10 February 2021

Kingsford Legal Centre

Submission to the Inquiry into the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020*

We welcome the opportunity to make a submission to the Inquiry into the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020* (**the Bill**).

We consent to this submission being published by the Senate Standing Committee on Economics. For all case studies in this submission, names and identifying information have been changed to protect confidentiality.

Summary of recommendations

In summary, our recommendations are as follows:

1. The Bill should not be passed;
2. Responsible lending obligations should not be weakened, but should be applied as recommended by the Banking Royal Commission; and
3. Implement the Small Amount Credit Contract (**SACC**) Review's recommendation to protect against unaffordable payday loans by ensuring that the total amount of repayments required of a borrower under all payday loans cannot be more than 10% of the borrower's net income in a fortnight.

About Kingsford Legal Centre

Kingsford Legal Centre (**KLC**) provides free legal advice, casework and community legal education to our local community in south-east Sydney since 1981. We are part of the UNSW Sydney Law Faculty and provide clinical legal education to over 500 of its students each year.

We have extensive experience in providing legal help to people who are in debt and experiencing financial hardship. Many of our clients experience massive debts that they will never be able to re-pay which impacts on issues such as their health, housing and education.

Debt is one of the most common problems that we help people with. In the 2019–20 financial year, we gave 164 legal advices and provided intensive assistance with 62 credit and debt matters. We also have a long history of working with community workers and counsellors to help resolve complex debt issues. We often provide community legal education and we recently provided community legal education on “COVID-19 and Debt” due to strong interest from the community.

General comments on the Bill

KLC believes that the starting point for consumer credit reform must be a recognition that unsustainable personal debt is a large and growing issue. This impacts disproportionately on vulnerable people in the community. We frequently help people who are struggling with debt. We see this debt occur in a range of common ways including:

- People who were pressured or coerced into taking on debt;
- People who were not given an adequate explanation of the financial product they were being signed up for;
- People who have borrowed to pay for essentials or meet an unexpected expense;
- People who have unexpectedly lost their job and people who have been incapacitated; and
- People who experience mental illness, cognitive disability or other types of disability where there was inadequate recognition of the need to provide further information to the person about the financial product.

We often see clients in vicious cycles in which poverty, disadvantage or even bad luck contribute to unsustainable debt, worsening a person’s situation and leading to even more debt. Debt is often catastrophic for vulnerable people, impacting upon housing, relationships, physical health, mental health, employment and education.

Thomas' story

Thomas, an elderly pensioner with multiple disabilities, was being harassed by a Payday lender. Thomas had signed up for the loan a number of years ago but quickly fell behind in repayments due to excessive interest, penalties and monthly fees. The lender then sold the debt to a debt collection agency that was chasing Thomas for payment. KLC was contacted by Thomas's doctor, as the stress of being chased for money Thomas could not repay was causing his health to deteriorate. Thomas had originally taken out a loan for $600 and had provided bank statements and an income statement from Centrelink that clearly showed he was in a poor financial position. Despite this, the loan was approved. Being unable to keep up with the repayments, default fees were applied as well as extremely high interest, resulting in him owing over $1,700. Thomas was unable to resolve the matter without legal help.

KLC assisted Thomas to negotiate with the Payday lender and argued that Thomas should never have been given the loan in the first place, as it was unsuitable for him. We argued that in doing so they breached their responsible lending obligations. Thomas had already repaid about $1200. After KLC became involved, the Payday lender eventually agreed to cease all collection activity on the account, waive the outstanding amount owed and refund Thomas $500. This has made a big difference in Thomas's life.

Community legal centres have seen a massive increase in debt, mortgage and consumer law matters during the COVID-19 pandemic.[1] It is very common to see people who are struggling with debt due to unforeseen job losses due to COVID-19. While the Explanatory Memorandum envisions the Bill forming a key part of Australia's economic recovery,[2] it is difficult to see how the Bill would provide a meaningful recovery for the socially and economically disadvantaged people we serve. The Organisation for Economic Co-operation and Development (**OECD**) has expressed similar concerns, noting that Australia's high household debt threatens to derail our economic recovery.[3]

The Bill would remove key protections against irresponsible lending, fail to adequately strengthen protections against unaffordable payday loans and increase the debt borne by

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[1] Federation of Community Legal Centres Victoria, *Legal Need and the COVID-19 Crisis* (Report, April 2020) 11 <https://d3n8a8pro7vhmx.cloudfront.net/fclc/pages/743/attachments/original/1593647085/FCLC_-_COVID-19_bid_-_For_tabling_at_PAEC_-_19052020_-_final.pdf?1593647085>.

[2] Explanatory Memorandum, *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020* (Cth) 3.

[3] Organisation for Economic Co-operation and Development, *OECD Economic Outlook – Australia* (Report, June 2020) <https://www.oecd-ilibrary.org/sites/ea3fd805-en/index.html?itemId=/content/component/ea3fd805-en>.

vulnerable people in our community. It is not an appropriate response to the COVID-19 pandemic, which calls for stronger protections and debt relief.

We provide comments below on key issues with the Bill. We have not commented on every issue with the Bill.

Recommendation 1: The Bill should not be passed.

Responsible lending obligations should not be weakened

The responsible lending obligations in the *National Consumer Credit Protection Act 2009* (**the Act**) play an important role in protecting vulnerable people from inappropriate and unaffordable debt. These include obligations to make reasonable inquiries about the borrower's requirements and objectives,[4] take reasonable steps to verify the borrower's financial situation,[5] give the borrower information about fees and charges,[6] and not help the borrower take on debt that the borrower will likely be unable to afford.[7] They are modest obligations that can nonetheless make a big difference in the long term to borrowers.

We have successfully relied on responsible lending obligations to achieve relief for people with inappropriate and unaffordable debt.

Gareth and Vera's story

Gareth and Vera had a mortgage on their home, where they live with their son, who has a disability. Gareth and Vera both worked in unstable jobs that did not provide a reliable income. A mortgage broker encouraged Gareth and Vera to take out multiple loans to refinance their mortgage and purchase an investment property, insisting that the rental income would help them to repay the mortgage on their home. Gareth and Vera trusted the broker's advice and a bank granted Gareth and Vera the loans. Their unstable employment and son's disability contribute to Gareth and Vera falling behind on their loans.

[4] *National Consumer Credit Protection Act 2009* (Cth) s 117(1)(a).
[5] *National Consumer Credit Protection Act 2009* (Cth) s 117(1)(c).
[6] *National Consumer Credit Protection Act 2009* (Cth) s 121.
[7] *National Consumer Credit Protection Act 2009* (Cth) s 123(1)–(2).

Gareth and Vera were deeply distressed by their spiralling financial situation and the prospect of having to sell their family home. KLC relied on responsible lending obligations to help Gareth and Vera negotiate a settlement with the mortgage broker and make a complaint about the bank's conduct in providing the loans.

In other cases, the failure to apply responsible lending obligations has led to inappropriate and unaffordable debt.

Daniella's story

Daniella is an Indigenous woman. She is unemployed and currently receiving the disability support pension. Daniella came to KLC having amassed significant debts in the form of a personal loan and a credit card debt from an Australian bank. Daniella was struggling to pay down the debt, and due to chronic illness, had few prospects of employment in the foreseeable future. The bank agreed to loan Daniella about $15,000 and separately approved a credit card limit of about $10,000. As of today, Daniella's total debt has increased to about $25,000. The bank was aware that Daniella already had a personal loan at the time they approved the credit card, and that Daniela was only making minimal repayments on that loan. The bank did not make further inquiries about Daniella's financial position to approve the credit card. The bank has since sold Daniella's debt to a debt collection agency, which frequently contacts Daniella demanding payment. KLC is assisting Daniella by asking the debt collection agency to write off the interest and late fees accrued on the debt, and by requesting the agency to waive a portion of the debt on compassionate grounds.

In this case, it is clear that had responsible lending provisions been applied, the credit card would not have been approved for Daniella.

Schedule 1 of the Bill would abolish the Act's responsible lending obligations, except for some contracts with credit limits of $2000 or less. This would encourage irresponsible lending, increasing the level of unsustainable debt in the Australian community. A "borrower beware" approach fails to recognise the imbalance of power and knowledge between lenders and borrowers, or the complex and varied reasons that people end up with unaffordable debt.

The Banking Royal Commission recommended that the obligation for lenders to assess the unsuitability of credit contracts should not be changed, but rather applied.[8] It is disappointing to see the Australian Government taking a big step in the opposite direction with Schedule 1 of the Bill.

Recommendation 2: Responsible lending obligations should not be weakened, but should be applied as recommended by the Banking Royal Commission.

Strengthening protections against unaffordable payday loans

The Explanatory Memorandum to the Bill acknowledges that people who use SACCs are often financially vulnerable.[9] This matches our experience. People who seek our help with SACCs or "payday loans" are generally people on lower incomes who have signed up for the loans out of a sense of desperation or urgency. In many cases, the borrower does not understand the high interest rate and default fees associated with the loan and has been exploited by a payday lender engaged in irresponsible lending conduct.

Amal's story

Amal, a young single parent on Centrelink with a history of trauma, came to KLC with debts to various payday lenders and other credit providers. KLC was concerned to see that these lenders had continued to provide Amal with loans despite a bad credit history and large amounts of debt. Amal was unable to keep up with the repayments for the majority of these loans, with default fees and high interest rates being applied. KLC is currently in the process of trying to negotiate with some of the payday lenders to have the debts waived given Amal's circumstances, and also that they were not suitable for Amal and that provision of the loans may have been a breach of responsible lending obligations.

The Government accepted in full the SACC Review's recommendation on the need for greater protection against unaffordable SACCs.[10] Under this recommendation, the total amount of repayments required of a borrower under all SACCs could not be more than

[8] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (1 February 2019) 59–60 <https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.pdf>.
[9] Explanatory Memorandum, *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020* (Cth) 72 [3.8].
[10] Kelly O'Dwyer, 'Government Response to the Final Report of the Review of the Small Amount Credit Contract Laws' (Media Release, 28 November 2016) <https://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/media-releases/government-response-final-report-review-small-amount>.

10% of the borrower's net income in a fortnight.[11] While this recommendation alone would not be enough to keep vulnerable people safe from exploitative payday loans, it would provide increased protection against further impoverishment as a result of such loans.

It is disappointing to see the Government abandoning this recommendation by taking steps in connection with the Bill to set the cap on payday loan repayments at 20% of the borrower's net income, rather than 10%, unless the 50% or more of the borrower's net income comes from social security payments.[12] This new approach is highly complex, and will create challenges for borrowers, lenders and regulators in working out what payday loan repayments can be required of a borrower at a given point in time. It will deny a modest, yet critical, protection to many vulnerable people. This includes extremely vulnerable people who are denied social security payments for technical reasons or who are ineligible for social security.

Recommendation 3: Implement the SACC Review's recommendation to protect against unaffordable payday loans by ensuring that the total amount of repayments required of a borrower under all payday loans cannot be more than 10% of the borrower's net income in a fortnight.

Conclusion

The Bill would weaken and deny protections against unsustainable debt at a time when there is high risk of many Australians being loaned money they cannot repay. The ongoing economic impact of the pandemic makes this a particularly dangerous time to wind back such protection. In our view it, will increase the crushing debt borne by the most vulnerable people in our community who have no real ability to repay the money they borrow. We are deeply concerned that people will find themselves sinking into deeper poverty due to spiralling debt and that this will contribute to a growing mental health crisis in the community.

The Bill should not be passed.

If you have any questions about this submission, please contact Emma Golledge at legal@unsw.edu.au.

[11] Small Amount Credit Contract Review Panel, *Review of the Small Amount Credit Contract Laws* (Final Report, March 2016) 11 <https://treasury.gov.au/sites/default/files/2019-03/C2016-016_SACC-Final-Report.pdf>.
[12] Explanatory Memorandum, *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020* (Cth) 72 [3.8].

Yours Faithfully

KINGSFORD LEGAL CENTRE

[redacted]

Emma Golledge

Director

[redacted]

Dianne Anagnos

Principal Solicitor

[redacted]

Sean Bowes

Law Reform Solicitor

[redacted]

Joshua Wang

Secondee Solicitor