Uniting Vic.Tas Position Paper

Small Amount Credit Contracts

(Pay Day Lending and Consumer Leasing)

August 2018

Uniting

Uniting's position:

Small amount credit contracts (SACCs), in the form of pay day loans or consumer leases, exploit financially vulnerable people and entrench disadvantage by providing credit that people may not to be able to afford to repay and imposing unreasonable interest rates and borrowing terms.

In addition to addressing financial vulnerability in our community, Uniting believes that we must regulate credit providers, ensure that people accessing credit have access to accurate information and timely financial advice, and provide alternative low-interest credit for people when they need it.

Key points:

- Small amount credit contracts (SACCs), in the form of pay day loans or consumer leases, exploit financially vulnerable people and entrench disadvantage by providing credit that people may not to be able to afford to repay and imposing unreasonable interest rates and borrowing terms.
- Dependence on payday lending is a reflection of both the low rates of welfare support provided by the state, and the inability of people on low incomes to access credit.
- It is important that people can access reasonable credit, but not by placing them in the ongoing cycle of debt. Alternative forms of credit should be made more widely available.
- Proposed legislative changes to regulate small amount credit providers has the potential to reduce the impact that SACCs have on low-income households; making the borrowing terms more reasonable and more transparent. These reforms need to be passed urgently.
- More support for free financial counselling services would empower more people to make the best choices for their personal circumstances.

Background

Growing economic inequality in Australia is placing increasing pressure on low-income households. The cost of living has risen significantly, but wage growth has stagnated, employment is becoming more insecure, and unemployment benefits have not increased in real terms for over two decades.

When low-income earners find themselves needing to access credit, many are unable or unwilling to access mainstream financial services as major banks discourage low-income customers from using their services.

This is done both explicitly; by denying products to people on low incomes or not providing products would meet their needs, and implicitly; by having high transaction fees that are waived when a minimum amount of money is deposited per month or simply by staff being unwelcoming (Marston and Shevellar, 2014).

A National Financial Services Federation survey (the Australian industry body for payday lenders) found that 88% of payday loan customers had not been able to access credit at a mainstream bank (Marston and Shevellar, 2014). These same consumers are often unable to access free financial counselling services in a timely manner due to a lack of financial counsellors and long wait times for appointments.

When people are financially excluded by mainstream institutions, they often come to rely on either small amount credit contracts (better known as pay day loans) or consumer leases (better known as rent-to-buy).

Without other options available, high-cost, short-term loans or credit are often a survival mechanism to overcome an immediate lack of money. Because of the high fees, people may end up paying the equivalent of 800-1200% of the base cost of their loan (Uniting's financial counsellors in Victoria have reported seeing interest rates of up to 3500%).

When a borrower is unable to repay the loan in time, the lender offers to renew with an additional fee. It is not uncommon for people to end up in a debt trap with multiple loans from multiple providers (Marston and Shevellar, 2014), with four out of five borrowers having used payday loans or consumer leases previously. In a five year period, around 15% of borrowers will end up in a debt trap, sometimes leading to bankruptcy (DFA, 2018). As a provider of financial counselling services across Victoria and Tasmania, Uniting is keenly aware of the vicious cycle that payday lending and consumer leases can cause for people experiencing disadvantaged.

The payday lending and consumer lease industry is estimated to be worth $925 million annually (DFA, 2018), and is the fastest growing part of Australia's financial sector (Marston and Shevellar, 2014). So far in 2018, an average of 124, 415 loans were entered into each month, valued at $77.14 million. By extrapolation, loans made this year will be worth over $925 million, with 83% of loans now being accessed online (DFA, 2018). Projections suggest that nearly 800,000 households will fall back on pay day loans or consumer leases in 2018.

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Proposed SACC Regulation

In August 2015, then Assistant Treasurer Josh Frydenberg announced a statutorily-required review of the small amount credit contract (SACC) laws.

The Review's report, released in April 2016, revealed what has been known to the social services sector and consumers themselves for a long time – that small amount credit contracts (in the form of pay day loans or consumer leases) exploit financially vulnerable people and entrench disadvantage.

The Review offered a measured response to the leniency of existing legislation, recommending a raft of reforms that would offer greater protections for consumers.

The government accepted 14 of the 24 recommendations in full, partially accepted another three and accepted three with amendments. Only two recommendations were rejected. A draft Bill released in November 2017 reflected this, by:

- Amending existing credit regulations to impose SACC repayment caps to 10% of the customer's net (after tax) income for each payment period (current legislation only applies to people who receive more than 50% of their income from Centrelink, and states that repayments should not exceed 20% of gross income)
- Imposing a cap on the total payments that could be made under a consumer lease to 10% of the customer's net income and only 4% more than the base price of the good per month
- Requiring loaners to assess a person's suitability for a SACC, and record the assessment in writing
- Removing the ability for loaners to charge monthly fees on expected term of a loan where a customer fully repays the loan early
- Requiring SACCs to have equal repayments and equal payment intervals
- Introduced 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)

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- Introducing a cap on the cost of consumer leases on household goods
- Prevented SACC providers and credit assistance providers from making unsolicited invitations to apply for credit and unsolicited credit offers to current or former SACC customers
- Preventing lessors and credit assistance providers from undertaking door-to-door selling of leases at residential homes
- Introducing broad anti-avoidance protections to prevent SACC loan and consumer lease providers from circumventing the rules and protections contained in the Credit Act and the Code
- Strengthening penalties to increase incentives for SACC providers and lessors to comply with the law.

The Uniting Church of Australia (Synod of Victoria and Tasmania), in collaboration with partner organisations, strongly endorsed these reforms (Consumer Action, 2017).

Unfortunately, the draft reforms have not progressed, despite having been through a rigorous consultation process.

Opposition back bencher, Tim Hammond, attempted to advance the legislation through a Private Members Bill in February 2018 but this was unsuccessful. The current minister, Michael Sukkar, has not responded to enquiries about the reforms other than to say that Government is "currently considering submissions following public consultation" and that the bill will progress this year (Consumer Action, 2018). With the final session of Parliament for the year rapidly approaching, there are concerns that this important reform will not be passed before the federal election is called.

Key points:

Projections suggest that nearly

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will fall back on pay day loans or consumer leases in 2018.

Because of the high fees, people may end up paying the equivalent of

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of the base cost of their loan.

The payday lending and consumer lease industry is estimated to be worth

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4 out of 5

borrowers have used payday loans or consumer leases previously.

Policy recommendations.

1. Uniting Vic.Tas supports the passage of the draft legislation as soon as possible, noting that with each passing month, the unreasonable levels of personal debt incurred by low-income households is increasing.

2. Uniting Vic.Tas also recommends the following amendments:
   - **a.** The commencement period of 12 months is unnecessary. Reforms should be applied from 6 months after the date of Royal Assent.
   - **b.** The distinction between consumer leases for household goods and other consumer leases should be removed.
   - **c.** The prohibition on unsolicited SACC invitations should apply to all consumers. Further, third parties must also be prevented from making these invitations.
   - **d.** A debtor should not be liable for future payments and should be entitled to recover any amounts already paid under the lease in the event of a breach. Further, amendments should allow claims arising from breaches of any provision relating to SACCs and consumer leases under the value of $40,000 in the small claims court.
   - **e.** The definition of 'unexpired permitted monthly fee' should be amended to ensure the final monthly fee payable is calculated on a pro-rata basis.
   - **f.** Consumer lease price disclosures should be required to be prominently displayed in advertisements, particularly where the advertisements feature a weekly repayment amount for a product.
   - **g.** Second-hand consumer leased goods should be depreciated in accordance with Australian Tax Office depreciation rates.
   - **h.** In addition to assessing a person's ability to make repayments and the purpose of the loan, providers of SACCs should also be obliged to assess a person's financial records for evidence of problem gambling (such as repeated payments to online gambling websites) and take this into account when assessing the suitability of the loan. Such customers should be referred to financial counselling and/or gambling support services.

A full description of amendments is detailed in the submission by the Consumer Action Law Centre of which Uniting Church of Australia (Synod of Victoria and Tasmania) was a signatory (Consumer Action, 2017).

3. Dependence on payday lending is a reflection of low rates of welfare support provided by the state, lack of access to financial counselling services and the inability of people on low incomes to access credit. To address these causes, Uniting calls for
   - The rate of Newstart payments to be increased by $50 per week
   - An increase in funding to free financial counselling services
   - The expansion of the No Interest Loan Scheme (NILS) to allow people to access credit for living costs, as well as raising the income cut-off from $45,000 per year to $55,000 per year.

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About Uniting

For over 100 years we've delivered community services across Victoria and Tasmania.

We build capacity and confidence in children, young people and families, people with disability, older people and people newly arrived in Australia. We work with people at risk of or experiencing financial crisis, homelessness, mental illness and problems with alcohol and other drugs by empowering them with the support they need to succeed.

As an organisation, we celebrate our diversity and welcome all people regardless of ethnicity, faith, age, disability, culture, language, gender identity or sexual orientation. We acknowledge Aboriginal and Torres Strait Islanders as Australia's First Peoples and as the traditional owners and custodians of the land on which we work. We welcome lesbian, gay, trans, gender diverse and intersex (LGBTIQ) people at our services. We pledge to provide inclusive and non-discriminatory services.

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