



Law Council
OF AUSTRALIA

Legal Practice Section

11 March 2020

Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

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

Dear Sir/Madam

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

1. The Australian Consumer Law Committee (**ACL**C) of the Law Council of Australia's Legal Practice Section welcomes the opportunity to make a submission to the Senate Standing Committee on Economics in relation to the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2) (**the Bill**).
2. The ACLC takes a specific interest in legal developments affecting consumers and liaises with government and non-government bodies involved in consumer law.

General

3. The ACLC supports the amendments to the *National Consumer Credit Protection Act 2010* (Cth) (**NCCP**) provided for in Bill. The amendments appropriately enhance protections for vulnerable consumers who may enter into Small Amount Credit Contracts (**SACCs**) and Consumer Leases (sometimes described as "rent-to-buy" schemes), including by:
 - imposing a cap on the total payments that can be made under a consumer lease;
 - requiring SACCs to have equal repayment and payment intervals;
 - removing the ability for SACC providers to charge monthly fees in respect of the residual term of a loan where a consumer fully repays the loan early; and
 - preventing lessors and credit assistance providers from undertaking door-to-door selling of leases at residential homes.

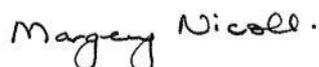
Anti-Avoidance Provisions of the Bill

4. The ACLC notes the anti-avoidance provisions in the Bill (sections 323A, 323B, 323C and 323D) as important additions to the consumer protection landscape in consumer credit. The "fringe" sector of the credit provision marketplace has been notorious for

the design, by some credit providers, of schemes that have sought to take what would, on their face, appear to be credit contracts regulated by the NCCP, outside the reach of the Act. One of the effects of doing so is to deny consumers important legislative protections.

5. Examples of such schemes considered by courts include:
 - (a) *Australian Securities and Investments Commission (ASIC) v Teleloans Pty Ltd* [2015] FCA 648 involving two companies with whom consumers dealt when seeking finance. Teleloans' business model involved consumers entering into near simultaneous agreements with Teleloans and Finance & Loans Direct Pty Ltd (**FLD**). Contracts between consumers and Teleloans required consumers to pay fees to it, whereas the contract with FLD also included a charge of 5% on the loan amount, falling within the exemption in subsection 6(1) of the *National Credit Code* (which is Schedule 1 to the NCCP Act). In that case ASIC argued that the two contracts should be viewed together, in which case the fees and charges imposed on consumers exceeded the amount permitted by subsection 6(1). The Court, however, strictly applying the terms of the legislation before it, decided that the two contracts should be viewed separately.
 - (b) *Australian Securities and Investments Commission v Fast Access Finance Pty Ltd* [2015] FCA 1055 a scheme which dressed what were in substance and reality loan contracts with a credit provider, as a pair of contracts by which consumers purportedly purchased, and then on-sold "diamonds" at a loss (the loss being, in effect, the interest payable under the scheme). The Court in that matter found both that (a) the scheme was a sham, and (b) in any event, the arrangement was regulated by the NCCP Act.
6. Those cases demonstrate the uncertainty faced by consumers in dealing with "fringe" credit providers offering products that in reality are consumer loans – but which have been designed to avoid the statutory provisions which give consumers much-needed protections.
7. In the view of the ACLC, the anti-avoidance provisions in the Bill are important provisions to ensure that consumer credit products that in substance and reality are consumer loans or leases, are captured by the NCCP Act.
8. The ACLC would welcome the opportunity to discuss this submission with the Senate Standing Committee on Economics. In the first instance, please contact ACLC Chair, Ben Slade on BSlade@mauriceblackburn.com.au.

Yours sincerely



Margery Nicoll
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