs, taking profits to centralised locations well away from local communities.

### **3.3 Financial stress leading to more pressure to take unsecured loans**

COVID-19 has had an uneven impact on individuals, families and communities across Australia. For some businesses in some locations business has continued largely as before, while other business sectors, such as tourism and hospitality, have fared poorly. This has impacted some communities much more severely than others. The financial pressures felt by households and individuals in the districts and industries worst hit by COVID-19 are much more likely to result in desperate people seeking unsecured loans with considerable risk of

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<sup>11</sup> The total value of new loan commitments for housing and the value of owner occupier home loan commitments each reached record highs in December 2020, according to the latest Australian Bureau of Statistics (ABS) figures released on 1 February 2021 < <https://www.abs.gov.au/media-centre/media-releases/record-housing-loan-commitments-continue-december>> accessed on 2 February 2021.

not being able to pay the loans back, or to be only able to partially repay loans we RLOs are not practised.

This would have deleterious impacts on the mental health and well-being of individuals and would economically harm the communities most that have been impacted by COVID-19.

### **3.4 Temporal Discounting**

“Time discounting research investigates differences in the relative valuation placed on rewards (usually money or goods) at different points in time by comparing its valuation at an earlier date with one for a later date (Frederick et al., 2002). Evidence shows that present rewards are weighted more heavily than future ones.”<sup>12</sup>

The behaviour of temporal discounting has been understood in both psychology and (behavioural) economics for some time. It relates to Ainslie-Rachlin choice theory: people tend to value short term rewards ahead of those where the consequences of the action are further away and was described by G Ainslie and H Rachlin in 1975.

A 2020 article in the American Economic Review takes temporal discounting further in the article “Time discounting and wealth inequality.”<sup>13</sup> The authors write:

“Why some people are rich while others are poor is of fundamental interest in social science. Standard savings theory predicts that people who place a larger weight on future payoffs will be wealthier throughout the lifecycle...Macroeconomics research suggests that this relationship between time discounting and wealth inequality can be quantitatively important and help to explain why wealth inequality greatly exceeds income inequality.”

Without RLOs it is more likely that lenders, seeking short term return, and borrowers discounting future costs of a loan, will result in future hardship through inability to repay the loan costs that were ‘discounted’ by both borrower and lender at time of writing the loan.

This situation, particularly when repeated by the same borrowers and in the same communities, reduces wealth for individuals, thereby limiting sustained economic growth, particularly for local communities, as longer term costs (of loan repayments) and reduced wealth growth are compromised in the short term and reinforced by temporal discounting.

### **3.5 Maintaining trust in financial system**

Confidence in financial system is crucial for economic recovery. The GFC clearly demonstrated the deleterious impacts of weakened trust in financial service providers.

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<sup>12</sup> <https://www.behavioraleconomics.com/resources/mini-encyclopedia-of-be/time-temporal-discounting>.

<sup>13</sup> Thomas Epper, Renest Fehr, Helga Fehr-Duda, Claus Thustrup Kreiner, David Dreyer Lassen, Soren Leth-Petersen and Gregers Nytoft Rasmussen.

Prudential controls and consumer protection along with prudent and consumer focused approached by lenders are crucial in maintaining faith in the financial system and the base that the financial system plays in sustained economic recovery.

Removing vital consumer protections in the current economic environment is a recipe for disaster, with adverse consequences for sustained economic recovery.

We urge the Committee recommend to the Senate that the whole Bill is abandoned. With respect to small amount credit contracts and consumer lease reforms, we urge that the Committee refers and copies the protections afforded under the South Australian *Fair Trading (Small Amount Credit Contracts and Consumer Leases) Amendment Bill 2020*.

A handwritten signature in black ink, appearing to read 'Simon Schrapel', with a stylized flourish at the end.

**Simon Schrapel AM**  
**Chief Executive**  
**Uniting Communities**