

06 November 2020

By email: CBSReforms@sa.gov.au

Consumer and Business Services
GPO Box 1719
Adelaide SA 5001

Dear Sir/Madam

Response to consultation: *Fair Trading (Small Amount Credit Contracts and Consumer Leases) Amendment Bill 2020 (SA)*

Thank you for the opportunity to provide feedback on the draft *Fair Trading (Small Amount Credit Contracts and Consumer Leases) Amendment Bill 2020 (SA)* (**the SA Bill**).

Consumer Action Law Centre (**Consumer Action**) strongly supports the South Australian Government's plans to introduce enhanced protections for South Australians in relation to small amount credit contracts (**payday loans**) and consumer leases. These high-cost credit products are primarily marketed at people doing it tough financially across the country. The exorbitant costs of these products too often leave borrowers worse off. The SA Bill would introduce widely agreed upon protections that would effectively reduce the problems and consumer harm occurring in these credit markets.

While Consumer Action's experience with payday loans and consumer leases is based upon our work with Victorians, we know from working closely with colleague organisations around Australia (including in South Australia) that problems with payday loans and consumer leases are widespread across the country.

The SA Bill would significantly decrease the risk of payday loans and consumer leases causing South Australians to fall into debt spirals or financial hardship. The SA Bill can co-exist with federal legislation regulating consumer credit. Such is our support for the SA Bill that we consider this a model that other state governments should follow, to step in where the Federal Government has failed to act.

A summary of recommendations is available at **Appendix A**.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, 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.

The need for this reform

For over a decade, payday loans and consumer leases have been regulated by the Commonwealth, through the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**), and the National Credit Code (**NCC**) (contained in Schedule 1 of the NCCP Act).

There is ample evidence that the markets for payday loans and consumer leases are failing consumers, and the NCCP Act and NCC are not doing enough to remedy this problem. This is resulting in significant consumer harm across the country, mainly due to the high costs involved with these products.

Harm done by payday loans

Payday loans are loans of up to \$2,000 paid back over a period of 16 days to 12 months. Despite their small value, the fees that can be charged on a payday loan are significant.

Under the NCC, lenders are permitted to charge an establishment fee of up to 20%, and an extra 4% of the principal amount lent each month. Depending on the amount borrowed and length of a loan, these fees equate to equivalent annual interest rates of 112.1% to 407.6%.¹ The fact that most payday lenders typically do charge the maximum fees allowed by law for a loan² is an indicator that this is a market where competition is not leading to good outcomes for consumers.

Payday loans are expensive and never represent a good deal for borrowers. These are loans that people typically turn to when they are desperate, and do not consider themselves to have many other options. For this reason, the majority of people who take out loans are on lower incomes and who may be experiencing some level of financial vulnerability or hardship.³

Payday loans can leave people more financially excluded

We too often see these products contribute to financial exclusion. Access to credit at a high cost is not financial inclusion, and in fact using payday loans often leaves people worse off and more deeply financially excluded.

This issue is most pronounced when consumers start taking out multiple payday loans, and meeting repayments gradually takes up an increasing proportion of their income.⁴ Where payments become unaffordable, people can fall into debt spirals that breed financial exclusion. Past independent reports on the same issue indicate a positive correlation between the number of payday loans a person takes out and the likelihood of them falling into a debt spiral.⁵

The risk of repeated debts accruing is not rare or novel. Research commissioned by the Stop the Debt Trap Alliance indicates that over a five-year period, around 15% of all payday borrowers fall into a debt spiral which puts them in financial hardship and at risk of bankruptcy.⁶ The difficulty people have in making repayments on these loans is also reflected in industry statistics. Cash Converters, the largest payday lender in Australia, reported that bad debts on payday loans amounted to about 25.1% of their revenue from payday loans in March-June 2020. This was apparently a significant improvement on the same time last year (where bad debts equated to 39.1% of payday loan revenue), with the improvement coinciding with the increased government financial support provided due to

¹ 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.

² 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>.

³ Senate Economics Legislation Committee, Parliament of Australia, *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)* (2020), at 2.5.

⁴ 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 12.

⁵ *Ibid*, p12-13.

⁶ Stop the Debt Trap Alliance, *The Debt Trap: How payday lending is costing Australians*, November 2019, available at: https://consumeraction.org.au/wp-content/uploads/2019/11/200217_PaydayLendingReport-1.pdf, p 6.

COVID-19.⁷ This is a significant portion of their customer base who are struggling to make repayments, or not making them at all. The fact that the industry is still highly profitable despite this high default rate speaks volumes about the profit margin on the loans that are repaid.

Matt's story

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

About two and a half years 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 owed 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 left him feeling overwhelmed and stuck and 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 were difficult to deal with. Feeling stuck he contacted the National Debt Helpline who referred him to Consumer Action Law Centre.

Consumer Action assisted Matt in dealing with his payday loan debts.

Millions of payday loans being sold

The payday loan industry has boomed since it first started in Australia in the late 1990s. It is estimated that between April 2016 and July 2019, over 4.7 million individual payday loans were written. In 2019 alone, it is estimated that nearly one million households had a payday loan.⁸

This increasing trend in payday loan uptake has coincided with the increasing ease of access to these products, with the vast majority of loans being taken out online.⁹ While payday loan demand has decreased during the COVID-19 pandemic (coinciding with the increase in government financial support), Cash Converters expects that demand will start to increase again, and will continue to do so as further government support is wound back.¹⁰

Recent research by the Consumer Policy Research Centre indicated that in July 2020, young Australians (18-34 years) were three times more likely to take out a payday loan or consumer lease.¹¹ They estimated that 300,000 young people took out payday loans in July 2020 alone. This is a worrying trend that only goes to confirm the

⁷ Cash Converters, *FY 2020 Results Presentation*, 28 August 2020, available at: https://cdn-api.markitdigital.com/apiman-gateway/ASX/asx-research/1.o/file/2924-02273451-6A993287?access_token=83ff96335c2d45a094dfo2a206a39ff4, p 6-7.

⁸ Stop the Debt Trap Alliance, *The Debt Trap: How payday lending is costing Australians*, November 2019, available at: https://consumeraction.org.au/wp-content/uploads/2019/11/200217_PaydayLendingReport-1.pdf, p 8-9.

⁹ Ibid, p 10.

¹⁰ Cash Converters, *Business Update, ASX Release*, 1 July 2020, available at: <https://clients3.weblink.com.au/pdf/CCV/02250179.pdf>.

¹¹ Consumer Policy Research Centre, *COVID-19 and Consumers: from crisis to recovery*, July 2020, available at: https://cprc.org.au/app/uploads/2020/09/CPRC_Consumer-Impacts-Monthly-Insights-Briefing-Report_July-2020.pdf, at p 13.

increasing importance of implementing better consumer protections in relation to payday loans as soon as possible.

Harm done by consumer leases

Consumer leases are rental arrangements for goods hired for domestic or household purposes, that typically last for a fixed period of between 12 to 48 months (though some last much longer than this). These agreements can often be as harmful as payday loans.

Unlike other consumer credit products, there is absolutely no cap on the amount that can be charged for a consumer lease. 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.¹² The lack of a cost cap for consumer leases means that despite being regulated by the NCCP Act and NCC, leasing arrangements often see consumer end up paying multiple times the recommended retail price for items.

Caroline's story

Caroline (name changed) is a Victorian woman who lives with a chronic back condition and post-traumatic stress disorder. She survives on a Centrelink pension.

Over a period of two years, Caroline entered into contracts with Rent4Keeps to lease six items for more than \$26,000, including a laptop.

For the laptop, Caroline was due to make fortnightly payments of \$200 over three years, which meant **paying more than \$15,000 for a laptop worth only \$3000.**

Caroline recalls that she was required to enter each contract without receiving any information on the terms or conditions of the contract, believing she would own the goods at the end of the lease, and by making payments via Centrepay.

After seeing a story on a current affairs program about consumer lease providers, Caroline contacted Consumer Action for help. At the time, Caroline had paid more than \$7000 for the laptop computer and had already paid over \$10,000 for the lease of the other five items.

At one time, Caroline was making fortnightly payments of \$327 to Rent4Keeps for three items including the laptop. This meant that Caroline was paying about 37% of her fortnightly Centrelink payment to Rent4Keeps. The lease payments caused Caroline substantial financial hardship and where paid via Centrepay were prioritised over payment for essential living expenses such as food and bills.

Misleading advertising aimed at those who cannot afford products upfront

As is the case with payday loans, consumer leases are predominantly marketed at those with limited financial means. Under these lease arrangements people who are doing it tough financially pay the most for essential household items, often many times the recommended retail price.

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. Misinformation is common in relation to these leases. Many people seeking advice from Consumer Action about consumer leases report that did not understand how much the lease would cost them when they entered into it, and often do not understand many key terms to the agreement (for example, that they had no right to own the good at the end of the lease).

¹² 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/>.

Poor conduct by lessors increases negative consumer outcomes

Even with the limited restrictions that currently apply to consumer leases, providers still manage to regularly engage in conduct contrary to the existing laws, to the detriment of consumers. There are multiple examples of where regulators and the courts have found consumer lease providers to have breached the NCCP Act and NCC regime:

- In the period between 2013 and 2017, ASIC action 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.¹³
- ASIC has also secured millions in customer refunds from consumer lease provider Radio Rentals,¹⁴ in a matter where the Federal Court also ordered Radio Rentals to pay a \$2 million penalty for contravening its obligations under the NCCP Act.¹⁵
- 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.¹⁶

Consumer Action regularly acts for clients in relation to consumer leases that we consider have breached aspects of the existing credit laws, with breaches of responsible lending obligations being the most common issue arising (but often far from the only issue). Some of these leases have a devastating impact on our clients. We have also taken court action against lessors multiple times in the last few years.

Case Study - Zane

Zane's (name changed) sole income is the disability support pension. Earlier this year, Zane leased an iPhone, and then separately, a soundbar, from a consumer lease provider. Both these leases were for two years, and in total, required Zane to pay an amount nearly double (or possibly higher) than his financial counsellor's estimate of the recommended retail price for each of the products. The fortnightly instalments for the two leases totalled around \$70.

Zane had almost no savings when he was approved for these leases. His bank statements showed that even before taking out these leases, his pension barely covered his expenses. The responsible lending unsuitability assessment for the second lease undertaken by the consumer lease provider concluded that with the leases he would have less than \$5 extra left to spend each week. This conclusion was only reached by listing his total food expenditure at just \$40 a week, and not accounting for multiple existing debts.

Inaction by the Commonwealth Government

The harm being caused by these products described above is hardly breaking news. The Commonwealth Government were on notice of big problems in these markets back in 2015, when it undertook an independent review of small amount credit contracts (**SACC Review**) to consider the appropriateness of the current laws applying to payday loans and consumer leases. The final report from that review was provided to the

¹³ ASIC, *Submission: 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, p 5.

¹⁴ 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>.

¹⁵ ASIC, 18-139MR, 16 May 2018, *ASIC action results in \$2 million penalty for Thorn's Radio Rentals handed down by the Federal Court today*, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-139mr-asic-action-results-in-2-million-penalty-for-thorn-s-radio-rentals-handed-down-by-the-federal-court-today/>.

¹⁶ ASIC, 18-337MR, 8 November 2018, *Local Appliance Rentals to remediate customers and pays \$257,500*, 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/>.

Commonwealth Government in March 2016, and made 24 recommendations regarding the existing legal framework.¹⁷

The SACC Review recommendations were based on a clear recognition that under the existing legal framework, payday loans and consumer leases were causing significant financial harm. The SACC Review's final report quite clearly identifies serious flaws in how the NCCP Act and NCC currently apply to these products. The recommendations were wide ranging, but broadly were aimed at reducing the risk that these products would lead people into financial harm or increase financial exclusion.

The Commonwealth Government accepted the majority (and all key) recommendations in November 2016.¹⁸ However four years later, no legislation has been put before Parliament to implement these changes by the Government. Four years of inaction has been an extreme disappointment, and has allowed far more unnecessary harm to be done to consumers through the sale of these financial products.

In 2017, Treasury consulted on a draft Bill that would have implemented the SACC Review recommendations accepted by the Government (**Treasury Draft Bill**).¹⁹ Since then, Bills replicating the Treasury Draft Bill have been tabled before Parliament by cross-benchers and the Opposition multiple times, but never passed.

A Bill replicating the Treasury Draft Bill was most recently tabled last year in the Senate, as a private member's Bill by Labor and the Centre Alliance.²⁰ This Bill was sent for review by the Senate Economics Legislation Committee in late 2019. That Committee reported back on the Bill in September 2020, disappointingly recommending against passing the Bill, despite recognising the need for increased consumer protections.²¹ More detail on the current status of potential reform at the Commonwealth level is discussed later.

Specific comments on the SA Bill

The SA Bill aims to implement the recommendations made in the SACC Review report. To do this, the SA Bill appears to have been based (to the extent it is appropriate) on the Treasury Draft Bill. We strongly support the SA Bill, given the Federal Government's lack of action in proceeding with the Treasury Draft Bill. By and large, the SA Bill would introduce these protections in an effective and workable manner. We provide some commentary below, as well as some limited recommendations for changes we think necessary to ensure the SA Bill delivers effective consumer protections.

Provisions relevant to both payday loans and consumer leases

Sections 45N and 45W - 10% protected earnings amount caps for payday loans and consumer leases

We strongly support the proposed introduction of a 10% protected earnings amount cap for each of payday loans and consumer leases, as contemplated by ss 45N and 45W.

We consider this reform to be one of the most important consumer protections recommended by the SACC Review,²² and a change that would help significantly reduce the risk of people falling into debt spirals, where they progressively commit more and more of their wage to repayments on payday loans or consumer leases. This would introduce a hard limit on the maximum portion of a person's income in total that can be required to go towards repayments for each of payday loans and consumer leases at any time to 10% of their total net income. It would

¹⁷ 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.

¹⁸ <https://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/media-releases/government-response-final-report-review-small-amount>.

¹⁹ <https://treasury.gov.au/consultation/c2017-t229374>.

²⁰ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bid=s1234.

²¹ Senate Economics Legislation Committee, Parliament of Australia, *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)* (2020).

²² 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, see Recommendations 1 and 15.

also be easy for credit providers, consumers and regulators to identify where there has been a breach of this requirement.

Georgia's story below provides an example of a situation that would have been prevented by the introduction of 10% protected earnings amount caps for both payday loans and consumer leases.

Case Study - Georgia

Georgia (name changed) supports her three young children and partner (whose visa does not permit him to work here). As a full time carer, she currently relies upon government support. Before going on maternity leave in the middle of last year, Georgia worked part time at a bank, but she is ineligible for JobKeeper.

Throughout the second half of last year, Georgia was consistently repaying at least one payday loan. She told us that she took these out when she was experiencing financial hardship, and had used lenders that she found gave out loans easily in the past. She told us that she found the payments for these loans difficult to make from the outset, but this got even harder when the combined repayments on multiple loans reached well over \$400 a fortnight for 3 months. Making these repayments required approximately 15 to 20% of her combined maternity leave and Centrelink income around this time. She eventually contested some of the debts through the Australian Financial Complaints Authority.

Late last year (while still repaying one payday loan), Georgia leased a fridge and washing machine for her family. She only later realised the lease requires her to pay about triple the price of the products in total. Earlier this year Georgia also desperately needed a phone, and applied to lease a phone and tablet. She told us she was very surprised she got approved for a 12 month lease, but particularly disappointed when she later realised that the total cost was going to be nearly \$3,800. Under fortnightly repayments for the phone and tablet, Georgia was being charged an equivalent annual interest rate of more than 150%. Meeting the combined repayments under both these leases requires over 14% of Georgia's current income. Even with the coronavirus supplement, it is near impossible for Georgia to keep up with the payments for these products, while keeping her family housed and fed.

However, there is one important amendment that needs to be made to both these sections, to ensure that the SA Bill effectively implements the recommendations of the SACC Review in this regard. As drafted, subsections 45N(1) and 45W(1) both require that the credit licensee only consider repayments on payday loans (or consumer leases) that exist between the same licensee and the consumer. The way these provisions are drafted, this would mean that a consumer could commit 10% of their wage to each different payday lender (or consumer lease provider). This would be an outcome that would provide little to no real protection to consumers, as there are dozens of payday loan and consumer lease providers. A person could, theoretically, still commit 100% of their wages to repaying payday loans to 10 different providers under this model.

Both these subsections should be amended so that licensees are required to ensure that by entering into the credit contract or lease, the consumer would not be collectively committing more than 10% in total of their net income to payday loan (or consumer lease) repayments **from all licensees**, rather than just those with the same licensee. This would ensure that the protection stops repayments for these products do not start eating into funds that should be set aside to pay for essentials, like housing, utilities and food.

This amendment would also ensure that these provisions achieve the intention behind recommendations 1 and 15 of the SACC Review. This is also not an onerous obligation for credit licensees to comply with. Part of the responsible lending obligations of credit providers already involves assessing and verifying a consumer's income and expenditure, so they should already be identifying all existing payday loans and consumer lease repayments being made by a consumer.

RECOMMENDATION 1. Amend s 45N(1) of the SA Bill to prohibit a licensee from entering into, or offering to enter into, a small amount credit contract with a consumer if the total amount of the repayments required to be paid by the consumer under **all existing small amount credit contracts**, plus the proposed contract, at any time during the loan would exceed 10% of the consumer's likely net income.

RECOMMENDATION 2. Amend s 45W(1) of the SA Bill to prohibit a licensee from entering into, or offering to enter into, a consumer lease with a consumer if the total amount of the repayments required to be paid by the consumer under **all existing consumer leases**, plus the proposed contract, at any time during the lease would exceed 10% of the consumer's likely net income.

Sections 45K-L and 45S-V – Suitability assessment requirements

All the sections of the SA Bill relating to licensees undertaking and documenting suitability assessments are well drafted and valuable additions to the lending framework set out in the NCCP Act and NCC.

In particular, we support the requirements in sections 45S and 45T that a licensee must properly verify the finances of the potential lessee, by reviewing their account statements for the last 90 days, before entering into a consumer lease with the lessee (or providing relevant credit assistance). It is entirely appropriate that a proper suitability assessment be undertaken by licensees when selling or suggesting these products, just as is the case for other forms of regulated credit.

Provisions relevant to payday loans

Sections 45I and 45J - Ban on unsolicited selling of payday loans

We strongly support the proposed ban on unsolicited selling of payday loans, contained in ss 45I and 45J. Payday lenders should not be targeting these harmful loans at people who are doing it tough through SMSs, emails and other forms of unsolicited marketing.

There have long been numerous reports of payday lenders sending SMS or emails to borrowers around the time they pay off one loan, suggesting they get another,²³ or to repeatedly suggest completing unfinished online application forms for loans.²⁴ This is predatory conduct that seeks to push consumers into taking out more high-cost credit, and often involves using details provided by people as part of a loan application process to push additional loans upon them.

A particularly concerning recent example of the kind of poor conduct we anticipate section 45I would stop were text messages sent by lenders at the start of the COVID-19 pandemic, opportunistically suggesting previous customers take out a 'COVID-19 relief' loan.

Sections 45M and 45O - Equal repayments and no early termination fees on payday loans

We also strongly support the proposed requirement that repayments for payday loans be equal, under s 45M of the SA Bill. This will stop lenders from front loading repayments and artificially extending the life of a loan, to allow them to charge more monthly fees than required for the borrower to repay the loan.

Additionally, we also strongly support the prohibition on early termination fees, contained in s 45O of the SA Bill. If borrowers are able to get on top of their finances and repay a loan early, this should be encouraged and lenders should not be able to penalise them for doing so.

²³ 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 33-34.

²⁴ Chen, Vivian, 'Online payday lenders: trusted friends or debt traps?' *UNSW Law Journal* 43(2), 2020, p 679.

Provisions relevant to consumer leases

Section 45X - Consumer lease cost cap and base price calculation

The SA Bill would introduce a cap on costs for all consumer leases, which is calculated on the base price of the goods, plus 4% of the base price per month, for a maximum of 48 months. We strongly support this reform. Consumer leases are the only form of regulated credit that is not subject to a cost cap. Introducing a cap is of vital importance and the continuing failure of the Commonwealth Government to do so since accepting the SACC Review recommendations is one of the most significant ongoing causes of harm to consumers in this space.

We strongly support the way this cost cap is set in the SA Bill. However, we make one recommendation in regard to the calculation of the base price for goods, under subsections 45G(4) and (5) of the SA Bill. We hold some concern that some lessors may manipulate the recommended retail price of goods that they manufacture themselves, or which are not readily available elsewhere in Australia. For this reason, we recommend aligning the definition of base price with the 'cash price' of the goods, under the definition at section 204 of the NCC. This defines the 'cash price' as:

- the lowest price²⁵ that a cash purchaser might reasonably be expected to pay for them from the supplier; or
- if the goods or services are not available for cash from the supplier or are only available for cash at the same, or a reasonably similar, price to the price that would be payable for them if they were sold with credit provided—the market value of the goods or services.

RECOMMENDATION 3. Use the 'cash price', as defined at section 204 of the NCC, of a leased good as the base price of a good for the purpose of calculating the permitted fees chargeable under the consumer lease cost cap.

Section 45P – Disclosing the cost of consumer leases

Requiring that consumer lease providers disclose the base price of goods hired, and the difference between the base price and total amount payable under the lease is also a positive step toward better transparency about the true cost of consumer leases. Consumer Action regularly hears from people who have signed up to a consumer lease and later realised they were required to pay far more than they understood when they entered the agreement. The base price should be amended to refer to the cash price, consistent with the recommendation above.

Sections 45Q and 45R – Door-to-door sales of consumer leases

As with the ban on unsolicited selling of payday loans, we also support the ban on door-to-door sales of consumer leases. This is a vital protection from predatory conduct and pressure selling. Canvassing of all kinds of financial products too often result in terrible outcome for consumers.

Laws can operate effectively at different jurisdictions

SA Bill would appropriately interact with Commonwealth laws

Obviously, the SA Bill is intended to impose consumer protections that would need to operate in addition to the existing Commonwealth regime under the NCCP Act and NCC. While the interaction between laws at different jurisdictional levels may involve some complexities, we consider the way the SA Bill addresses the necessary interaction with relevant Commonwealth laws to be appropriate and workable.

²⁵ The 'lowest price' is further defined as 'the lowest price including any goods and services tax but unaffected by any discount between the credit provider and the supplier.'

The broad clarification at s 45G(1) makes clear from the start that the SA Bill is intended to operate in conjunction with the NCCP Act and NCC, and the way the provisions are written throughout generally appear to build on the Commonwealth framework. All of the provisions of the SA Bill rely on the existing national framework (some implicitly and some explicitly), but they do so in a way that only adds additional requirements, rather than overlapping or conflicting with the existing laws.

Additional protections valuable

Despite the answers to the problems plaguing the payday loans and consumer lease industries being widely recognised for over four years (and the solutions agreed upon), the Federal Government continues to fail to deliver these reforms. Considering this, and recent announcements from the Treasurer indicating an intention to water down promised reforms (discussed below), it seems the Federal Government does not have an intention to effectively protect consumers from predatory conduct by payday lenders and consumer lease providers.

Four years is long enough to wait for the Federal Government to act. At this point, the better course of action is for the states to intervene. The power to legislate with regard to credit laws was referred to the Commonwealth with the understanding that uniform laws would be the best outcome for the public. The South Australian Government is fully justified in stepping in to deliver widely agreed upon consumer protections.

The benefits the protections in the SA Bill will provide South Australians are significant. It could result in some overlap between regulators, but this is something that Consumer and Business Services SA and the ASIC could navigate in partnership.

Current status of potential Commonwealth reform

In late September 2020, Treasurer Josh Frydenberg announced an intention to introduce a range of reforms to the NCCP Act, NCC and broader national credit law framework.²⁶ These proposed reforms include changes to the laws relating to payday loans and consumer leases. However, the Treasurer's intended reforms fall short of delivering all the consumer protections recommended by the SACC Review. Crucially, the Treasurer has indicated that two of the most important consumer protections recommended in the SACC Review be watered down to a point that, in our view, makes them wholly insufficient. These are:

- the protected earnings amount caps for both payday loans and consumer leases. The Commonwealth will double these caps for consumers who do not predominantly receive their income from Centrelink, so that 20% (rather than 10%) of their income may be committed to repaying each of payday loans and consumer leases (40% total). In our view, this would drastically reduce the value of this protection.
- the consumer lease cost cap. The Government intends to allow an extra 20% establishment fee to be charged by lease providers, on top of the 4% monthly fee recommended by the SACC Review.

In addition, the Treasurer intends on tabling these amendments that apply to payday loans and consumer leases in an omnibus Bill, which will also contain number of other reforms to the credit space – including the repeal of responsible lending obligations for almost all other forms of credit. This is a move which has widely been condemned by consumer groups and many leading experts in the field.

The Federal Government's intended changes are not sufficient

We encourage the South Australian Government continue with plans to pass the SA Bill despite the recent announcements by the Treasurer. The Federal Government is not going to deliver all the same protections the SA Bill would provide South Australian consumers.

²⁶ Details available at <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/simplifying-access-credit-consumers-and-small> (see factsheet in particular).

The Federal Government proposals have not passed Parliament. If those reforms do pass Federal Parliament, it is possible that some of the SA Bill protections might overlap, such as the ban on unsolicited selling of payday loans. To the extent there is any overlap, the Federal provisions would prevail. However, there is still a long road ahead before those Federal reforms pass Parliament – it is entirely possible they will not proceed given the problems with the Omnibus bill.

Accordingly, the SA Bill could still provide extremely valuable additions to the Commonwealth regime, and the SA Bill would deliver the most appropriate and complete consumer protections that are currently being proposed at any level of government.

Potential need for additional State intervention for other credit products

The Commonwealth's plan to introduce these reforms to payday loans and consumer leases in an omnibus credit Bill are also of major concern. Should Commonwealth legislation be passed removing responsible lending obligations for almost all other consumer credit products, like personal loans and credit cards, we also strongly encourage the South Australian Government to consider legislating to replace these laws at a state level as well.

Removing responsible lending, particularly during a recession, spells disaster in so many ways. Responsible lending laws ensure safe access to credit and stop lenders from selling unaffordable debt. These protections are extremely important – even more so during a recession. People rely on the advice of lenders and brokers when they are discussing credit products. Responsible lending laws help to temper the sales culture in lending by requiring lenders to ensure people do not end up with unsuitable credit products. It beggars belief that such protections might be repealed by the Federal Government, while many people are already struggling to manage their debts.

Repealing these laws is also in direct contradiction to Recommendation 1.1 of the Final Report from the Financial Services Royal Commission. Commissioner Hayne explicitly recommended retaining the current responsible lending laws.

Much of the same reasoning that has led to the South Australian Government preparing to intervene in relation to payday loans and consumer leases would also justify an intervention to reinstate responsible lending laws, should the Commonwealth do away with them. We would be happy to discuss this issue further with the South Australian Government, should it become necessary.

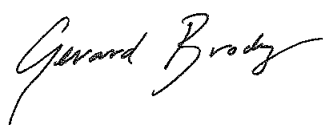
Conclusion

We commend the South Australian Government for taking the initiative to step in to deliver genuine consumer protections where the Commonwealth Government has failed. Passing this Bill would greatly reduce the serious harm that payday loans and consumer leases cause South Australians, and help many people avoid further financial hardship. We consider the SA Bill to be a model approach that could be adopted by other states as well, to deliver appropriate protections where the Commonwealth has failed.

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

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody | Chief Executive Officer

APPENDIX A - SUMMARY OF RECOMMENDATION

RECOMMENDATION 1. Amend s 45N(1) of the SA Bill to prohibit a licensee from entering into, or offering to enter into, a small amount credit contract with a consumer if the total amount of the repayments required to be paid by the consumer under **all existing small amount credit contracts**, plus the proposed contract, at any time during the loan would exceed 10% of the consumer's likely net income.

RECOMMENDATION 2. Amend s 45W(1) of the SA Bill to prohibit a licensee from entering into, or offering to enter into, a consumer lease with a consumer if the total amount of the repayments required to be paid by the consumer under **all existing consumer leases**, plus the proposed contract, at any time during the lease would exceed 10% of the consumer's likely net income.

RECOMMENDATION 3. Use the 'cash price', as defined at section 204 of the NCC, of a leased good as the base price of a good for the purpose of calculating the permitted fees chargeable under the consumer lease cost cap.