12 October 2015

SACC Review Secretariat
Financial System and Services Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

By Email: consumercredit@treasury.gov.au

Dear Sirs or Mesdames,

Review of certain provisions of the *National Consumer Credit Protection Act 2009* (Review of the small amount credit contract laws)

Consumer Credit Legal Service (WA) Inc. **(CCLSWA)** is pleased to provide this submission to the Department of Treasury's review of certain provisions of the *National Consumer Credit Protection Act* 2009 (Cth) **(NCCPA** or **the Credit Act)** relating to the effectiveness of and recommended changes to, small amount credit contract laws, and whether those laws should extend to regulated consumer leases.

1. About CCLSWA

CCLSWA is a not-for-profit community legal centre based in the Perth metropolitan area. We advise and advocate for consumers on consumer credit issues and Australian Consumer Law related problems. CCLSWA operates a telephone advice line service, which allows consumers to request legal advice and information.

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CCLSWA also provides:

- Assistance for 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;
- Community legal education programmes relating to credit and debt issues and the Australian Consumer Law;
- Financial literacy programmes to high school students and selected groups within the community;
- Contributions to relevant policy and law reform initiative; and
- A training and supervision programme for law student volunteer paralegals.

In providing these services CCLSWA aims to create awareness, knowledge and understanding of consumer issues related to banking and financial institutions, and the Australian Consumer Law. We seek to assist the Western Australian community with developing just and fair relationships with banks and financial institutions. We also aim to advance public interest and awareness through participating in community legal education and policy and law reform.

2. Executive summary

The *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (**Enhancements Act**) introduced a number of amendments relating to consumer credit. Most notably, the Enhancements Act introduced an improved scheme for regulating the provision of small amount credit contracts (**SACCs)**, or as they are more commonly referred to as, "payday loans."

The objective of the legislative enhancements contained in the Enhancements Act was to establish more onerous obligations on payday lenders in order to address the increasing incidence of predatory lending and "debt spirals"[1]. The Enhancement Act also included complementary purposes such as the

[1] Revised Explanatory Memorandum to the Consumer Credit Legislation Amendment (Enhancements) Bill 2012, 58

encouragement of alternatives to payday loans, and the promotion of financial inclusion.[2] CCLSWA aims address these policies throughout this submission.

CCLSWA is grateful for this opportunity to comment on, and provide recommendations to, the existing SACCs laws provided in the NCCPA. CCLSWA regularly advises and advocates for low-income and otherwise disadvantaged consumers who have been provided with SACCs to their serious detriment. In addition to commenting on the effectiveness of the SACCs laws, CCLSWA welcomes this opportunity to address the following aspects of the Terms of Reference (**TOR**):

i. Whether a national database of SACCs should be established (TOR: 2.1)**;**
ii. Whether any additional provisions relating to SACCs should be included in the Credit Act, the accompanying regulations or the National Credit Code (TOR: 2.2); and
iii. Whether any of the provisions which apply to SACCs should be extended to regulated consumer leases (TOR: 3).

The large and established payday lending industries in the United States, Great Britain and Canada have undergone significant media and regulatory scrutiny over the past several years[3]. The establishment of consumer protection agencies, and outright prohibition of payday lending in some regions represent some of the measures taken to curb the prevalence of payday lending in developed countries[4]. While comparatively smaller, the payday loan industry in Australia has grown at an alarming rate, particularly in light of the more stringent regulations placed on payday lenders in the 2013 Enhancement Act. A report by the Australian Securities and Investments Commission (**ASIC**) in March 2015 stated that approximately $400 million in small amount loans were written in the 2013/2014 financial year, representing a 125% growth since 2008[5]. CCLSWA believes this statistic represents two realities of the consumer credit landscape in 2015 and beyond.

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[2] See the Second Reading Speech of the Enhancements Bill: Commonwealth, Parliamentary Debates, House of Representatives, 21 September 2011, 10 950–3 (Bill Shorten, Minister for Financial Services and Superannuation).
[3] C, Dougherty, "Payday Loans get U.S Consumer Bureau Scrutiny as "Debt Traps", Bloomberg Business, 27 February 2013 <http://www.bloomberg.com/news/articles/2013-02-26/payday-loans-get-scrutiny-from-consumer-bureau-as-debt-traps->
[4] The Pew Charitable Trusts, "*State Payday Loan Regulation and Usage Rates"* 14 January 2014, <http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/state-payday-loan-regulation-and-usage-rates> (Retrieved 11 October 2015)
[5] Australian Securities & Investments Commission, "Payday lenders and the new small amount lending provisions", Report 426, March 2015, 7

Firstly, based on the number of consumers that CCLSWA and our colleagues (financial counsellors and consumer advocates) have advised in this area, and the statistics presented in the ASIC report, it is clear that the changes to the SACCs laws contained in the Enhancements Act, while causing many lenders to exit the market, has had a minimal effect on any intended reduction on payday lending in Australia. Conversely, CCLSWA's experience suggests that payday lenders are not just neglecting, but may be knowlingly flouting many SACC laws, particularly the presumptions of unsuitability.

Secondly, the statistics represent a changing economic landscape in Australia, and the unfortunate reality that low-income Australians are increasingly depending on multiple short-term, small-amount loans to pay for essential items, household bills, and to service existing loans. The explanatory memorandum for the Enhancements Act noted that repeat loans was an inherent feature in payday lending, where consumers who took out one payday loan were highly likely to take out further loans.

CCLSWA believes that the existing SACC laws have been ineffective in curbing the growth of the payday lending industry and in the frequency of consumers experiencing debt spirals. CCLSWA strongly believes that the existing SACC laws can be made significantly more effective if they are supplemented by a system of oversight, enforcement and community education. CCLSWA recommends that this review panel consider establishing a payday-lending database to provide a system of supervision for payday lending. We further believe that improvements in the quantity, attainability and community awareness of alternatives such as no-interest loans, low-interest loans, and hardship utility grants must be made.

3. Effectiveness of and recommendations to SACC laws

CCLSWA will address the effectiveness of the following provisions of the NCCPA and National Credit Code relating to SACCs:

- Presumptions of unsuitability: ss 118(3A), 123(3A), 131(3A) and 133(3A);
- Requirement to display warning statements: ss 124B and 133CB;
- Caps on fees and charges: ss 31A and 31B;
- Cap on default charges: s 39B; and
- Protections for a prescribed class of consumers: s 133CC

3.1 Presumptions of unsuitability

A main point made in the revised explanatory memorandum for the Enhancement Act provided:

"That the creation of presumptions will address the risk of debtors entering into a debt spiral, where the amount of their indebtedness increase over time, as a greater proportion of their income is used to meet repayments"[6]

The presumptions of unsuitability are contained in the Part 3 Responsible Lending Obligations of the NCCPA. They establish a presumption that a consumer will be unable to comply with the financial obligations of a SACC without substantial hardship (unless the contrary is proven) if the consumer:

- is in default in payment of an amount under another small amount credit contract at the time of assessment; or
- in the 90-day period before the time of assessment, the consumer has been a debtor under two or more other small amount credit contracts.

The Enhancement Act introduced these measures to address the risks inherent in small amount lending: consumers falling into a debt spiral through the repeated or continued use of high-cost small amount loans. The following statement is also contained in the revised Explanatory Memorandum.

"The effect of these presumptions is that unless the contrary is proven, a consumer would be considered to be in substantial hardship. The provisions place an onus on a licensee to establish that the small amount credit contract was suitable for the consumer. These provisions provide targeted reform to address concerns in relation to both debt spirals and recurrent use of SACC's[7]*".*

The presumption is intended to protect consumers from the risks of taking out multiple SACCs, therefore limiting the number of low-income consumers in financial hardship and debt spirals[8]. However, through our work, it is quite clear that the presumptions fail to protect the consumers as intended. The case study below concerning a CCLSWA client illustrates one example of where a payday lender has actively flouted any consideration of the presumptions of unsuitability.

[6] Revised Explanatory Memorandum to the Consumer Credit Legislation Amendment (Enhancements) Bill 2012.
[7] Explanatory Memorandum to the Consumer Credit Legislation Amendment (Enhancements) Bill 2012, [4.30]
[8] Ibid

3.1.1 CCLSWA case study 1

June is a 75-year-old indigenous Australian receiving an aged pension. June took out a loan for $750 with More Money, a payday lender. June had also received two previous loans with More Money, each for $1000. June was in default on both these loans when she took out the third loan. Therefore More Money gave June a third payday loan when she was already in default on two loans, and those two loans were also from More Money. CCLSWA advised June that because she already in default on two small amount loans, she should not have been approved for a third small amount loan.

The most alarming aspect of June's situation was not that the payday lender in that case either neglected to find out whether June had taken out prior SACCs and apply the statutory rebuttable presumption to June; or deliberately ignored the law.

June is but one example of the clients who are readily approved for SACCs irrespective of the operation of the presumptions. An ASIC review of 288 consumer files indicated that 62% of payday lenders entered into a loan with a consumer who triggered at least one of the presumptions of unsuitability[9]. Further inquiries by ASIC discovered that only one of 13 lenders who discovered that a presumption was triggered actually made further inquiries to rebut this presumption[10]. This statistic shows that lenders are simply not going through the required process of assessing the suitability of a consumer when one of the presumptions has been triggered. At the same time, the demand or need for multiple small amount loans is increasing. Consequently, payday lenders are unlikely to be concerned about a borrower making a complaint to the lender or either ombudsman scheme, when they believe the required process has not been followed. Rather, consumers are far more willing to continue taking out loans, or rolling-over their loans into new loans.

CCLSWA believes that there should be more stringent provisions relating to the presumptions of unsuitability, particularly in the way they impose a detriment to the lender when not followed. Further, CCLSWA believes that in instances where a consumer is in default in payment of more than one SACC at the time of assessment, this should trigger an outright prohibition on the provision of a payday loan.

[9] Australian Securities & Investments Commission, "Payday lenders and the new small amount lending provisions", Report 426, March 2015, 32, [162]
[10] Ibid [166]

3.2 Requirement to display warning statements

One of the supplementary purposes of the Enhancement Act was *"improving disclosure about the availability of alternatives will help consumer to make better and more informed financial decisions and to seek out lower cost alternatives to relatively higher cost short-term credit contracts*[11]*".*

Section 124B and 133CB provide that a lender who provides credit assistance in the form of SACCs must display warning information on their premises and their website. Schedule 7 of the *National Consumer Credit Protection Regulations 2010 (*Cth) provides the current warning to be displayed on the premises of the lender. CCLSWA believes that the three alternatives currently provided on the warning notice fall substantially short of providing consumers with information about practical and attainable alternatives to SACCs.

CCLSWA supports a recent recommendation made by the no-interest lender Good Shepherd proposing that a lender or lease provider must refer a consumer on a Centrelink income to a no-interest lender if the consumer requires the item of for survival, safety or resilience[12]. CCLSWA believes that information about no-interest and low-interest loans such as NILS and the StepUP loans[13] should be expressly stated on the warning notices.

Further, CCLSWA strongly believes that the warning notice should also contain at least one plain English example of a payday loan and the annualised percentage ***and*** dollar figures payable over a period of the loan.

3.3 Caps on fees and charges

A well-known characteristic of the payday lending industry across Australia and the United States is the charging of exorbitant interest rates and default charges. The caps placed on the allowed establishment fee (20%)[14], monthly fee (4%)[15] and default charges[16] represent significant improvements to this aspect of SACC's. The high interest rates, monthly fees and default charges have long been the most significant

[11] Explanatory Memorandum to the Consumer Credit Legislation Amendment (Enhancements) Bill 2012
[12] S, Drummond, "Good Shepherd says poor borrowers should be referred to no interest loans," *Sydney Morning Herald*, 17 September 2015, <http://www.smh.com.au/business/banking-and-finance/good-shepherd-says-poor-borrowers-should-be-referred-to-no-interest-loans-20150917-gjp1u3.html>

[13] http://goodshepherdmicrofinance.org.au/about-us
[14] 31A(2) NCC
[15] 31A(3) NCC
[16] s 39B

factor in driving consumer into debt spirals, and forcing consumers to "rollover" their loans into new, larger loans designed to service their previous loans.

However, while these caps have been an effective in reducing the incidence of lenders imposing exorbitant interest rates, lenders are still able to circumvent the caps on monthly fees and establishment fees. Particular incidences have been reported where lenders are using hidden annualised interest rates of 240%[17], and imposing insurance fees and brokerage fees to ensure the loan can be classified as a "medium amount credit contract"[18]. Another concern is that when default charges are combined with monthly rate charges, consumers are often still required to pay large fees, making it extremely difficult for consumers to repay their loan in the required time period. This in turn causes many consumers to roll over their loan into another loan, initiating a financially damaging debt spiral.

CCLSWA strongly believes that this review panel should revisit the SACC provisions relating to chargeable rates and fees in order to ensure that payday lenders are not able to easily circumvent the laws in order to charge higher fees and charges or hidden annualised interest rates.

3.4 Protections for a prescribed class of consumers

Section 133CC of the NCCPA establishes a conditional prohibition on any credit provider entering into a small amount credit contract with consumer if that consumer is in a "class of consumers" where the repayments do not meet certain requirements, prescribed by the regulations. At present, the regulations have only prescribed one class of consumers as being applicable under Section 133CC. Regulation 28S effectively prescribes a conditional prohibition that where a Consumer receives at least 50% of their gross income as payments under the *Social Security Act 1991 (Centrelink Benefits),* the repayments required in each payment cycle of income under a proposed SACC **must** not exceed 20% of the consumer's gross income for that payment cycle of income[19].

For example, if a consumer receives $500 a fortnight under a carer's pension, which is that consumer's entire income, a credit provider is prohibited from providing a SACC which requires fortnightly repayments of over $100. CCLSWA supports the creation of prescribed classes of consumers, particularly where they ensure greater protections for low-income Australian's. However, CCLSWA strongly believes

[17] http://consumeraction.org.au/review-is-opportunity-to-improve-protections-for-payday-loan-and-rent-to-buy-borrowers/
[18] G, Wilkins, "Payday loans charged at up to 240% interest" *Sydney Morning Herald*, 12 February 2014 <http://www.smh.com.au/national/payday-loans-charged-at-up-to-240-interest-20140211-32g2n.html>
[19] *National Consumer Credit Protection Regulations 2010* (Cth), r 28S

that s 133CC should prescribe more stringent assessment requirements to be made by credit providers. This is largely due to the nature of Centrelink benefits, and the likelihood that a consumer has certain Centrepay deductions and other fees. The case study below will illustrate this issue as experienced by one of our clients:

3.4.1 CCLSWA case study 2:

Phillip, a 30 year old male was homeless when he contacted CCLSWA Phillip suffered from diagnosed mental and physical disabilities. Phillip received approximately $800 from Centrelink, largely from a disability support pension. Phillip filled out an online application with Payday Lender, giving them his bank statements, and informing them of his limited income. Phillip entered into a contract to borrow $1500 from Payday Lender, for a period of two years. Phillip believed the repayments were too high, but needed to the loan to pay for his university fees. Phillip was not able to make any repayments, and defaulted on the loan. After looking over Phillip's Centrelink statement and the assessment by Payday Lender, the Payday Lender had not included over $200 in deductions from the Centrelink statement. This would have had the effect of reducing Phillip's disposable income to less than the repayment amounts under the contract. CCLSWA alleged that Payday Lender breached their obligations by not assessing the loan as unsuitable for Phillip. Payday Lender agreed to reduce the repayment amounts substantially.

It is clear from this case study that the lender did not properly assess Phillip's Centrelink statement, and that Phillip fell well within the protected class of consumers, and should have been prohibited from entering into a SACC. CCLSWA believes our experience with clients like Phillip give rise to two recommendations with respect to the protections for prescribed classes of consumers. Firstly, while CCLSWA strongly supports prescribing individuals on welfare benefits as a protected class of consumers, we also believe there must be more stringent obligations to assess a consumer's income. In the case of Phillip, while he was receiving a gross payment of $800, after the relevant deductions, his actual benefit was only $600 a fortnight. After deductions, Phillip's loan repayments were actually far more than 20% of his fortnightly income. If the credit provider had made only minor enquiries into Phillip's financial position, he would not have been approved for the loan that put him in substantial hardship.

Phillip's situation also illuminated another significant issue. While Section 133C provides that regulations may prescribed requirements for certain classes of consumers, Regulation 28S concerning consumers on social security benefits is the only class of consumer that has been prescribed since 2013. CCLSWA

believes that there are a number of classes of consumers that deserve to be protected by these provisions. In particular, consumers that have a diagnosed mental illness, are homeless or are elderly should be prescribed as protected classes of consumers. It has been our experience that elderly consumers and consumers with a mental illness are the most susceptible to entering into SACCs where they will have no ability to make the repayments, and fall into financial hardship and a debt spiral.

The impact of payday lending on individuals with a mental illness has already been seen in countries like the UK, with tragic consequences[20]. In one case, an individual who began experiencing financial difficulty associated with payday loans also experienced a form of mental illness. This led the individual to tragically take his own life when a lender left no income in his bank account[21]. Consumers who suffer from mental illness or are elderly may experience far more severe consequences as a result of payday lending. CCLSWA strongly believes that this review panel should consider protecting a wider range of consumers with particular vulnerability factors, such as those who suffer from serious mental illnesses or who are elderly.

4. Supplementing the existing SACC laws

The short-term, small-amount lending industry has built a successful business model by encouraging dependency on multiple short-term, small-amount loans. The explanatory memorandum for the Enhancement Act submits that one of the primary purposes of the reforms is that they would lead to a decreased overall volume of short-term contracts by reducing the extent of repeat borrowing and the incidence of debt spirals[22]. Debt spirals generally occur where a consumer is unable to avoid repeated borrowing, increasing their indebtedness over time, as a greater proportion of their income is used to meet repayment obligations.[23] Statistics showing a 125% increase in the volume of short-term contracts since 2008 is a frightening statistic, largely because it has shown the SACC laws, particularly the presumptions, have failed to effectively reduce the prevalence of payday lending.

A recent ABC Four Corners report contained the following statement by an anonymous CEO of a payday lending company:

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[20] N, Khomami, "Teenager killed himself hours after Wonga cleared out his account" *The Guardian*, 26 September 2015, <http://www.theguardian.com/business/2015/sep/25/teenager-killed-himself-wonga-cleared-out-account>.
[21] Ibid.
[22] Explanatory Memorandum to the Consumer Credit Legislation Amendment (Enhancements) Bill 2012, [11.220].
[23] Ibid, [1.14], [11.44].

"There are 10 million Australians that don't have access to a credit card. Where are they going to get credit?"[24]

This statement reflects the reality of the payday lending industry in Australia in 2015 and beyond: there is a strong and sustained demand for short-term, small-amount easily accessibly credit. CCLSWA has advised a number of clients who had payday loans, in situations where it was apparent that a number of the SACC laws had been neglected or intentionally disregarded. This has been particularly clear for the presumptions of unsuitability, which are likely ignored if borrowers were promptly approved for further loans where they had existing defaulted loans, multiple existing loans, and in some cases defaults on multiple loans. If the SACC laws had been applied appropriately by the payday lenders in each of these cases, none of these clients would have been approved for loans that they clearly had no capacity to repay without substantial hardship.

CCLSWA believes that there are two potential initiatives that the Treasury may take under consideration, which if applied together may ensure the successful operation of the SACC laws. These initiatives are:

1. The establishment of a real-time database of payday loans; and
2. Improving the accessibility of, and increase in the number and quality of payday loan alternatives.

4.1 Database of payday lending

CCLSWA has advised a number of clients where it was apparent that the lender had not only neglected to adhere to the SACC laws in the NCCPA, but actively disregarded those laws. As seen in Case study 1 at paragraph 3.3.1, it is not uncommon for consumers to be provided with payday loans while in default on two or more existing payday loans. Currently only one in 13 lenders that discover that a consumer triggers a presumption of unsuitability actually makes further inquiries to rebut that presumption.[25] This statistic shows that lenders have no incentive to heed the presumptions, and are not deterred by the low risk of a consumer making a complaint. Consumers are unlikely to make any complaints as they

[24] S, Long and D, Richards, "Game of Loans" ABC Four Corners, 1 April 2015, <http://www.abc.net.au/4corners/stories/2015/03/30/4205225.htm>
[25] Australian Securities & Investments Commission, "Payday lenders and the new small amount lending provisions", Report 426, March 2015, 12, [54]

become reliant on multiple payday loans. Therefore, regulatory bodies and the industry ombudsman schemes should not and would not rely on consumers lodging complaints on their own accord.

As such, one potential solution, which may ensure stricter compliance by lenders to the SACC laws, is the establishment of a database of SACCs. A real-time, monitored database of this kind would update a consumer's credit file to reflect when a SACC has been entered into, defaulted on, or paid out. The aim of this database would be to ensure that all payday lenders carry out suitability assessments appropriately, and approach the presumptions of unsuitability prudently and diligently.

The United States Payday Lending Industry dwarfs the Australian industry both in size and prevalence. However, the US is far ahead of Australia in terms of curbing the incidence of payday lending. 15 states in the US have an outright prohibition on any form of payday lending, while 9 further states have strict laws regulating the provision of payday loans[26]. These states have laws limiting the number of small loans a borrower can take out at a single time. This is regulated by a statewide real-time database. These databases provide information to licensed payday lenders on whether a potential borrower is eligible for a particular loan and requires that lenders enter loan related information into the database in accordance with payday loan legislation[27]. Currently over 10 states have implemented an effective database of payday lending including Alabama, Kentucky, South Carolina, Michigan, Virginia, Florida, Washington, Illinois and North Dakota[28]. This model effectively utilises a private company, Veritec, to implement a system of oversight and reporting that enforces the Government's consumer protection regulations[29].

However, this model has also been met with significant opposition from certain states and organisations. Organisations such as the Utah Consumer Lending Association are strongly opposed to a mandated database, which it argues would impose an administrative burden and hurt consumers. The chief concern with a system of this kind is that consumers who demand multiple payday loans may be driven to seeking out unregulated, higher cost Internet lenders. CCLSWA suggests that any consideration of a database should address this potential risk.

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[26] The Pew Charitable Trusts, "*State Payday Loan Regulation and Usage Rates"* 14 January 2014, <http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/state-payday-loan-regulation-and-usage-rates> (Retrieved 11 October 2015)
[27] "Payday Lending Database System", *Commonwealth of Virginia*, <https://www.vapdl.com/AboutUs.aspx> (Retrieved 12 October 2015)
[28] "Veritec Solutions") <http://www.veritecs.com/jurisdictions/> (Retrieved 12 October 2015)
[29] "Veritec Solutions" <http://www.veritecs.com/about/>(Retrieved 12 October 2015)

CCLSWA believes that this review panel should strongly consider the implementation of a similar solution. Whether implemented by a government department/authority or a private company, a database of payday lending would ensure that the existing SACC provisions would be far more effective in achieving their purpose of consumer protection, and reducing the incidence of payday lending in Australia.

4.2 Practicable and attainable alternatives to SACCs

ASIC's 2015 report on the payday lending industry and the small amount credit provisions included a number of statistics in relation to the review of 288 individual files from lenders[30]. Of those 288 files, 187 recorded the consumer's purpose behind taking out the particular small amount loan[31]. Of those 187 files, 39% recorded the purpose as "generic household expenses or temporary cash shortfall", while 30.4% were provided for the purpose of addressing generic, utility and telecommunications bills[32]. There is clearly a strong demand for immediate small amount credit, that is currently only being adequately serviced by the payday lending industry. Therefore, any proposed restriction or oversight to the current SACC"s regulatory regime will only be effective if consumer's can be directed to practical and attainable alternatives providing consumers with immediate, small amount credit.

4.2.1 CCLSWA case study 3:

Mary is an elderly indigenous woman who was referred to CCLSWA when she began experiencing immense financial difficulty. Mary lives in government housing and receives $450 a fortnight in income. Mary's financial situation originated when she received a $2000 loan from Popular Payday Lender (PPL). Mary needed the money to help her manage living expenses, while taking care of her 6 children, and a number of grandchildren, all of whom were living with her. After a year of paying the loan, Mary contacted PPL to find out how much remained owing under the contract. The lender told Mary she still had $500 remaining, and suggested that she take out another loan. Mary then took out another loan for $2000. Over the years, Mary began regularly taking out "over the counter" loans of $200 to $300 from PPL, regularly having multiple loans at once. Mary continued to take these loans out so she could pay bills and general living expenses. During this time, Mary also took out two consumer leases for a TV and computer with HJ's

[30] Australian Securities & Investments Commission, "Payday lenders and the new small amount lending provisions", Report 426, March 2015, [288]
[31] Ibid, 34
[32] Ibid

Electronics. Mary is now in default on two of her loans with PPL, owes $1000 under each, and has defaulted on her payments for each consumer lease, owing $1200 on each lease.

As the above case study illustrates, very vulnerable consumers often rely heavily on payday loans to service general household expenses, then remain tied up in a cycle of payday loans. Consumers like Mary regularly take out loans of $200 and $300 to service household and utility bills as and when they become due. As stated in the ASIC report, 30.4% of consumers demand payday loans to address a generic household, utility and telecommunications bills. This demand is indicative of temporary cash shortfalls in households, and general struggles to consistently meet accumulating household expenses. The HUGS is provided in Western Australia by the Department of Child Protection, and offers financial assistance to people with financial difficulties to pay their utility bills so their supply is not cut off[33]. While the HUGS scheme provides an effective alternative to the most desperate class of WA consumers, it does not address the demands of the majority of consumers, who require immediate credit to address temporary cash shortfalls. This review should consider suggestions to renew or expand the operation of schemes similar to HUGS, and potentially offering more alternatives, which are more attainable and can be offered to a wider range of consumers.

Another alternative is the provision of microfinance. Comprehensive studies have demonstrated that microfinance helps very poor households meet basic needs, and improves household economic welfare[34]. Microfinance is currently offered in Australia by organisations such as Good Shepherd Microfinance.

The No Interest Loan Scheme and StepUP low interest loans provided by Good Shepherd Microfinance in partnership with National Australia Bank provide a far more desirable alternative to low-income consumers in need of urgent, cheap credit[35]. Consumers are generally able to seek out these loans through financial counsellors and other community providers, and CCLSWA has often advised consumers of the availability of these loans. The provision of funding by NAB for the maintenance and growth of these schemes is vital to limiting the demand for payday lending services in Australia.

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[33] Hardship Utilities Grant Scheme" *Department of Child Protection and Family Support*, <https://www.dcp.wa.gov.au/servicescommunity/Pages/HardshipUtilitiesGrantScheme(HUGS).aspx>
[34] "Financial services for the poor", *United Nations Capital Development Fund*, <http://www.uncdf.org/en/financial-services-for-the-poor> (Retrieved 10 October 2015)
[35] "*Good Shepherd Microfinance* <http://goodshepherdmicrofinance.org.au/about-us> (Retrieved 10 October 2015)

However, at present neither NILS or StepUP loans are offered to consumers to address any form of generic household or utility bills or even rental payments[36]. These purposes represent one of the most predominant purposes behind consumers taking out repeated payday loans. CCLSWA believes that while the services offered by Good Shepherd Microfinance are important, there needs to be incentives for other microfinance providers to enter the market and address a wider range of consumers.

CCLSWA strongly believes that for the existing SACC provisions to be effective, practical and attainable alternatives to payday loans must be provided. Improvements and expansions to HUGS or similar schemes and Centrelink advances need to be explored, and incentives for organisations that offer low-cost and attainable microfinance loans should be provided. More importantly, advertising and community education initiatives need to be created to actively inform low-income consumers who rely on payday lending of the existence of lower-cost alternatives, when they become available.

5. Impact of funding cuts to financial counseling services in Western Australia

CCLSWA wishes to briefly address the role that financial counselling services play in assisting consumers who may otherwise be drawn to payday lending services. In Western Australia, the recent state government funding cuts to these services will result and has resulted in the closure or reduction in state-funded metropolitan financial counselling services by 30 September 2015[37]. While this concern is specific to Western Australia, CCLSWA agrees with the views of a number of financial counsellors who believe that the reduction in these services may lead consumers in desperate situations who would ordinarily seek out financial counsellors for advice, to seek out payday loans[38]. CCLSWA has also discussed this issue with state parliamentarians who share our concern in this area. There is some restored funding, but it falls short of the need for it.

6. A new age of payday lending?

In the past decade, the payday lending industry has begun targeting their loans to a particular class of consumers who had not been directly addressed in the decades prior: young people, or Gen Y. New

[36] "The No Interest Loan Scheme", *Good Shepherd Microfinance* <http://nils.com.au/> (Retrieved 10 October 2015)
[37] http://www.financialcounsellingaustralia.org.au/Corporate/News/WA-Government-Urged-to-Reverse-Decision-to-Close-F. At the time of writing, there are current discussions among stakeholders regarding the modified funding model for Perth metropolitan financial counselling services.
[38] J Kagi, "Payday lender warning issued by Perth financial counsellors hit by cuts" ABC News, 29 June 2015, <http://www.abc.net.au/news/2015-06-29/payday-lender-warning-from-financial-counsellors-hit-by-cuts/6581044>

lenders such as "Nimble" and their "smart little loans" have quite clearly placed their emphasis on targeting young people and young, growing families. In a number of clearly well made and humorous television advertisements, young people with common problems such as telephone bills, utility bills, and costs associated with young children are provided with the ability to take out a $200 to $1200 loan in 60 minutes via a smart phone application[39]. While these loans comply with the SACC laws, the advertising of these loans can quite aptly be characterised as predatory in nature. Similar lenders such as Cash Converters, Loan Ranger, and PayDay 24/7 who offer similar services, targeted at a similar class of consumers are putting young people, who would otherwise not require loans of this nature, in financial hardship and debt spirals[40]. CCLSWA believes that this review panel should review how the SACC laws and regulations address these services, and particularly whether the SACC laws need to be adjusted to regulate the more modern capabilities of lenders to provide loans in 60 minutes.

7. Extension of SACC laws to regulated consumer leases

Consumer leases have long been marketed and offered to low-income consumers in Australia as an alternative to mainstream credit contracts. A consumer lease is a contract for the rent or hire of goods that allows a consumer to take immediate possession of goods without having to pay the full purchase price upfront. Under the current provisions of the National Credit Code, a consumer lease is either regulated as a *"consumer lease" or a "credit contract"* based on certain distinctions[41]. Under the NCC, a regulated consumer lease is one in which the lessee of the goods *does not* have the right to purchase the goods at the end of the contract[42]. This distinction has long provided leasing companies with opportunities to circumvent the more stringent laws regulating "credit contracts". While the Enhancements Act has largely eliminated opportunities for regulatory arbitrage, consumer leases continue to provide an attractive route for low-income consumers who do not have access to conventional forms of credit to take possession of goods they cannot afford[43].

CCLSWA has advised a number of clients, and been in discussions with financial counsellors in the Kimberley and Pilbara who witnessed their clients' falling prey to disturbing predatory practices by

[39] S de Brito, "Numble's dumb little loans", *The Sydney Morning Herald,* 4 January 2015, http://www.smh.com.au/comment/nimbles-dumb-little-loans-20141228-12emh5.html
[40] Ibid.
[41] P Ali, C McRae, I Ramsay and T Saw, "Consumer leases and consumer protection: Regulatory arbitrage and consumer harm", (2013) 41 ABLR 240
[42] *National Consumer Credit Protection Act 2009* (Cth), Schedule 1, National Credit Code, s 160.
[43] P Ali, C McRae, I Ramsay and T Saw, "Consumer leases and consumer protection: Regulatory arbitrage and consumer harm", (2013) 41 ABLR 240

consumer lease providers. Particular practices include lease providers driving to remote, low-income communities with vehicles filled with white goods and electronic goods for lease, and lease providers who drive consumers to retail outlets, and purchase goods which the consumer then leases from them. CCLSWA submits the following case study concerning an individual who took out a consumer lease to their detriment.

7.1 CCLSWA case study 4

> *Alex was an indigenous man living in the Kimberley region of Western Australia. Alex was locked into a rental contract with Rent Lease to rent a TV, DVD and computer. The rental contract required Alex pay $160 a month for 4 years. At the time of entering into the agreement, Alex was working full time and was not missing any repayments. While the retail price of the goods was only $3500, after over 3 years Alex had paid $6500. With $1000 still to be paid over the remaining 8 months, Alex had to leave his full-time job to become a full-time carer for his wife who had become ill. Alex was shocked at the amount that the goods were actually worth relative to the amount that he had already paid, without even getting to keep any of the goods. Alex was unable to receive Centrelink payments within a short enough time frame, and was unable to make the remaining repayments to Rent Lease. Alex advised Rent Lease of his situation, and provided them with a statement of his financial position. Rent Lease however refused to waive the remaining payments, and demanded that Alex make the final repayments under the contract.*

The existing consumer lease provisions, while providing an improved framework for regulating the provision of consumer leases, still falls short in a number of areas. One area is that there is no prohibition or presumption ensuring that consumers do not take out multiple consumer leases at the same time. Consumers with multiple consumer leases often find that their costs continue to rise, as more and more of their income is being used to make repayments on goods that have become old and outdated. This in turn means that consumers are often paying more than three times the retail price of goods, largely because of the long-term nature of the contracts, and high interest rates that lessors are able to impose. CCLSWA believes that a number of the SACC laws should be extended to the provision of regulated consumer leases. In particular, the presumptions of unsuitability, caps on rates and charges, and caps on the term of consumer lease contracts would provide a more effective framework for the protecting the interests of low-income consumers. Further, the use of "warning statements" to advise

consumers of the real price that they will be paying, and alternatives such a layby or microfinance will also go towards reducing the adverse consequences of consume leases.

8. Conclusion

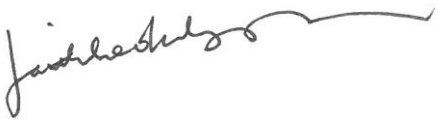
CCLSWA has committed extensive resources towards educating consumers and consumer advocates on the operation of the SACC laws and the consequences associated with payday lending. CCLSWA strongly believes that a comprehensive review of the SACC laws is required in a number of key areas. In particular, the provisions relating to the caps of fees and charges, warning statements, and protections for classes of consumers require a number of enhancements in order to ensure that the purpose of the Enhancement Act of reducing the volume of payday loans and consumers in debt spirals is achieved. Further, while the presumptions of unsuitability may require amendments, CCLSWA believes that it should be the focus of this review panel to ensure that the existing presumptions are implemented with a system of oversight and reporting to ensure they are appropriately applied. Additionally, this panel should consider increasing emphasis on initiatives to improve the quantity, attainability and community awareness of the existing alternatives to small amount credit contracts.

CCLSWA is grateful for the opportunity to comment on this inquiry.

If you have any questions or would like to discuss this matter further, please contact Faith Cheok on (08) 6336 7020

Yours sincerely,

Consumer Credit Legal Service (WA) Inc.



Per

Faith Cheok

Principal Solicitor