18 January 2016

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 & Mesdames,

Review of the small amount credit contract laws – Interim report December 2015

Consumer Credit Legal Service (WA) Inc. (**CCLSWA**) is pleased to provide this submission to the Department of Treasury's Interim report on the review of the small amount credit contract laws contained in the *National Consumer Credit Protection Act 2009* (CTH) (**NCCPA** or the **Credit Act**), and comparable 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 seek information and legal advice.

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;

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- Community legal education programmes relating to credit and debt issues and the Australian Consumer Law;
- Financial literacy programmes to high school students and select 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* (the **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**).

The objective of the legislative enhancements contained in the Enhancements Act was to establish more onerous obligations on credit providers in order to address the increasing incidence of predatory lending and "debt spirals"[1]. The Enhancement Act also addressed the encouragement of alternatives to SACCs and the promotion of financial inclusion.[2] In this submission, CCLSWA takes into consideration these objectives.

CCLSWA is grateful for this opportunity to comment on, and provide recommendations to, the existing SACC laws contained in the NCCPA. CCLSWA regularly advises and advocates for low-income and otherwise disadvantaged consumers who have been provided with unsuitable SACCs to their serious detriment. In addition to making general comments regarding our observations on the effectiveness of

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

[2] See the Second Reading Speech of the Enhancements Bill: Commonwealth, Parliamentary Debates, House of Representatives, 21 September 2011, 10 950–3 (Bill Shorten, Former Minister for Financial Services and Superannuation).

the SACCs laws, CCLSWA welcomes this opportunity to address the following requests for further information:

i. Information on trends in the SACC and leasing industries including consumer characteristics;
ii. Whether policy option 2 or policy option 3 will be more effective at improving consumer outcomes, taking into consideration the cost and benefit of both options, including the effect on competition, fairness, innovation, efficiency, access to finance, regulatory compliance costs and consumer protection; and
iii. If there are broad or systemic problems with the way in which lessors comply with the responsible lending requirements in relation to low-income consumers and Centrelink recipients.

3. General observations

CCLSWA maintains that the existing SACC laws can be made significantly more effective if they are supplemented by a system of oversight, enforcement and community education. We believe that financial literacy is vital in facilitating community awareness of the true nature of SACCs, namely that while a SACC is generally promoted as being a one-off short-term solution, the reality is that SACCs are highly likely to exacerbate a consumer's financial position, as opposed to improving it.

CCLSWA's casework experience suggests that the existing SACC laws have failed to be effective in curbing the growth of the payday lending industry and the frequency of consumers experiencing debt spirals.

The high demand for SACCs is, in most circumstances, driven by members of a low socio-economic background. SACCs appear to have become a necessary evil for many of these consumers who do not have access to alternative forms of credit. CCLSWA considers that any steps taken to improve financial inclusion and protection for the most vulnerable members of our community will be positive ones.

4. Information on trends in the SACC and leasing industries including consumer characteristics

4.1 SACCs

Research has found that, in Australia, there has been 'a twenty-fold increase in demand for short term, small amount loans in the last decade.'

As observed in the interim report, high levels of repeat borrowing appear to be causing financial harm and the costs associated with the SACC industry actually promote repeat borrowing. CCLSWA has observed that repeat borrowers are at the greatest risk of debt spiralling and concludes that these consumers are those must vulnerable to mismanagement at the hands of credit providers, as evidenced by Case study 1.

Case study 1:

> *Christina is a 74-year-old indigenous Australian whose income is derived from a Centrelink pension and a superannuation pension. Christina has extensive expenses, due primarily to her role as legal or de-facto guardian to eight grandchildren. Christina experiences crippling financial difficulty. She lives in government housing and struggles to manage her living expenses while taking care of her three children and eight grandchildren.*
>
> *All the above facts were known to Christina's lender Popular Payday Lender.*
>
> *Between March 2012 and October 2014, Popular Payday Lender approved 19 SACCs and advanced a total of $ 9, 800 to Christina. To date, Christina has made repayments totalling $13, 000 on these SACCs.*
>
> *In CCLSWA's view, all 19 SACCs were unsuitable for Christina pursuant to the NCCPA. Christina could not afford the repayments without suffering substantial hardship.*
>
> *For two of the SACCs, Popular Payday Lender failed to obtain any form of supporting documentation before it approved and advanced the funds to Christina. For the remaining 17 SACCs, Popular Payday Lender ostensibly discharged its obligation to make reasonable enquiries into Christina's financial position. In CCLSWA's view, Popular Payday Lender's request for and purported review of the documents did not amount to a verification of Christina's financial position at the time of each SACC loan.*
>
> *In addition to the 19 SACCs, between January 2011 and July 2013, Popular Payday Lender also provided Christina with five personal loans. In CCLSWA's view, in four of these five loans, Popular Payday Lender breached their responsible lending obligations. The loans were also unjust transactions.*

4.2 Consumer leases

It should not be surprising that Christina was also approved for two unsuitable consumer leases.

Consumer leases tend to attract a similar demographic to that attracted to SACCs. This demographic comprises low-income earners from low socio-economic backgrounds who are usually recipients of Centrelink benefits. These consumers have little to no bargaining power and enter into consumer leases that result in their paying in excess of three times the cash price for household and electronic goods

Case study 2:

> *In 2013 Christina entered into a consumer lease with Easy Renters R Us, through Hansel & Gretel, for the rental of a computer.*
>
> *In 2014 Christina entered into a second consumer lease with Easy Renters R Us, through Hansel & Gretel, for the rental of a television.*
>
> *At the time of each of the leases, in addition to general living expenses, Christina had a number of other debts, including SACCs and personal loans with Popular Payday Lender.*
>
> *Christina was told by representatives from Hansel & Gretel and Easy Renters R Us that at the end of the lease period, she could pay an extra month's payment and would own the goods.*
>
> *To date, Christina has paid $2060 for the computer and still owes $800. For the television, Christina has paid $900 and still owes $1400.*
>
> *CCLSWA advised Christina that even if she paid an extra month she would still not own the goods, unless her offer to purchase the goods were accepted by Renters R Us. CCLSWA also advised Christina that Renters R Us would likely require her to pay an amount higher than one month's repayment.*

5. Is policy option 2 or policy option 3 more effective at improving consumer outcomes?

Policy option 2 suggests replacing the rebuttable presumption that a SACC is unsuitable if a consumer has had two or more SACCs in 90 days, with a bright line test banning the provision of SACCs to consumers who have two or more SACCs in the past 90 days.

Policy option 3 suggests extending the protected earnings amount for Centrelink recipients, where total SACC repayments cannot exceed 20 per cent of gross income, to all consumers and lower the protected earnings amount to no more than 10 per cent of net income.

In taking into consideration the cost and benefit of both options, including the effect on competition, fairness, innovation, efficiency, access to finance, regulatory compliance costs and consumer protection, CCLSWA submits that policy option 2 is likely to be more effective in improving consumer outcomes.

As it stands, the rebuttable presumption is quite subjective, meaning there are difficulties with compliance and enforcement. Repeat borrowers are more likely to trigger the rebuttable presumption and in a number of cases, the presumption is rebutted without a genuine, reasonable inquiry into a borrower's financial position. Replacing the rebuttable presumption with the bright line test would provide clarity and ensure ease of compliance for credit providers. The table below sets out the number of SACCs provided to CCLSWA client Christina over a period of two-and-a-half years.

SACC #	Date entered into	Cash advanced ($)	Fortnightly income ($ approx.)	Fortnightly expenses ($ approx.)	Surplus funds	Fortnightly repayments required under the loan ($)	Suitable according to CCLSWA ?	Supporting documents	Date settled	Total number of defaults	Total paid ($)
1	12/03/12	361.00	1387.01	1526.56	-139.55	243.68	NO	NO	12/04/12	-	487.35
2	18/05/12	350.00	1387.01	1336.53	50.48	236.25	NO	YES*	03/07/12	-	472.50
3	24/08/12	350.00	1388.18	1300.13	88.05	232.25	NO	YES*	25/09/12	-	472.50
4	03/10/12	200.00	1569.39	1350.87	218.52	135.00	NO	YES*	06/11/12	-	270.00
5	08/11/12	350.00	1571.96	1353.16	218.53	272.50	NO	YES*	04/12/12	-	472.50
6	03/12/12	350.00	1571.16	1353.96	164.00	236.25	NO	YES*	02/01/13	-	472.50
7	03/01/13	400.00	1571.16	1353.96	164.00	270.00	NO	YES*	12/02/13	-	540.00
8	14/02/13	400.00	1571.16	1353.96	164.00	270.00	NO	NO	12/03/12	-	540.00
9	09/03/13	500.00	1585.36	1436.53	148.83	225.00	NO	YES*	07/05/13	1	691.50
10	07/05/13	550.00	1604.96	1435.17	169.79	247.50	NO	YES*	18/06/13	-	742.50
11	21/06/13	550.00	1609.96	1384.64	225.32	247.50	NO	YES	13/08/13	-	742.50
12	14/08/13	550.00	1612.15	1527.97	84.18	341.00	NO	YES	19/09/13	-	704.00
13	11/10/13	550.00	1617.77	1439.57	178.20	341.00	NO	YES	03/12/13	-	704.00
14	29/11/13	550.00	1617.77	1464.55	153.22	234.67	NO	YES	14/01/14	-	704.00
15	11/01/14	600.00	1617.77	1418.03	199.74	256.00	NO	YES*	11/02/14	-	768.00
16	19/02/14	700.00	1627.41	1431.59	195.82	298.67	NO	YES*	14/04/14	-	868.00
17	10/04/14	700.00	1627.41	1504.29	123.12	298.67	NO	YES*	19/06/14	-	896.00
18	19/06/14	800.00	1643.11	1534.68	108.43	341.34	NO	YES*	22/09/14	1	1088.00
19	13/10/14	960.00	1653.07	1420.01	233.06	320.00	NO	YES*	$680.00 outstanding	Nov 2014 onwards	580.00
		9771.00									12215.85

*Indicates that according to CCLSWA's analysis, even where Popular Payday Lender collected documents as supporting documents, Popular did not discharge its duty to make reasonable enquiries as to Christina's financial position at the time of the loan.

---- Indicates where there were no supporting documents provided to assess Christina's financial position at the time of the Loan.

--- Indicates where Christina was, in the 90 day period before the time of the assessment, a debtor under two or more SACCs

Repeat borrowers are most susceptible to debt spirals, yet are a high source of profitability for credit providers. Such profitability has been on the back of those vulnerable consumers who are the ones in the most need of protection.

Policy option 2 is not without fault and it should be noted that throughout the industry it has been suggested that there is a real risk borrowers may instead choose loans for greater amounts which are not as stringently regulated as SACCs, such as medium amount credit contracts. Despite this expression of concern, consumers will still be afforded the protection of the NCCPA where the consumer cannot comply with the terms of the loan without suffering substantial hardship or where the contract will not meet the consumer's requirements or objectives.

Based on our casework, we believe policy option 3 is more likely to effect financial exclusion where the total SACC repayments cannot exceed 10 per cent of net income. While higher-income earners are not likely to be adversely affected by the lower protected earnings, low-income earners may find themselves unable to access credit in circumstances where their need is great, and possibly urgent.

CCLSWA submits that, in comparison with policy option 3, policy option 2 will be more effective in improving consumer outcomes.

6. Are there broad or systemic problems with the way in which lessors comply with the responsible lending requirements in relation to low-income consumers and Centrelink recipients?

From our informal consultation with other consumer advocates and from our own limited casework experience, CCLSWA holds the view lessors appear to have an increasingly lax approach to their compliance with responsible lending obligations under the NCCPA. The following case study is evidence of two separate instances of such conduct, by the same lessor.

Case study 3:

> *In 2013 Christina entered into a consumer lease with Easy Renters R Us, through Hansel & Gretel, for the rental of a computer.*
>
> *At the time of the lease, in addition to general living expenses, Christina had a number of other debts, including two SACCs and a personal loan with Popular Payday Lender.*

Popular Payday Lender did not require any supporting documentation for Christina's application. At that time, Christina had a total fortnightly income of around $1600 and fortnightly expenses of around $1700.

In 2014 Christina entered into a second consumer lease with Easy Renters R Us, through Hansel & Gretel, for the rental of a television. As with the first consumer lease, at the time of the second lease, in addition to general living expenses, Christina had a number of other debts, including SACCs and personal loans with Popular Payday Lender, and a consumer lease with Easy Renters R Us.

Again Popular Payday Lender did not require any supporting documentation for Christina's application. At that time, Christina had a total fortnightly income of around $1600 and fortnightly expenses of around $1800.

To date, Christina has paid $2060 and still owes $800 for the computer, having defaulted on six repayments. She has continued to default since May 2015.

To date, Christina has paid $900 and still owes $1400 for the television, having defaulted on seven repayments. She has continued to default since May 2015.

Comment

The most alarming aspect of Christina's case was that Easy Renters R Us had neglected to determine whether or not the lease was suitable for Christina, hence breaching their responsible lending obligations under the NCCPA.

Christina's case is not an isolated one. Through our work with other consumer advocates and through our limited casework experience, CCLSWA believes that a small number of SACC lenders and lessors are becoming increasingly non-compliant with their lending obligations to ensure the suitability of SACC loans and leases. Despite the laudable objectives of the Enhancements Act, lenders' and lessors'non-compliance has resulted in instances where particularly vulnerable consumers are increasingly susceptible to debt spirals.

7. Conclusion

CCLSWA has committed extensive resources towards educating consumers and consumer advocates on the operation of the SACC laws, and the consequences associated with SACCs, payday lending generally and consumer leases. CCLSWA consistently seeks input from consumer advocates, particularly financial counsellors, regarding the practices of payday lenders and consumer lessors and how such practices impact consumers at grassroots level.

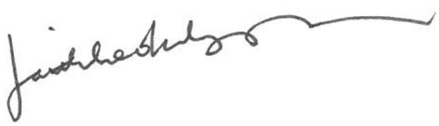
CCLSWA believes that while the policy options show promise if implemented correctly, it is important to strengthen current measures to ensure the lenders and lessors comply with existing statutory obligations. Otherwise, despite the best intentions and most laudable objectives and toughest laws, rogue lenders and lessors would continue to breach the laws, hence making it improbable to protect particularly vulnerable consumers, who are exposed to the traps and pitfalls that lead to debt spirals.

CCLSWA is grateful for the opportunity to comment on the Interim report.

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

Yours sincerely,

Consumer Credit Legal Service (WA) Inc.



Per

Faith Cheok

Principal Solicitor