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

Dear Madam/Sir

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

Thank you for the opportunity to provide a submission to the Senate Economics Legislation Committee's inquiry on the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)* (**SACC Bill**).

This Bill must be passed as a matter of priority to protect Australian consumers from exploitation by high cost payday loans and exorbitant consumer lease contracts. For years now we have watched progress on implementing the SACC Bill stall as industry lobbyists fight to derail these crucial reforms.

In this time, we have witnessed ongoing harm caused by this industry—pushing families into deeper and deeper debt. In the years since the independent Review of Small Amount Credit Contracts (**SACC Review**) made its recommendations, these companies' profits have continued to grow off the back of Australians drowning in debt. Independent research commissioned by Stop the Debt Trap Alliance shows over 4.7 million individual payday loans were taken on by around 1.77 million households between April 2016 and July 2019. This research shows women, including single mothers, are increasingly accessing payday loans. The harm being caused in Aboriginal communities by consumer lease providers and payday lenders is also cause for alarm.

The move into online provision and the targeting of specific demographics through online advertising means these products are reaching an increasingly wider audience and diverting people away from more appropriate services.

While we are supportive of the Government's efforts to implement the recommendation made by the Financial Services Royal Commission, it is essential that we don't forget other harmful products and services targeting people who are already struggling to make ends meet and are preyed on by these companies. The impact of unaffordable debt is significant. Evidence of poorer health and wellbeing outcomes resulting from debt suggest that people in debt experience negative impacts on their relationships with family and friends, increasing isolation and exacerbate mental health issues.

For too long we've watched consumer lease companies and payday lenders exploit those who can least afford it. This inquiry provides another opportunity to highlight the continuing real-world harm caused by payday lending and consumer lease companies. It's time for Parliament to step up and pass the SACC Bill and finally put an end to the rip-offs.

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About Consumer Action

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

Payday lenders and consumer lease providers

Payday loans (also known as small amount credit contracts or **SACCs**) are loans of up to $2,000 paid back over a period of 16 days to 12 months. There are legislated caps on the fees that can be charged by payday lenders, being an establishment fee of 20% of the amount borrowed and a monthly fee of 4% of the amount borrowed.[1] There is often confusion about how these caps operate, and it is sometimes said that the caps limits payday lenders to charging 24% or 48%. This is incorrect. Due to the generous fee caps, these loans typically attract comparison annual interest rates of between 112.1% and 407.6%.[2] The vast majority of payday lenders charge the maximum amount permitted by legislation, as competition is generally ineffective in bringing down prices in this market.[3] Table 1 below shows the extremely high cost of a $600 payday loan compared to a credit card or personal loan. The total fees and charges for a $600 payday loan is staggering – more than ten times higher than a typical personal loan from a bank with a 12.99% APR over 3 months.

Table 1: Loan Cost and Total Repayments in Comparison

	Payday Loan	Credit Card	Personal Loan
Sum borrowed	$600	$600	$600
Length of loan	3 months	3 months	3 months
Total fees and charges*	$192	$19.07	$13.04

***Payday loan cost charged at the statutory cap; credit card cost charged at 18.97% APR (average platinum card rate)[4]; personal loan cost charged at 12.99% APR (current CBA rate – fixed rate personal loan)[5]**

A consumer lease is a contract that lets someone rent an item, usually with fortnightly repayments over a fixed term (typically between 12 and 48 months). Unlike other credit providers, there is absolutely no cap on the amount consumer lease providers can charge. A report by the Australian Securities and Investments Commission (**ASIC**) on the cost of consumer leases for household goods found a clothes dryer cost a Centrelink recipient the equivalent of an 884% interest rate.[6] Marks ups of this magnitude are common. The lack of cost caps in this industry mean consumers end up paying far more than the recommended retail price (RRP) of an item (see Figure 1).[7] ASIC's investigation found that consumer leases can cost as much as five times the maximum amount permitted under a payday loan, where a cap on costs applies.

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[1] It should be noted that these caps were enacted in 2012, and were watered down from the initial proposal due to strong industry lobbying. A 2011 senate inquiry on the draft amendments "urged the Government to work with industry" to re-evaluate the caps due to concerns about "industry viability". The chair of that committee, the Hon. Bernie Ripoll, went on to become a prominent advocate on behalf of the payday lending industry. See Senate Economics Committee, *Inquiry into Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*, December 2011, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Completed_inquiries/2010-13/Consumer_Credit_Corporations_2011/report/index.

[2] Comparison rate calculations completed using RiCalc software assuming maximum permitted fees and charges, and fortnightly repayments. 407.6% comparison rate calculated using a 30 day loan of $200 with total repayments of $248. 112.1% comparison rate calculated using a 12 month loan of $1,000 with total repayments of $1,680.

[3] These findings are consistent with findings of the Competition and Markets Authority (CMA) in the United Kingdom, which found that customer demand responded weakly to prices and that competition between payday lenders on prices was largely ineffective: Financial Conduct Authority, *High-cost credit including review of the high-cost short-term credit price cap*, July 2017, p. 23, available at: https://www.fca.org.uk/publication/feedback/fs17-02.pdf.

[4] See: https://www.canstar.com.au/credit-cards/credit-card-interest-101/, accessed 20/02/20

[5] See: https://www.commbank.com.au/personal-loans/fixed-rate-loan.html, accessed 20/02/20

[6] ASIC, Media Release 15-249MR, 11 September 2015, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-249mr-asic-finds-the-cost-of-consumer-leases-can-be-as-high-as-884/.

[7] ASIC, Media Release 15-249MR, 11 September 2015, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-249mr-asic-finds-the-cost-of-consumer-leases-can-be-as-high-as-884/.

Industry advertising usually expresses the cost of a lease as a low 'per week' amount, without disclosing the full cost of making many years of payments. On top of this, the person has no contractual right to own the goods at the end of the lease term, despite many people thinking they are 'renting to buy'.

Figure 1

LG 454L Fridge

Radio Rentals, total cost **$4,765**

advertised as $22.91 per week for 48 months[8]

JB Hi-Fi, total cost **$1,399**[9]

The urgent need to pass the SACC legislation

It has been over 4 and a half years since the Federal Government announced the review of payday lending and consumer leases, and over 3 years since it accepted the recommendations of that review (**the SACC Review**). Despite the comprehensive consultation process undertaken by the SACC Review Panel as well as Treasury consultation on exposure draft legislation,[10] industry lobbyists have fought tooth and nail to water-down and derail these crucial reforms.[11] Since the Government released the SACC Review report in April 2016, Digital Finance Analytics (**DFA**) estimates that over 4.7 million individual payday loans were taken on by around 1.77 million households.[12]

It's time for the Government to follow through and implement the SACC Review recommendations it accepted in November 2016.[13] These recommendations included:

- extending the SACC protected earnings amount requirement to all consumers and lowering it to 10 per cent of the consumer's net income;
- introducing a cap on total payments on a consumer lease equal to the base price of the good plus 4 per cent of that price per month; and
- introducing a protected earnings amount requirement for consumer lease providers of 10 per cent of net income for all consumers, equivalent but separate to the requirement for SACCs.

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[8] See: https://www.radio-rentals.com.au/kitchen/refrigerators/lg-454l-bottom-mount-fridge-black, accessed 20/02/20
[9] See: https://www.jbhifi.com.au/products/lg-gbw455mbl-454l-bottom-mount-fridge-matte-black, accessed 20/02/20
[10] Treasury, Exposure Draft National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017, available at: https://treasury.gov.au/consultation/c2017-t229374/.
[11] The Guardian, Payday loan industry using former Labor shadow minister as lobbyist, 27 March 2017, https://www.theguardian.com/money/2017/mar/27/payday-loan-industry-using-former-labor-shadow-minister-as-lobbyist
[12] Digital Finance Analytics, The Debt Trap: How payday lending is costing Australians, November 2019, https://consumeraction.org.au/wp-content/uploads/2019/11/Payday-Lending-Report_FINAL_UPDATED_WEB-1.pdf, page 6.
[13] 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: https://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/media-releases/government-response-final-report-review-small-amount.

These recommendations are evidence-based, independent and underwent extensive consultation through both the SACC Review process and again with Treasury consultation on the exposure draft legislation. Responsible businesses that do not gouge customers, lend irresponsibly or treat people unfairly would not be unduly impacted by the Bill. Instead, passing the Bill would level the playing field across the industry, and put in place much-needed safeguards for people like Matt below so that they have enough money for food, bills and other essential expenses.

Case study – Matt

Matt is in his mid-thirties and has a partner and young son. He works full-time in fire services.

About 18 months ago his young son—who was 18 months old at the time—became very ill and was in hospital for about six weeks. While still working , Matt was traveling to and from hospital to be near his son and stayed in hotel accommodation during this time. Running short of funds, Matt says he turned to payday loans to help him meet unexpected expenses during this stressful period.

Matt instructs us that he took out about 10 payday loans during the time his son was in hospital and in the weeks after as he struggled to keep up with accommodation costs, household bills, and the high repayments incurred on his growing payday loan debts.

Matt says payday lenders allowed him to borrow multiple loans and he doubts that they could have reasonably concluded that he had the capacity to repay them. He estimates that he owes over $6,000 to about 10 different payday loan providers and that some of the loans were taken out to keep up with the debt spiral he was in.

Matt says that these debts have left him feeling overwhelmed and stuck and have severely impacted his mental health. He is on a mental health treatment plan.

Unable to keep up with his debts, Matt states he tried to deal with the payday lenders himself, including negotiating payment arrangements, but that some of the payday lenders have been difficult to deal with. Feeling stuck he contacted the National Debt Helpline who referred him to Consumer Action Law Centre.

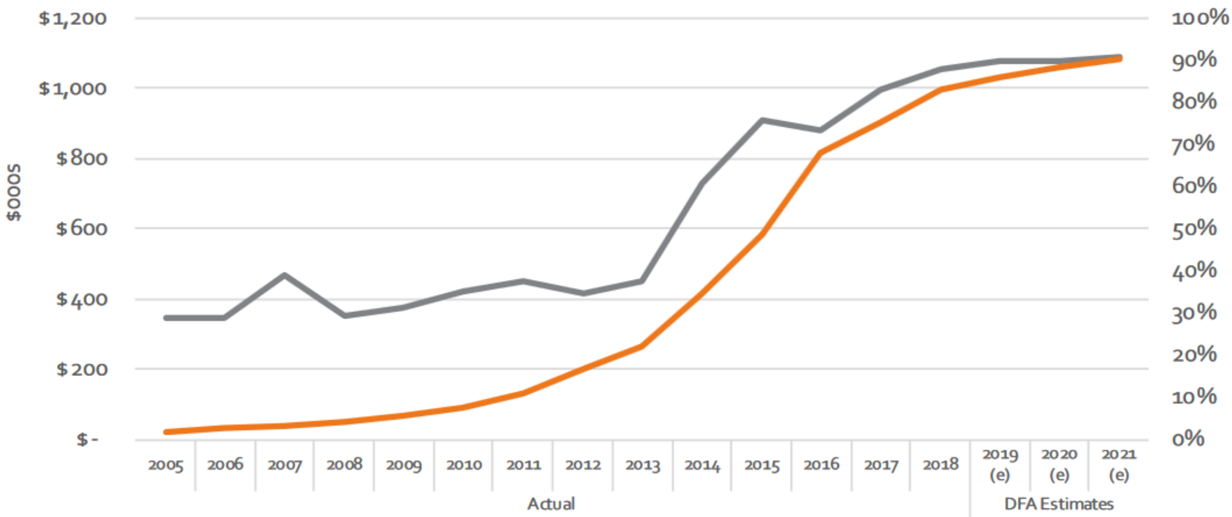
Consumer Action is assisting Matt and the matter is ongoing.

We urge all parties to support this Bill, which would introduce sensible safeguards that balance the interests of lenders with the need to enhance protections for borrowers.

Digital marketing

There has been a rapid growth in payday lending online. DFA research has estimated that in 2020 the percentage of payday loans that originated online is expected to reach 88.5% (see Figure 2 below). This is a massive increase: just 10 years ago only 7.6% of payday loans originated online.

Figure 2: Estimated size of payday lending market in Australia



	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019 (e)	2020 (e)	2021 (e)
Lending Stock	$345	$344	$470	$354	$377	$419	$453	$418	$450	$727	$908	$883	$995	$1,055	$1,078	$1,079	$1,086
% Originated Online	2.0%	2.5%	3.0%	4.0%	5.6%	7.6%	10.9%	16.8%	22.2%	34.7%	48.7%	67.9%	75.1%	82.8%	85.8%	88.5%	90.1%

Data from DFA Analytics

Academic research has found that digital platforms are making payday loans very accessible but often borrowers do not fully understand the costs, risks and consequences of these loans.[14] The growing demand for payday loans is driven, in part, by aggressive marketing techniques.[15] This advertising is also blending the 'sell' with advice on good budgeting giving consumers a misleading message that payday loans are somehow linked to good financial management (see Figure 3). Disclosure in the fine print about costs and dangers is not going to cut through when people are receiving these kinds of misleading messages from lenders.

Figure 3

Source: Screenshots from Nimble Australia Facebook page, 20 February 2020, *https://www.facebook.com/NimbleAustralia/*

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[14] Monash Business School & Dr Vivien Chen, Payday lenders: trusted friends or debt traps?, 15 October 2019, https://www2.monash.edu/impact/articles/banking/payday-lenders-trusted-friends-or-debt-traps/

[15] Financial Conduct Authority, FS17/2 Feedback Statement: High-Cost credit including review of the high-cost short-term credit price cap, July 2017, available at: https://www.fca.org.uk/publication/research/price-cap-research.pdf

Poor practice is endemic in the consumer lease and payday lending industries

The industry is rife with poor practice and regular enforcement action by ASIC indicates there are compliance problems across the industry.[16] In November 2018, ASIC announced further enforcement action against a consumer lease provider for contraventions of its responsible lending obligations.[17] In the same year ASIC has obtained orders to wind up a payday lending company for failing to pay fines for breaching consumer credit laws and engaging in credit activities without holding an Australian credit licence.[18] In the period between 2013 and 2017, ASIC action has resulted in lessors being fined or making community benefit payments of $1.4 million, and also being required to remediate consumers (comprising refunds and debt write-offs) almost $8 million.

Between 2010 and 2017, ASIC enforcement action has resulted in payday lenders being required to refund more than $14.2 million to consumers. Payday lenders have also been fined close to $21 million.[19] ASIC has also secured millions in customer refunds from consumer lease provider Radio Rentals.[20] In May 2018, Radio Rentals was ordered by the Federal Court to pay a $2 million penalty for contravening its obligations under the *National Consumer Credit Protection Act 2009* (**National Credit Act**). In November 2018, Local Appliance Rentals was forced to pay back $257,500 after the company failed to follow responsible lending guidelines or properly supervise the conduct of its franchisees. In October 2019 plaintiff law firm Maurice Blackburn agreed to a settlement with Cash Converters who will pay back $42 million to customers it ripped off by charging illegitimate fees on top of its high cost payday loans.

Consumer Action has also taken court action against consumer lease providers, including:

- In 2017, on behalf of a single mother of four on a low-income, alleging irresponsible lending by Rent4Keeps in relation to five consumer lease contracts.[21]
- In 2017, on behalf of a single mother who was a victim of family violence, alleging irresponsible and unjust lending in relation to six 'rent try buy' contracts.[22]
- In 2019, on behalf of a woman living with a disability, again against Rent4Keeps regarding five consumer lease contracts.[23]

Despite extensive enforcement action, poor practice in both the consumer lease and payday lending industries continues. Perhaps due to lack of reputational capital, many of these businesses do not fear the opprobrium associated with regulator action or litigation. An alternative explanation is that the penalties lack sufficient deterrent effect. This was a finding of the Financial Services Royal Commission about the finance sector generally,

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[16] Consumer Action, *Small Amount Credit Contract and Consumer Lease Reforms submission*, 3 November 2017, available at: https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/11/171103-FINAL-submission-exposure-draft-SACC-legislation.pdf, p 2-3.

[17] ASIC, *18-337MR Local Appliance Rentals to remediate customers and pays $257,500*, 8 November 2018, available at: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-337mr-local-appliance-rentals-to-remediate-customers-and-pays-257-500/.

[18] ASIC, 18-064MR ASIC winds up payday lending companies for unpaid fines, 6 March 2018, available at: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-064mr-asic-winds-up-payday-lending-companies-for-unpaid-fines/

[19] ASIC, *Exposure Draft of the National Consumer Credit Protection Amendment (Small Amount Credit Contracts and Consumer Leases Reforms) Bill 2017*, November 2017, available at: https://download.asic.gov.au/media/4536984/asic-submission_exposure-draft-of-the-small-amount-credit-contracts-and-consumer-leases-bill-2017.pdf.

[20] ASIC, *18-017MR*, 23 January 2018, available at: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-017mr-asic-acts-against-thorns-radio-rentals-and-secures-multi-million-customer-refunds-for-poor-appliance-rental-outcomes.

[21] Consumer Action Law Centre, *Consumer Action takes consumer lease provider Rent4Keeps to court,* October 2017, media release available at: https://consumeraction.org.au/consumer-action-takes-consumer-lease-provider-rent4keeps-court/

[22] Consumer Action Law Centre, *Radio Rentals sued over irresponsible 'Rent Try Buy' contracts,* March 2017, media release available at: https://consumeraction.org.au/radio-rentals-sued-irresponsible-rent-try-buy-contracts/

[23] Consumer Action Law Centre, *Rent4Keeps sued over unaffordable consumer leases*, September 2019, media release available at: https://consumeraction.org.au/20190913-rent4keeps-consumer-leases/

that "entities treat regulatory compliance as a cost of doing business rather than a foundation that informs and underpins how the business must be conducted".[24]

Impact on individuals, communities and the broader financial system

We have written at length about the consumer harm being caused across Australia by consumer leases and payday loans. In November 2018 we provided a submission to the Senate Inquiry into *Credit and financial services targeted at Australians at risk of financial hardship* outlining ongoing problems with consumer lease providers and payday lenders. The subsequent report from the Senate Economics Reference Committee recommended that the SACC legislation (which mirrors the current SACC Bill before the Senate) be introduced and passage facilitated by the government. This recommendation was not contested in dissenting reports. We also contributed extensively to the SACC Review in 2015-16,[25] which included consideration of consumer leases, and Treasury's consultation on the Exposure Draft Bill developed to implement the SACC Review recommendations in 2017.[26]

We have set out some of the financial and health impacts of over indebtedness below, along with examples of the impact of payday loans and leases in Aboriginal communities and among women.

Financial harm

Our caseworkers witness the ongoing financial harm caused by this fringe finance industry, which targets the most vulnerable in our community. It is not uncommon for borrowers to take out multiple payday loans and leases alongside existing debts and household expenses (see Matt's Case Study above). Products offered by consumer lease and payday loan providers can have a devastating impact on their target market. They are persuaded to take out high interest loans to meet an immediate need, yet the result of this decision is often to worsen their situation. This can lead to financial exclusion and a serious debt spiral.

The financial harm caused to individuals targeted by these providers has flow on social and economic costs. These products are aggressively marketed, which can drive people away from other services that may be more suitable, such financial counselling or no/low interest loan schemes.[27] Payday lenders have attempted to normalise predatory lending practices under the guise of assisting financial excluded people, when in reality these practices entrench disadvantage. Access to finance, irrespective of the cost, does not mean that a consumer is 'financially included'.[28]

Health impacts of debt

There are risks that turning to payday loans or taking out unaffordable consumer lease contracts as these can result in a debt spiral which comes with associated detrimental impacts on health and wellbeing.

Payday loans and consumer lease contracts exacerbate financial harm and debt. Our lawyers and financial counsellors speak to people everyday who are stuck in a payday lending debt trap—individuals who are already in debt to payday lenders, who then take out additional payday loans to try and keep up with repayments all while trying to juggle other expenses like energy bills or groceries. DFA analysis shows that over a five-year period, around 15% of payday loan borrowers fall into a debt spiral. On that basis, an additional estimated 324,000 Australian households have been allowed to enter a debt path that may result in an event such as bankruptcy.

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[24] Banking Royal Commission, Interim Report, vol 1, p 67.
[25] Consumer Action Law Centre, *Submission: Review of the Small Amount Credit Contract Laws* (15 October 2015) <https://consumeraction.org.au/review-of-the-small-amount-credit-contract-laws-submission/>; https://policy.consumeraction.org.au/2016/01/22/submission-sacc-review-interim-report/; https://consumeraction.org.au/review-small-amount-credit-contract-laws-final-report/; https://policy.consumeraction.org.au/2017/11/06/submission-small-amount-credit-contract-and-consumer-lease-reforms/
[26] https://consumeraction.org.au/submission-small-amount-credit-contract-and-consumer-lease-reforms/
[27] For example, Good Shepherd Microfinance's No Interest Loans Scheme and StepUp Loans: https://nils.com.au/ and https://stepuploan.org.au/.
[28] The Australian Government the Treasury, *Review of the small amount credit contract laws – Final report*, March 2016, available at: https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf p. 3

Over-indebtedness can result in significant longer-term impacts on individuals as it affects their capacity to provide for housing, health, education and retirement.[29] The Australian Government's *Head to Health* website notes:

> *Mental health and financial safety are strongly linked. Experiencing a mental illness can add to financial stresses, and financial stresses can add to a mental illness.[30]*

Ten per cent of individuals who contacted Consumer Action's National Debt Helpline for financial counselling in 2017-18 self-identified as dealing with mental health issues[31] and we consider there is likely to be many more people who did not identify these issues during the call. Debt can also have a harmful effect on relationships with family and friends, increasing isolation and exacerbate mental health issues.[32] Studies have found that people with unmet loan payments had suicidal ideation and suffered from depression more often than those without such financial problems.[33]

The stress and anxiety caused by debt impacts people in very real ways, as the case study below shows. Passing the SACC Bill will make payday loans and consumer leases safer for those that use them and stop these products from causing or exacerbating mental health issues.

Case study – Chris and Lucas

Chris and his partner Lucas (names changed) are in their early 40s and live north-east of Melbourne's CBD. Their source of income is the Disability Support Pension. After experiencing homelessness, they found a home through a housing service but did not have any furniture or appliances. They advise they went to their local Radio Rentals store in late 2017 and after a "pretty quick" process they were signed up for a bed, mattress, speakers, tv, couch, fridge, two sets of bedside drawers and a tallboy.

They advise that they were shown models of the type of items that they would receive, which were displayed around the store. However, as they were signing, the salesperson said that their income did not allow Radio Rentals to give them all new items and asked whether they be happy to receive a couch that had one part of it which was second hand. Lucas said that they agreed that this "was fine". However, when the items were delivered the sofa was damaged, the fridge was dented, the bed was scratched and the drawers were rusty and unopenable.

Their contracts show that they would pay a total of just under $20,000 for the items over 48 months. Radio Rentals collected at least part of the payments through Centrepay which deducts the funds directly from their Centrelink payments.

Consumer Action is yet to receive evidence that shows that Radio Rentals carried out a suitability assessment or made adequate inquiries into their financial situation as required by the *National Consumer Credit Protection Act*. In fact, an assessment of their income and expenditure completed in December 2019 shows that Chris and Lucas are experiencing financial hardship *without* including their repayment obligations to Radio Rentals. The

[29] Ali, McRae and Ramsay, 'Consumer Credit Reform and Behavioural Economics: Regulation Australia's Credit Card Industry', Australian Business Law Review, Volume 40, Issue 2, 2012.
[30] Australian Government Department of Health, Head to Health 'Finances' page, accessed 17/02/2020, available at: https://headtohealth.gov.au/meaningful-life/feeling-safe-stable-and-secure/finances
[31] Royal Commission into Victoria's Mental Health System, submission by Consumer Action Law Centre, 5 July 2019, available at: https://consumeraction.org.au/wp-content/uploads/2019/07/190705-RCVMHS-Consumer-Action-submission.pdf
[32] Step Change, Statistics Yearbook Personal Debt, 2014 p 24, available at: https://www.stepchange.org/Portals/0/documents/media/reports/statisticsyearbooks/StepChangeDebtCharityStatisticsYearbook2014.pdf.
[33] Turunen and Hiilamo, *Health effects of indebtedness: a systematic review*, BMC Public Health, 2014, available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4060868/#B31

Radio Rentals' contracts have exacerbated their financial hardship and Chris and Lucas say this has caused them substantial stress and anxiety.

Consumer Action is assisting Chris and Lucas and their matter is ongoing.

Impact in Victorian Aboriginal communities

Payday lending was identified as a key concern in the Indigenous Civil Needs Report back in 2013.[34] Last week, Consumer Action and the Victorian Aboriginal Legal Service's (**VALS**) released a joint report which reveals how irresponsible lending, including by payday lenders, continues to cause harm in Victorian Aboriginal communities. Our joint report '*Consumer issues in Victorian Aboriginal communities*' is based on community engagement sessions we held across the state speaking to more than 500 community members and taking on more than 80 cases. The report found that:

> *Because these loans are for short periods with unaffordable high repayments, many people take out additional payday loans to stay afloat, subsequently finding themselves in a debt trap. While these loans may be small, their negative impact can be far from small.*[35]

VALS also continues to see harm being caused by consumer lease providers in community, as demonstrated by the case study below.

Case study – Larissa

Larissa (name changed) is an Aboriginal woman who is a single mother with a young baby and teenager. Her sole source of income in Centrelink.

Larissa has previously struggled with her mental health after experiencing the loss of a family member. In 2017 when Larissa was finally getting back on her feet she found herself homeless, sleeping on a friends couch with her son. After 3 months without stable accommodation Larissa finally found a private rental she could afford. Larissa had some household items (she had got through Radio Rentals in the past) in storage but she needed a fridge, washing machine and microwave for her new home. Larissa did not think she had any other options but to get these essential items from Radio Rentals.

In 2017 Larissa signed up with Radio Rentals to lease a fridge, washing machine, microwave, lounge. She was also renting a treadmill since 2015. As part of their assessment for 3 of the items, Radio Rentals estimated Larissa's expenses at $194 per week. It appears that Radio Rentals neglected to factor in Larissa's rent, and recorded her expenditure on medical/health items as well as entertainment as 'NIL'.

The Henderson Poverty Index ("HPI") for the September Quarter 2017 shows that, around the time Larissa entered 3 of the leases weekly expenses for a single parent with one dependent would have been upwards of $473 per week, excluding housing. This figure is far greater than Radio Rental's figure of $194 and suggests the company did not make appropriate inquiries into Larissa's financial situation.

When Larissa was signed up by Radio Rentals for these items the sales representative focused on the weekly cost of the goods and never mentioned the ultimate price she would end up paying over the life of the contract. Larissa also focused on this weekly price and did not look closely at the total she would be paying over the life

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[34] Schwartz, Allison & Cunneen, 'Indigenous Legal Needs Report', 2013, pp. 131 and 141

[35] Victorian Aboriginal Legal Service and Consumer Action Law Centre, *Consumer Issues in Victorian Aboriginal Communities: Integrated Practice Project Final Report 2020*, February 2020, available at: https://consumeraction.org.au/consumer-issues-in-victorian-aboriginal-communities-integrated-practice-project-report-2020/, page 18.

of the contract, she was just focused on getting the items she needed to provide a safe and happy home for herself and her son.

These 'weekly' payments were deducted fortnightly through Centrepay and they quickly added up to take a large proportion of the small income Larissa was receiving from Centrelink. This caused financial stress for Larissa who struggled to pay for other essential items. If she missed a payment then she would have to make it up the following fortnight which placed even greater financial pressure on her.

Larissa now knows that the sales pitch of 'weekly' payments by the Radio Rentals sales representatives was a lure to get her to sign the contract. At the time she didn't consider that these 'weekly' payments would result in her paying substantially more than the retail price of the goods. Larissa says that if she had known the total price she was paying for the goods in comparison to the retail price she would have never have signed the contracts.

Larissa is still paying off the items she signed up for in 2017, which is even more stressful now she has a new baby. Once these contracts are finalised Larissa has sworn off rent to buy contracts forever, because she now has the knowledge of just how bad of a deal they are. VALS is currently reviewing her contracts with Radio Rentals.

Case study provided by the Victorian Aboriginal Legal Service (VALS)

The Consumer Action and VALS data suggests that irresponsible lending is a common issue experienced within some Victorian Aboriginal communities. An analysis of the data of consumer issues identified in community engagement sessions shows that irresponsible lending is the most common consumer issue. Of those enquiries, 1 in 5 related to irresponsible payday lending.[36] Consumer Action's legal casework data shows that, since July 2019, irresponsible lending (most often in relation to credit cards and consumer leases) was the most enquired about issue by Victorian Aboriginal people contacting our lawyers for advice.

The industry also featured during the Financial Services Royal Commission in 2018. During the opening address on issues affecting regional and remote communities, Rowena Orr QC noted that the Commission had been told about problems with a range of consumer credit products in Aboriginal and Torres Strait Island communities including payday loans and consumer leases, 'particularly those taken out to obtain essential household items, such as furniture and white goods'.[37]

Nathan Boyle from ASIC gave evidence to the Financial Services Royal Commission that ASIC saw Aboriginal and Torres Strait Islander people being 'specifically targeted' by payday lenders and consumer lease providers, which ASIC did not see regularly in other areas.[38] ASIC said it receives a 'significant amount of reports of misconduct in relation to both consumer lease providers and small amount credit contract providers and sees behaviours that are 'less than ethical'.[39] This included reports of trusted and respected Elders being provided with incentives to introduce the company to other members of their communities.[40] Lynda Edwards from Financial Counselling Australia also provided evidence that payday loans and consumer leases cause 'enormous harm' to Aboriginal people.[41] Ms Edwards described these lending practices as 'predatory', 'unfair' and expensive, and also highlighted problems with continued access to Centrepay by consumer lease providers.[42]

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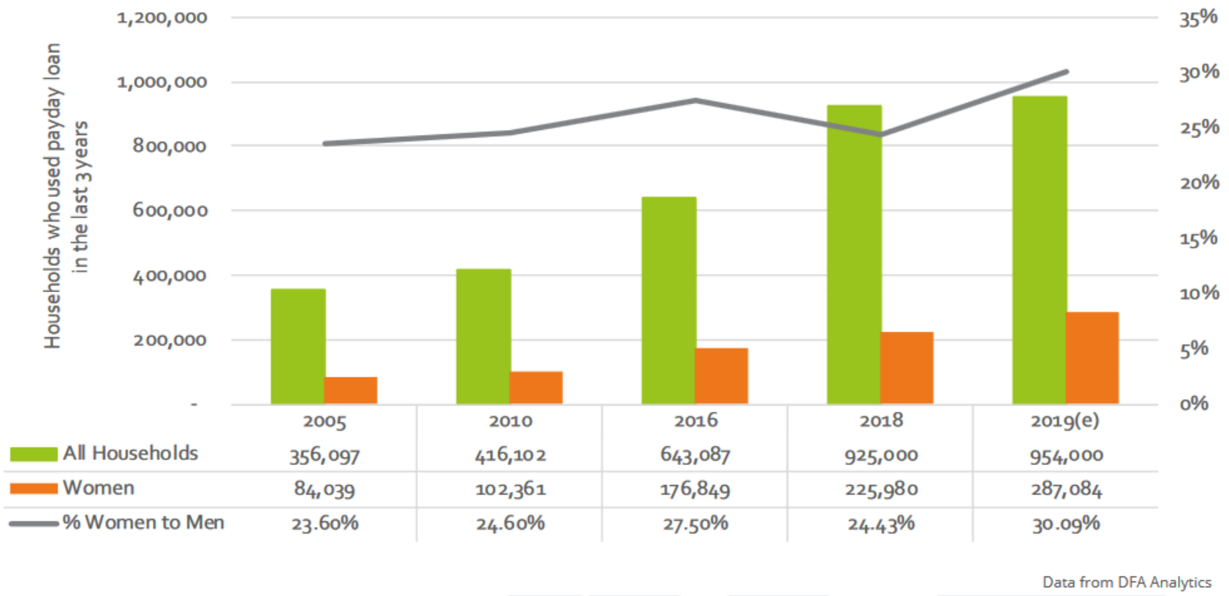
[36] Ibid. p 16.
[37] Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 35* (2018), 3695.
[38] Witness Statement of Mr Nathan Boyle, ASIC.0800.00007.0001, [60].
[39] Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 36* (2018), 3746-37.
[40] Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 36* (2018), 3747.
[41] Witness Statement of Ms Lynda Edwards, WIT.0001.0067.0001, [48].
[42] Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 39* (2018), 3746.

Women

DFA data on financially distressed and stressed households taking out payday loans indicates that the proportion of women in this segment continues to rise.

Figure 4: Women using payday loans



	2005	2010	2016	2018	2019(e)
All Households	356,097	416,102	643,087	925,000	954,000
Women	84,039	102,361	176,849	225,980	287,084
% Women to Men	23.60%	24.60%	27.50%	24.43%	30.09%

The number of women using payday loans rose from 177,000 in 2016 to 287,000 in 2019 (see Figure 4). This represents a rise to 23.13% of all borrowers. Forty one percent of these women are single parents. Women experiencing significant vulnerability and under the most significant financial pressure are more likely to access payday loan services.

Good Shepherd Microfinance has reported that:

> [Women] in challenging financial situations, with sole charge of children are most likely to use this form of credit, and often do so as a form of emergency cash for household expenses. Solo women without children are less likely to use payday loans, and when they do, it tends to be for a specific purpose such as car repairs. … we conclude that women who are most vulnerable and under the most significant financial pressure are most likely to access payday services. Those that do are quite likely to take multiple loans.[43]

Good Shepherd also says that consumer leases also have a disproportionate impact on women, many of them single mothers, who often turn to these products because they are excluded from mainstream finance. Because many people experiencing vulnerability feel like they have no other options to acquire household goods and have limited access to mainstream finance, true consumer choice and competition in these markets does not exist. Prices remain consistently high and there is nothing to incentivise better lender behaviour. This is exactly the type of market that requires intervention in order to improve outcomes for Australian consumers, because competitive pressures simply don't exist. People like Amy (case study below) should be able to access these products on fair and just terms without being ripped-off or pushed into debt and financial hardship.

[43] Good Shepherd Microfinance & Digital Finance Analytics, *Women and Pay Day Lending – An Update*, January 2018, https://goodshepherdmicrofinance.org.au/assets/files/2018/02/Women-and-Pay-Day-Lending-2018.pdf

Case study – Amy

Amy (name changed) is a single mum who relies on Centrelink as her sole source of income. Moving to a new city, Amy signed up to a number of rent-to-buy contracts in late 2016 with Thorn Australia (Radio Rentals) which included a gaming console, an LCD TV and a lounge.

As part of Radio Rental's legal obligations they were required to:

a. assess whether the leases were unsuitable;

b. make reasonable inquiries about our client's requirements and objectives;

c. make reasonable inquiries about our client's financial situation; and

d. take reasonable steps to verify our client's financial situation

Despite repeated requests, Radio Rentals has not been able to provide any evidence that they completed any of these steps. Radio Rentals has not provided any documents to us which contain specific information about Amy's income or expenses. Without making these inquiries it would have been impossible to assess whether the leases were unsuitable for Amy.

Additionally, there is no evidence in the documents that Radio Rentals made any real inquiries about our client's requirements, objectives and financial situation, or that it took any steps to verify her financial situation by requesting documents from her.

Looking at the items Amy was renting we have estimated the total retail cost of the gaming console, TV and lounge at being approximately $2,300 if they were bought outright at a store. We have calculated that Amy has paid over $6,200 to Radio Rentals for these items since she entered into the contracts in 2016—approximately $3,900 more than the RRP. Repayment of the leases has caused Amy substantial hardship.

Amy's dispute with Radio Rentals is ongoing.

International research on consumer harm

Research from overseas jurisdictions also indicates continuing consumer harm from payday lending. Recent research from the United Kingdom[44] has found that people who receive a payday loan subsequently apply for and take out more credit and debt, including non-payday loans. The researchers found a 64.7% increase in non-payday balances at 6-12 months after receiving a first payday loan, and 80.1% additional deterioration in an individual's credit score. While a payday loan causes a small, short-lived decrease in the likelihood of a borrower defaulting on other bills, this pattern was reversed in subsequent months with a 'sharp worsening' in outcomes. The researchers noted that their results were 'in line with studies that suggest that payday loans exacerbate financial hardship'.

Demand for payday loans is driven by easy access, aggressive marketing and irresponsible lending. This has been reflected in research by the Financial Conduct Authority (**FCA**) into the payday lending industry, which found that 27% of payday loan borrowers had been attracted by the firm's advertising, and only 9-12% chose firms on the basis that they are the cheapest, had good interest rates or were the best offer on a price comparison website.[45]

This research showed that there was *no* evidence that people who were unable to get payday loan products have generally had negative consequences as a result. In fact, the majority (63%) of consumers turned down for payday

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[44] John Gathergood et. al., *How do payday loans affect borrowers? Evidence from the UK Market*, The Review of Financial Studies, 13 August 2018, available at: https://doi.org/10.1093/rfs/hhy090.

[45] Financial Conduct Authority, *FS17/2 Feedback Statement: High-cost credit including review of the high-cost short-term credit price cap*, July 2017, available at: https://www.fca.org.uk/publications/feedback-statements/fs17-2-high-cost-credit.

loans believe that they are better off as a result.[46] Further, while 20% of declined individuals reported that they needed the loan to pay a bill, only 1% state that they missed a bill payment as a result of not receiving credit. Importantly, the FCA did *not* see evidence of a rise in illegal money lending because of the price cap, or that declined or former users of payday loans were increasingly turning to illegal money lenders.

Introducing percentage caps for payday loans is the only way to drive down the costs. Research in the United States indicates that a state's limit on interest rates is the key factor driving loan pricing. The four largest payday lenders in the United States charge similar prices within a given state, with rates set at or near the maximum allowed by law. In states with higher or no interest rate limits, the same companies charge comparable borrowers far more, for essentially the same small-loan product.[47] For consumer leases in Australia there are no caps which means providers can charge essentially whatever they want. In short, Government intervention is required if exorbitant costs to consumers in this market are to be lowered.

Consumer leases and Centrepay

Our casework shows that allowing consumer lease providers priority access to individuals' Centrelink payments via Centrepay often results in financial harm to our clients.[48] Centrepay is a Government bill paying service for Centrelink recipients. As noted by the 2013 Independent Review of Centrepay, access to Centrepay 'should be treated as a privilege' due to the welfare safeguarding attributes that customers and stakeholders assume Centrepay to be associated with.[49] Payments made through Centrepay essentially means that the providers (in this case, high-cost consumer lease providers) are paid before the Centrelink recipient is able to allocate their benefits to other essential expenses, such as housing, utilities or food. Two of the case studies above show the severe detriment caused by giving consumer lease companies access to people's Centrelink payments through Centrepay. It also speaks volumes about the appalling conduct that is widespread in the consumer lease industry.

Allowing unscrupulous providers access to welfare payments via Centrepay arguably contravenes Centrepay's own Policy and Terms, which state that an objective of Centrepay is to 'assist customers in managing expenses ... consistent with the purposes of their welfare payments, and reducing financial risk...'[50] Additionally, our casework finds that consumer leases contravene several criteria in Centrepay's Policy and Terms which specify other grounds that warrant exclusion from access to Centrepay. This is because consumer leases:

- goods that impose high costs for low value;
- contain unfavourable clauses; and
- expose customers to unacceptable risk of financial stress or exploitation.

Since November 2017, Consumer Action has made multiple complaints to Services Australia (previously Department of Human Services) about systemic misconduct of consumer lease companies exploiting people through the Centrepay system. In 12 complaints made to Services Australia, we allege that consumer lease providers are systematically breaching the Centrepay Policy and Terms by:

- providing high-cost but low value goods;
- providing products that expose people to an unacceptable risk of financial stress or exploitation;
- failing to operate in a lawful manner;

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[46] Ibid.
[47] The Pew Charitable Trusts, *How state rate limits affect payday loan prices*, April 2014, available at: http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs/content-level_pages/fact_sheets/stateratelimitsfactsheetpdf.pdf.
[48] Consumer Action Law Centre, *Submission - Review of Centrepay Policy and Terms,* 21 March 2017; Consumer Action Law Centre, *Submission- Independent Review of the Centrepay System,* 28 February 2013 <https://www.humanservices.gov.au/sites/default/files/documents/submission-17-consumer-action-law-centre.pdf>.
[49] https://www.humanservices.gov.au/organisations/about-us/publications-and-resources/independent-review-centrepay.
[50] Department of Human Services, Centrepay Policy and Terms v 2.0 as at 01/07/15, section 2.1, p 6.

- failing to comply with Centrepay Policy and Terms and Framework and adversely affecting the reputation of Services Australia; and
- failing to act acting ethically, lawfully and fairly in its dealings with customers. [51]

In response to a lack of appropriate action by DHS, we made a complaint to the Commonwealth Ombudsman in July 2019.[52] This complaint comes after the department failed on multiple occasions to apply its own policy to address exploitative consumer lease providers using the Centrepay bill-payment system.

We have also seen consumer lease providers restart Centrepay deductions after consumers have cancelled payments without obtaining the consumer's consent. We have seen subsequent Centrepay forms with different customer signatures. We have also assisted consumers who have suffered harassment as a result of cancelling deductions, or have had consumer lease providers continue to deduct payments through Centrepay after the relevant contracts had finished.[53]

Centrepay access is not needed by people to obtain household goods through consumer leases, as there are other payment options available that enable people to make regular payments. If consumer leases were removed from Centrepay, people would still have the option of paying for their goods by direct debit, credit card, bank transfer, POLI or other payment services. Centrelink recipients have the option to sign up for fee-free basic bank accounts that do not charge default or overdraft fees. There are at least 11 banks currently offering these accounts.[54]

Access to the Centrepay systems is a privilege that should be revoked for consumer lease providers for the following reasons:

- access to Centrepay encourages irresponsible lending by providing priority access to people's welfare payments;
- consumer leases are excessively expensive, and are targeted at those who can least afford it through Centrepay;
- consumer leases are essentially credit contracts, and consumer lease providers are engaging in regulatory arbitrage in order to access Centrepay;
- consumer lease providers have a proven history of non-compliance with the law and charging welfare recipients higher prices; and
- we have seen Centrepay forms misused by consumer lease providers to give the impression that their products are government endorsed, or are otherwise generally more legitimate.

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[51] Ibid, section 4.1, Table 2.
[52] Consumer Action lodges complaint to Commonwealth Ombudsman about the Department of Human Services' poor administration of Centrepay, July 2019, available at: https://consumeraction.org.au/20190710-centrepay-consumer-leases-complaint/
[53] For example, see Radio Rentals: https://www.smh.com.au/business/banking-and-finance/radio-rentals-forced-to-repay-1m-and-update-customer-checks-20150914-gjm1ge.html.
[54] See: https://www.betterbanking.net.au/better-products/affordable-banking/.

Concluding remarks

Current regulation of consumer lease and payday loan providers is grossly inadequate and results in widespread financial harm that falls short of community standards and expectations.

Reform is urgently needed to ensure individuals and communities are protected from exploitation and harmful debt spirals caused by these predatory lenders and lease providers. Consumer Action strongly supports the reforms to SACCs and consumer lease providers that were proposed in 2016 by the SACC Review Panel.[55]

The proposed cap on costs for consumer leases, and the 10% protected earnings amount for consumer leases and payday loans (20% combined) are critical reforms that would provide much needed protections for borrowers.[56] We have strongly opposed more lenient caps, which would fail to address the harm caused by these products. The costs of payday loans and consumer leases is excessive, but the proportion of people's income that these loans can take up is also highly problematic. Research by the Pew Trust in the United States found that in order to fit the budgets of typical payday loan borrowers, payments should not exceed 5% of monthly income,[57] making the 10% cap proposed by the SACC Review a very generous compromise.

A bright line percentage cap would offer better protection to consumers, be easier for lenders to comply with, and reduce the number of borrowers being caught in dangerous debt spirals. It would also make it easier for the regulator to enforce as the current rebuttable presumptions lead to grey areas, and make enforcement work inherently riskier for ASIC.

The current regulatory regime for payday lenders and lease providers is out of sync with other non-bank credit providers[58] who must abide by a 48% cost cap on the loan. The result is that payday lenders are able to charge interest rates nearly 10 times this figure while consumer lease providers are subject to no price caps whatsoever.[59] There is no good reason why consumer leases and payday loans should not be subject to a comprehensive 48% cost cap, inclusive of fees, charges and interest – like all other consumer credit products. We recommend Government work towards a comprehensive 48% cost cap for all forms of consumer credit in future.

We strongly welcomed the Government's response to the independent review into payday loans and consumer leases in 2016, which supported the vast majority of the review's recommendations. The review recommended introducing sensible safeguards to make these products fairer and more affordable for everyday Australians who want to use them. We are urging the Government to support the SACC Bill currently before Parliament, which would implement these recommendations.

Extortionate consumer lease contracts and high cost payday loans have been ripping off Australians for years—it's time to finish the job and pass this legislation.

RECOMMENDATION 1. Pass the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2) as a matter of urgency.

RECOMMENDATION 2. Remove consumer lease providers access to Centrepay.

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[55] *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017* (Cth).

[56] Consumer Action Law Centre, *Small Amount Credit Contract and Consumer Lease Reforms submission*, 3 November 2017, available at: https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/11/171103-FINAL-submission-exposure-draft-SACC-legislation.pdf

[57] Pew Trusts, *From Payday to Small Installment Loans,* August 2016, available at: https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/08/from-payday-to-small-installment-loans.

[58] ADIs are not subject to the 48% cost cap.

[59] The Government accepted recommendations by the SACC Review Panel to limit consumer lease repayments to the base price of the good plus 4%, with an overall cost cap of 10% of net income: http://kmo.ministers.treasury.gov.au/media-release/105-2016/.

Please contact Policy Officer **Patrick Sloyan** at **Consumer Action Law Centre** on 03 9670 5088 or at patrick@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,
CONSUMER ACTION LAW CENTRE

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