Community Legal Centres Queensland

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

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

Dear Committee,

Credit and financial services targeted at Australians at risk of financial hardship

Community Legal Centres Queensland is pleased to provide this submission to the Committee's inquiry into credit and financial services targeted at Australians at risk of financial hardship.

We are the peak body representing the 34 funded and unfunded community legal centres across Queensland. Community legal centres are independently operating not-for-profit, community-based organisations that provide free legal services to the public, focusing on the disadvantaged and people with special needs. More information is available at www.communitylegalqld.org.au.

Partly because of low levels of funding for financial counselling services in Queensland, community lawyers are often asked to provide advice and assistance to Queenslanders with consumer and money problems. It is difficult to say how often community lawyers provide advice in relation to payday lending or consumer leases, given then they could be counted in any of the following categories under applicable counting rules:

Year	Problem Type	Information	Referral	Legal Advice	Non-Legal Support	Legal Task	Representation services (opened)	Representation services (closed)	TOTAL
2015-2016	Consumer	497	1,580	2,368	40	5	308	295	5,093
	Consumer credit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Credit and debt	807	1,853	3,264	221	0	847	616	7,608
2016-2017	Consumer	689	1,500	2,368	68	42	223	251	5,141
	Consumer credit	2	2	0	0	0	2	0	6
	Credit and debt	810	1,783	3,106	203	87	766	634	7,389
2017-2018	Consumer	709	1,851	2,533	114	390	81	112	5,790
	Consumer credit	5	11	14	0	5	0	1	36
	Credit and debt	772	2,091	2,949	154	469	359	378	7,172
TOTAL		4,291	10,670	16,602	800	998	2,586	2,287	

Payday loans and community legal centres' clients

Many of the people helped by community legal centres report that they have taken out payday loans - loans of up to $2,000 for a period of 16 days to 12 months. These loans typically attract comparison interest rates of between 407.6% and 112.1%.[4]

The vast majority of payday lenders charge the maximum amount permitted by legislation.[1] Payday loans are consistently one of the most expensive ways for Australians to get credit – a cap on repayments works because regardless of your circumstances there's a limit to the expensive drain of payday loans.

This places consumers in hardship, and makes it difficult for them to afford the basic necessities of life.

Unlike larger, personal loans, which our clients get because they want to buy an asset (like a car or a property) and improve their financial position and wellbeing, we see clients taking successive payday loans that create a debt spiral. People fall into the repayment siphon, where repayments take up a large proportion of available income. This creates the need for another loan to plug the gap and provide cash for basic living expenses. Over a series of small, expensive loans, the repayments become larger, and the debt spiral takes hold.

Demand for payday loans is driven by easy access and irresponsible lending. Payday lenders have attempted to normalise predatory lending practices under the guise of assisting financially excluded people, when in reality they are entrenching disadvantage.

Case study: Fast Access Finance[2]

Caxton Legal Centre assisted young mum Rachel Charter and her partner Michael to commence proceedings in QCAT to reopen an unjust consumer credit transaction. The proceedings related to a loan she obtained in 2008 from Fast Access Finance (Beaudesert) Pty Ltd. Rachel argued that she had gone into the store for a loan, received a loan of $1000 and wound up with a debt of $2000. Caxton calculated that this loan cost more than 300% per annum. Fast Access Finance responded saying that rather than a loan, Rachel and Michael had purchased $2000 worth of diamonds from Fast Access Finance and then on-sold those diamonds to a third party, Diamond Clearing House Pty Ltd, for which Fast Access Finance acts as an agent. They said that it was the third party that then provided the $1000 to Rachel and Michael.

Caxton was assisted by Barrister Simon Cleary to work on the case. Mr Cleary prepared the documents and appeared at the QCAT hearing, which resulted in a decision in favour of our clients by QCAT in 2011. Fast Access Finance (Beaudesert) Pty Ltd and Diamond Clearing House Pty Ltd both applied for permission from QCAT to appeal the decision. In March 2012, the QCAT Appeals Tribunal decided not to grant the permission to appeal and left the 2011 decision intact.

The QCAT decision-maker in that instance said that the way the Consumer Credit Code was written sends *'... a legislative warning sign that technicalities and artificialities calculated to defeat or evade consumer protection laws are no longer tolerable'*. Barristers Tom Sullivan SC and Simon Cleary then assisted Caxton to prepare for the next stage of proceedings, as the two companies applied to the Queensland Court of Appeal for permission to appeal Mr Forbes's decision. Mr Sullivan and Mr Cleary worked tirelessly to prepare submissions in opposition to the Fast Access Finance Pty Ltd and Diamond Clearing House Pty Ltd application. In July 2012, Fast Access Finance Pty Ltd and the Diamond Clearing House withdrew their Court of Appeal appeal after more than three years of fighting over a sum of $1500!

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[1] https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf p 21. 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.

[2] Caxton Legal Centre Inc, *Annual Report 2011-12,* p25. Available at https://caxton.org.au/pdfs/Annual%20Report%202011-12.pdf.

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Access to finance, irrespective of the cost, does not mean that a consumer is 'financially included'.[3] In fact, research from the UK showed that there was no evidence that people who have not been able to get payday loan products have generally had negative consequences as a result. The majority (63%) of consumers turned down for payday loans believe that they are better off as a result.[4]

Research by the Pew Trust in the United States showed that payday loan repayments should be restricted to 5 percent of monthly income to solve the problem of unaffordable payments, making the 10 percent limit in Recommendation 1 a very generous compromise to the payday lending industry.

The average payday loan borrower is not taking out subsequent $100 loans each month. Industry data shows that in 2015/16, the average size of a new payday loan entered into was $770, and the average length was 134 days.[5]

Need for reform

Community Legal Centres Queensland endorses the Consumer Action submission to this inquiries, which sets out detailed suggestions for reform that will increase the protection of the vulnerable consumers of payday loans and consumer leases.

It is vital that legislation is passed to better protect Australians from extremely harmful lending practices.

In October 2017, then Minister for Small Business Michael McCormack MP published the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017* as an exposure draft for comment. The Minister's press release stated "the Government will introduce legislation this year to implement the SACC and consumer lease reform."

There is cross-party support for these reforms, which are the result of an independent review that provided its final report to Government in March 2016. As stated by the independent reviewers, the proposed reforms are "designed in a way that promotes financial inclusion and attempts to protect consumers from descending into a spiral of financial exclusion".

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3 https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf p 3.

4 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.

5 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.

The Senate Economics Committee should recommend that the Government:

- Immediately implement the Small Amount Credit Contract review recommendations;
- Regulate Buy-Now Pay-Later services; and
- Increase funding for community legal centres, financial counsellors, financial capability workers and safe and affordable credit options such as NILS and StepUP.

Thank you for the opportunity to contribute to this Inquiry.

Yours sincerely

James Farrell OAM
Director
Community Legal Centres Queensland Inc.