

28 May 2020

By email: covid.sen@aph.gov.au

Committee Secretary
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

Submission to the Senate Select Committee on COVID-19

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to make a submission to the Senate Select Committee's inquiry into the Australian Government's response to the COVID-19 emergency.

Consumer Action is an independent, not-for-profit consumer organisation with deep expertise in consumer laws and policy, and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

Our clients have been affected by the COVID-19 emergency, and the Australian Government's response, in a number of ways. In many cases we have experienced a short-term decrease in demand on financial counselling services, which could be attributed to the increased income support available for people who have lost work in the form of JobSeeker and JobKeeper. However, in some cases the issues that existed prior to COVID-19 were compounded by the emergency, with little provided in the way of relief.

We commend the Australian Government for swift action and on some of the positive responses, such as increasing income support and increasing the bankruptcy threshold, discussed below.

We are most concerned about the people who have fallen between the cracks of the Government's initial response to the crisis. For example, we have seen a disproportionate increase in calls for financial counselling assistance from people who are ineligible for the Australian Government's income support, such as migrant workers and international students. Our financial counsellors report that some of the most distressing calls they receive are from parents on temporary visas who, after losing work and ineligible for income support, are struggling to feed their families.

This submission is not a comprehensive assessment of the impacts of COVID-19 and the Government's response. Instead, we seek to bring some key issues to the Committee's attention:

- Increases to income support
- Increase to the bankruptcy threshold
- Early access to superannuation

- Hardship measures offered by telecommunications providers
- Responsible lending for existing small business customers
- Mortgage deferrals and consumer credit hardship
- The need to ban disconnections from essential services including energy, telecommunications and housing
- The need to enact reforms to payday lending and consumer leases

Responses to the COVID-19 emergency

Increase to income support

We strongly support the Government's increase in social security payments in the form of JobSeeker. There is broad consensus that, for far too long, NewStart and other payments have been far too low to live on. These increases must not be reversed.

Increase to the bankruptcy threshold

Swift action by the Australian Financial Security Authority (AFSA), working in conjunction with the Attorney-General's Department, saw the implementation of temporary changes to bankruptcy laws until 25 September 2020. This included:

- an increase to the debt threshold at which a creditor can apply to make a person bankrupt, raising it from \$5,000 to \$20,000;
- increasing the timeframe for a debtor to respond to a bankruptcy notice from 21 days to 6 months (known as Temporary Debt Protection) and issuing guidance to trustees and debt agreement administrators.¹

Our sector strongly supports the first of these changes, which will protect low-income debtors from the harsh consequences of bankruptcy over relatively small debts that cannot be paid following economic distress associated with COVID-19. What happens after this temporary changes expires in September remains to be seen. Given the impact of COVID-19 will likely play out longer than 6 months, we anticipate a surge in bankruptcies and part IX debt agreements from October onwards. We encourage the bankruptcy regulator AFSA and the Attorney-General to extend the temporary changes beyond September 2019. This will provide a safety net for individuals and allow them to focus on the immediate impacts of the health crises on their lives.

We strongly encourage the bankruptcy threshold to remain at \$20,000 until a review is undertaken. The existing threshold of \$5,000 is far too low. We have assisted individuals at risk of losing their family home over very low debts when compared to the equity held in their property. A joint report we released in July 2019 called for the threshold to be raised to \$50,000.² Being forced into bankruptcy by a debt collector, bank or other creditor, can have severe and unfair consequences, including relationship conflict and breakdown, deterioration of mental health and homelessness. Unnecessary bankruptcies over small amounts do not benefit families, creditors or the broader community.

We have some concerns about the Temporary Debt Protection initiative. In particular, we consider the name misleading as it offers very little protection. While it does stop the Sheriff from seizing goods under a court order and stops the garnisheeing of wages or money from a person's bank account, it is an 'act of bankruptcy'. Creditors can use this act of bankruptcy to make the person bankrupt without needing to obtain a court judgment or issue a bankruptcy notice. Creditors can also conduct debt collection activities, including demanding repayment and

¹ <https://www.afsa.gov.au/debtrelief>.

² See: Who is making Australians bankrupt? A review of applications by creditors in the Federal Court to force people into bankruptcy, July 2019, available at <https://consumeraction.org.au/20190813-forced-bankruptcy-report/>.

starting fresh legal proceedings in court (and get a court judgment) despite the temporary debt protection. In many cases, debtors would be better off negotiating with their creditors directly and avoid taking this formal step, particularly at a time when creditors are offering forbearance. We consider that a review should be conducted of this initiative in order to understand its take-up, as well as its implications for low-income debtors.

RECOMMENDATION 1. The Government should keep the threshold for a creditor's petition for bankruptcy at a minimum of \$20,000 until a review of the *Bankruptcy Act 1966* (Cth) is undertaken.

RECOMMENDATION 2. Temporary measures to assist Australians with debt and bankruptcy should be reviewed before they expire and remain if there is evidence they will assist people better navigate the bankruptcy process during and after the COVID-19 emergency.

Early access to superannuation

Early access to superannuation should be the last resort – not the first. Our financial counsellors have experience advising people on complex consequences – the pros and the many cons – of early access to superannuation. It requires skilled and impartial advice.

Appallingly, some people calling the National Debt Helpline report being pressured and harassed into accessing their super by creditors, debt management firms, debt collectors and real estate agents.

We are concerned that some creditors pursuing debts have jumped upon this 'opportunity' for a quick cash grab. We have heard of debt collectors suggesting that debtors access superannuation to pay down debt. We have seen text messages from at least one lender offering its customers the opportunity to have their debt payments matched if they pay out lump sums by a certain date – conveniently timed to coincide with the Government's early release scheme. While this may seem like a positive step to reduce debt, it is problematic if the debt was irresponsibly lent in the first place. It also ignores the fact that most creditors are required by law to respond to a request to vary a contract due to financial difficulty, and that consumers can have any decision reviewed independently by an ombudsman, like the Australian Financial Complaints Authority.

We are very concerned about the short- and long-term impacts of this policy, which should be urgently reviewed.

Joint statement on telecommunications

Staying connected to phone and internet services is essential for all Australians. In response to our KeepConnected campaign, we were pleased to see proactive commitments in March 2020 from three of the four largest phone companies (as well as some smaller ones) to suspend disconnections and late fees through April.

In mid-April, the Government and telecommunications industry jointly released a statement of principles in response to COVID-19, approximately one month after social restrictions began.³ The statement indicated a broad set of measures to keep people connected to their family, friends, school, doctors, and underscored the critical nature of telecommunications service. While we welcomed the joint statement, it hasn't gone far enough.

In fact, the statement unfortunately resulted in the roll-back of previously announced measures by the major telcos that were more helpful and proactive. For example, the aforementioned major telecommunications companies did not renew their suspension of disconnection policies beyond the end of April. Rather than proactively halting disconnections during this unprecedented time, companies returned to the model of pausing disconnections only for those consumers who have been lucky enough to successfully complete the following:

- contact their telco provider about their financial difficulty (which is no small feat when contact centres and chatbots have closed, wait times are protracted, and a person's ability to contact their telco provider is often dependent on the phone or internet connection they are already struggling to afford);

³ See <https://www.paulfletcher.com.au/media-releases/media-release-telecommunications-hardship-principles-for-covid-19>.

- be granted an appropriate and affordable financial hardship arrangement or payment plan by the telecommunications provider.

Through the National Debt Helpline, we have received numerous calls from individuals who have been unable to contact their telco provider as well as reports of telcos offering *unaffordable* payment arrangements. The reliance on successful customer contact, as set out in the Joint Statement, has had the effect of disadvantaging the most vulnerable, who may not be in a position to advocate for an affordable financial hardship arrangement during the pandemic prior to simply being disconnected.

Responsible lending laws for small business loans

Australia's responsible lending laws, introduced after the disastrous impacts of the global financial crisis, aim to prevent the impacts on people and the economy when lenders dole out money that people and businesses are unlikely to repay without substantial hardship.

We are concerned about the Government's removal of the 'dominant purpose' test in relation to small business loans to existing customers.⁴ The effect of this change is that a loan that is primarily for personal purpose, but has some marginal connection with the borrower's small business, is now exempt from responsible lending requirements (it is still subject, however, to other consumer credit protections).

The Financial Services Royal Commission revealed the way many lenders dodge and skirt their obligations to lend responsibly and this relaxation measure may result in individuals becoming over-indebted, increasing financial and personal stress and anxiety. The effect of this relaxation of the rules may not be seen for months or years. At the very least, small business lenders must be mandatory members of the Australian Financial Complaints Authority (AFCA) so that individuals have an accessible forum to resolve complaints with the lender.

RECOMMENDATION 3. Small business lenders must be mandatory members of AFCA.

Mortgage deferrals and other consumer credit hardship responses

Australian banks took early and quick action to offer customers with mortgages up to six months deferral in repayments and have offered various proactive hardship initiatives in relation to consumer credit. ASIC has also published guidance on retailer lenders' obligations relating to financial hardship during COVID-19.⁵ However, there has been little public consideration of how banks and other providers of consumer credit will respond at the end of the six-month period.

The Australian Banking Association states that around 429,000 mortgages have been deferred, and 703,000 loans overall. We consider that it would be helpful for consumer groups, industry, Government and regulators to come together to agree to enhanced principles and processes to address ongoing hardship. The outcome sought should be to prevent unnecessary debt recovery and repossessions and ensure Australians are not unfairly disadvantaged by inconsistent and poor approaches to financial hardship. A particular focus should be to reverse high interest charges and other default or late payment fees. Australian banks are well capitalised, however it is during a crisis such as COVID-19 that this capital should be drawn upon to protect individuals, families and communities.

We particularly welcomed the approach taken by the industry to ensure any deferral on a mortgage or other consumer credit product will not impact a borrower's credit report.⁶ By taking this approach, banks have acknowledged that late payments are not necessarily a good indicator of future creditworthiness. Given this, we

⁴ National Consumer Credit Protection Amendment (Coronavirus Economic Response Package) Regulations 2020, <https://www.legislation.gov.au/Details/F2020L00386>.

⁵ See: <https://asic.gov.au/about-asic/news-centre/news-items/covid-19-and-financial-hardship-retail-lenders-obligations-and-asic-s-expectations/>.

⁶ See: <https://consumeraction.org.au/no-impact-on-credit-files-during-covid-19-pandemic-a-welcome-announcement-by-banks/>.

reiterate our previous opposition to unfair reporting of repayment history information on credit reports⁷, and the introduction of 'hardship flags'.⁸

RECOMMENDATION 4. That consumer groups, industry, Government and regulators should come together to agree to enhanced principles and processes to address ongoing financial hardship beyond the initial 6-month assistance period.

RECOMMENDATION 5. That the Federal Government should amend the National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2019 to no longer introduce hardship flags on credit reports and ensure a fair approach to the reporting of repayment history information.

Outstanding issues

We urge the Australian Government to consider the following measures in its ongoing response to the COVID-19 emergency, noting the anticipated increased demand for financial assistance and relief if the Government and industry withdraw current relief measures.

Keep communities connected: ban disconnections from essential services

It is critical that during a health crisis, all people remain connected to essential services such as electricity, water and telecommunications, and housing. In response to the unfolding COVID-19 emergency, more than 65 community organisations and support service providers urged companies and state and federal governments to implement a proactive moratorium on disconnection of essential services.⁹

Our concern is that many people who have lost work as a result of the emergency, will either forgo daily essentials such as food for their family in order to pay bills, or find themselves in a considerable amount of debt. While industry hardship policies require providers to provide payment plans for people experiencing financial stress, the onus is on the person to know hardship assistance is available to them, and for them to have the means to negotiate an arrangement.

Industry commitments have not been enough to give comfort all companies providing essential services will keep people connected. A pro-active Government directive is needed

RECOMMENDATION 6. The Government should issue a pro-active directive banning disconnections from essential services, including energy, water and telecommunications, during the COVID-19 emergency.

Payday lending: Enact the Small Amount Credit Contract reforms

Given the large numbers of people experiencing financial hardship as a result of the COVID-19 emergency, there is a serious risk that people will be lured into a dangerous debt cycle by reckless payday lenders and consumer lease providers. We have seen marketing by payday lenders using COVID-19 to attract new business and our caseworkers continue to speak to people who owe substantial debt to payday loan and consumer lease providers.¹⁰

High cost loans and consumer lease contracts will undercut any efforts to support people who have lost work. These loans are not a solution to financial difficulty and instead entrench many in a long-term debt cycle where they take out more and more payday loans to try and keep on top of the accruing debt. For almost four years, the Australian Government has sat on draft legislation that would put in place desperately needed consumer

⁷ See, eg, <https://consumeraction.org.au/letter-to-the-editor-credit-reporting-not-great-for-the-public/>.

⁸ See <https://consumeraction.org.au/20190905-nccp-amendment-ccr/>.

⁹ See <https://consumeraction.org.au/covid-19/>.

¹⁰ See <https://www.abc.net.au/news/2020-05-21/concerns-over-payday-lenders-offering-coronavirus-relief-loans/12272332>.

protections for people who use payday lenders or consumer leases. The SACC reforms must be implemented as a matter of urgency to protect people from falling into further financial hardship due to predatory lenders.

RECOMMENDATION 7. Pause payday lending and consumer lease providers for the duration of the COVID-19 pandemic.

RECOMMENDATION 8. Pass the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2) into law.

Please contact Cat Newton, Senior Policy Officer, on 03 9670 5088 or at cat@consumeraction.org.au if you have any questions about this submission.

Yours sincerely,

CONSUMER ACTION LAW CENTRE



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