Submission to the Senate Inquiry: National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2) ('the Bill')

QCOSS' position

- In many cases high-cost credit businesses are making people's lives worse, creating debt they cannot repay and causing financial stress.
- Many of the businesses providing high-cost credit are preying on people, including through targeted marketing strategies and advertising, who have:
  - limited economic resources and
  - limited access to mainstream credit.
- The Bill must be passed as a matter of priority to address many of the predatory and unfair practices of high-cost credit businesses providing payday loans or consumer leases.

Recommended actions

QCOSS calls on the Standing Committee Inquiry to recommend that the Australian Government:

- **pass this bill** because it addresses many of the predatory and unfair practices of high-cost credit businesses
- **ban advertising** by high-cost credit businesses on all forms of social media, television and radio media and
- **reduce structural inequities** including by raising the JobSeeker (Newstart) allowance by $95 per week and indexing to wages.[1]

About QCOSS

We are Queensland's peak body for the social service sector. Our vision is to achieve equality, opportunity and wellbeing for every person, in every community.

QCOSS is a member of the *Stop the Debt Trap Alliance,*[2] a national coalition of more than 30 consumer advocacy organisations from around Australia including financial experts, community advocates and service providers. The Alliance was launched in September 2019, marking 1,000 days since the Coalition Government accepted the recommendations of the Review of Small Amount Credit Contract (SACC). The Alliance is calling for the government to implement stronger laws to protect Australians from predatory payday lenders and harmful consumer lease providers.

[1] QCOSS (September 2019), *QCOSS position statement Adequacy of Newstart and related payments*, https://www.qcoss.org.au/wp-content/uploads/2019/09/QCOSS-Position-Statement-on-Newstart.pdf.
[2] More details on the Stop the Debt Trap Alliance can be found at this link https://consumeraction.org.au/policy-campaigns/stop-the-debt-trap/.

We have many years' experience working on financial inclusion and living affordability. Our *Living Affordability in Queensland 2019 report* found that many Queenslanders cannot afford to cover basic living expenses.[3] Cost-of-living pressures are increasing, with affordability concerns cited as the leading issue for many households.[4] This is particularly true in regional Queensland and in remote communities.[5]

This submission has been informed by our work with the community services sector and the stories we hear directly from people with lived experience. This includes structured interviews with people who work in the financial inclusion sector, engagement with the Financial Counselling Association Queensland (FCAQ) and participation in groups such as the Logan, Ipswich and Gold Coast Financial Literacy Action Groups (FLAG) and the Queensland Financial Inclusion Network (QFIN). QCOSS has also conducted our own policy, research and advocacy on issues relevant to financial inclusion including energy literacy, income support, housing and cost of living.

About the Bill

The Bill aims to strengthen the regulation of SACCs and consumer leases, referred to collectively for the purposes of our submission as 'high-cost credit products'. SACCs, referred to in our submission as payday loans, are loans of up to $2,000 with repayment periods of between 16 days to 12 months. Businesses providing these products include Cash Converters, Nimble and Wallet Wizard. Consumer leases are high-cost goods rental agreements, commonly used to rent electronics, whitegoods and furniture. The best-known consumer lease provider is Radio Rentals. They are also sometimes referred to as 'rent-to-buy' or 'rent to lease' agreements.

The Bill aims to protect people from problematic practices of some high-cost credit businesses. The Government conducted a major independent review of the high-cost credit industry in 2016 and announced its response in 28 November 2016. It accepted all or in part most of the 26 recommendations.[6] It subsequently produced exposure draft legislation addressing many of the recommendations.[7] There have also been a number of unsuccessful private members' bills. As set out in the Explanatory Memorandum to the Bill, this most recent private members' Bill replicates Exposure Draft legislation released by the Government on 23 October 2017.

The Bill would:

- introduce regulatory power to cap the total amount of fees and charges that can be made under a consumer lease[8]
- enable current caps on payday loan fees and charges to apply to all consumers, not just a specified class
- require payday loans to have equal repayment amounts and equal time intervals between each payment
- remove the ability for payday loan providers to charge monthly fees in respect of the residual term of a loan where a consumer fully repays the loan early

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[3] QCOSS (2019), *Living affordability in Queensland*, QCOSS, https://www.qcoss.org.au/wp-content/uploads/2019/04/Affordability-in-Queensland-report-February-2019-15.docx.
[4] Roy Morgan (2018), *Most Important Problems Facing Australia*, Article No. 7504, Roy Morgan, http://www.roymorgan.com/findings/7504-most-important-problems-australia-the-world-february-2018-201803051043.
[5] QCOSS (2019), *Living affordability in Queensland*, QCOSS, https://www.qcoss.org.au/wp-content/uploads/2019/04/Affordability-in-Queensland-report-February-2019-15.docx
[6] Australian Treasury (2016), *Government response to the final report of the review of the small amount credit contract laws,* Australian Government, https://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/media-releases/government-response-final-report-review-small-amount.
[7] Australian Treasury (23 October 2017), *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017* Exposure draft Explanatory Materials, Australian Government, https://treasury.gov.au/sites/default/files/2019-03/c2017-t229374-Explanatory-Memorandum-1.pdf.
[8] Currently, there is no cap on the total amounts of payments that can be made under a consumer lease.

- prevent high-cost credit businesses from undertaking door-to-door selling at residential homes
- introduce broad anti-avoidance measures to prevent high-cost credit businesses from circumventing the rules and protections contained in the *National Consumer Protection Credit Act 2009* "Credit Act" and the *National Credit Code* "the Code" and
- increase disincentives for high-cost credit businesses to deter them from breaching the law, for example by voiding non-compliant debt and establishing or increasing civil and criminal penalties.

Issues

The payday loan industry is booming

The payday loan industry has grown exponentially since April 2016 to June 2019, with more than 4.7 million individual payday loans taken out by about 1.77 million people across Australia.[9] The value of these loans is approximately $3.09 billion.[10]

Queensland was predicted to have more than 300,000 payday loans in 2019. This is a 35 per cent increase since 2017.[11]

Increase in digital access

The growth is, in part being driven by increase in digital access.[12] Ten years ago, across Australia only 5.6% of payday loans originated online. In 2019 that figure is expected to hit 85.8%. These digital platforms have greatly increased the ease and time period by which people can get approval for loans and leases.[13]

It is QCOSS' view that people in regional Queensland are especially vulnerable likely to be taken advantage of my the payday loan industry. In the past, people living in regional areas would be required to travel to access payday loans. Now they can easily access them from their own homes. In addition, as we note later in this submission, people in regional Queensland are increasingly excluded from mainstream credit.

Recent research by Monash University suggests that digital marketing strategies are normalising payday loans by making them look like other mainstream lenders and making it difficult for consumers to know who to trust.[14] It found that payday lenders are blending online advertising with advice on good budgeting, giving consumers a confusing message that payday loans form part of good financial management.

The report by Monash points out:

> "*On Facebook, for example, payday lenders have many followers and fun social media profiles. Their posts include finance tips, cute pictures and engage in socially responsible activities, such as blood donations or environmental responsibility, yet among these posts, they promote their loans," she says.*
>
> *While ASIC warns against this practice, it continues unabated and without any real penalties for lenders who engage in this kind of activity".*

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[9] Consumer Action Law Centre (2019), *The Debt Trap: How payday lending is costing Australians,* https://consumeraction.org.au/wp-content/uploads/2019/11/Payday-Lending-Report_FINAL_UPDATED_WEB-1.pdf.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Monash University (2019), Payday Lenders: *Trusted Friends or debt traps?* Monash University, https://www2.monash.edu/impact/articles/banking/payday-lenders-trusted-friends-or-debt-traps/.

High-cost credit businesses are preying on people who are vulnerable

Low-income, financially vulnerable households are more likely to use risky credit products. For example, 17.1 per cent of individuals with low economic resources are accessing forms of high cost credit such as consumer leases, small or medium credit, and personal loans. This is a far higher rate than those who had "moderate economic resources" (5.3 per cent) and "high economic resources" (3.1 per cent).[15]

Access to mainstream credit

Many people know they are paying more than the market price for the goods, or higher comparison rates but there are limited options to meet essential costs.[16]

In an interview with QCOSS, one financial counselling associate in Cairns noted, "*vulnerable people are shut out [of mainstream services] and then are vulnerable to predatory practices*". Low-income, financially vulnerable households who are excluded from accessing mainstream financial products are more likely to be reliant on some type of risky credit for their credit needs than those of moderate to high levels of resources.[17] Research by the Centre for Social Impact and the National Australia Bank (NAB) on the extent of financial exclusion in Australia has found that 17.7 per cent of the adult population in Australia were either fully excluded or severely excluded from one or other of what they consider to be basic mainstream financial products, including access to safe credit.[18]

A preliminary assessment of the mainstream banks' current websites in Australia shows that they will only provide a minimum personal loan of $4,000 or $5,000.[19] They also have credit requirements such as asking for evidence of employment, established credit rating and documents to substantiate income and residency status.[20] This may rule out people with poor credit history or people on low incomes as they cannot meet the banks' loan service requirements. In such circumstances, people who require funds for an emergency or one-off essential expenses, such as car registration, have limited options.

There is also a growing trend across Australia for banks to withdraw from rural and remote areas. For example, BankWest announced in 2018 that they are closing 29 branches along the east coast of Australia.[21] Financial exclusion is especially problematic for people living in these areas where there are few or no local banks they can turn to. The Financial Counselling Association of Queensland (FCAQ) in an interview (April 2018) with QCOSS confirmed this when they stated that:

> *"There is a lack of financial awareness, education and rights amongst people. People are excluded from mainstream banking and then go to risky payday lenders. [In]*

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[15] Marjolin, A., Muir, K., and Weier, M. (2018), *Financial Exclusion in Australia*, Centre for Social Impact (CSI) - University of New South Wales, for National Australia Bank, https://www.csi.edu.au/research/project/financial-resilience-australia-2018/.

[16] Comparison rate equivalent to the Annual Percentage Rate (APR); Conversation with Financial Counsellor in regional Queensland during the QCOSS Financial Inclusion Project 2018.

[17] Marjolin, A., Muir, K., and Weier, M. (2018), Financial Exclusion in Australia, Centre for Social Impact (CSI) - University of New South Wales, for National Australia Bank. https://www.csi.edu.au/research/project/financial-resilience-australia-2018/.

[18] Connolly, C., Georgeouras, M. and Hems, L. (2014), *Measuring Financial Exclusion in Australia*, Centre for Social Impact (CSI) - University of New South Wales, for National Australia Bank. https://www.csi.edu.au/research/project/measuring-financial-exclusion-australia-2013/.

[19] Please see the following link: National Australia Bank https://www.nab.com.au/personal/personal-loans/offers/pl-affiliate?cid=sem:p50461712986&psk=%2Bpersonal%20%2Bloans%20%2Bnab&psm=b&psn=g&psd=c&psa=&&gclid=CjwKCAiAhc7yBRAdEiwAplGxXxpHBG9aOk4m4JHD1L74mBiUfWgsv4uWLIKwCHELiDkYIB3D1ujL6RoCxCMQAvD_BwE&gclsrc=aw.ds or please see the following link for Commonwealth Bank https://www.commbank.com.au/personal-loans.html?ei=hp-pro-c1-p3-pl.

[20] For example, the National Australia Bank currently requires evidence of regular income, financial commitments employment, credit rating and residency.

[21] Brisbane Times (8th July 2018), *Bankwest to close 29 Branches*, https://www.qt.com.au/news/bankwest-to-close-29-branches/3470291/.

remote regions where there is no support [people] are especially vulnerable to pay day lenders and consumer lease companies who often travel to these communities with their mobile services and sign people up. People in these communities lack support and social cohesion which are compounded by isolation and poverty".[22]

Living affordability

Most people who use high-cost credit businesses need money for essential items. Research in 2015 showed that people are using payday loans for:

- emergency cash for household expenses (35.6 per cent, an increase of 31.5 per cent in ten years)
- utility bills such as electricity, phone, internet and so on (16.7 per cent, an increase of 10.8 per cent)
- costs related to a specific event (15.6 per cent)
- car registration or expenses (11.2 per cent)
- repayment of an existing loan (9.8 per cent).[23]

A breakdown of the "Emergency cash for household expenses" is outlined in Table 1 and shows the close relationship between emergency cash and child related expenses with more than 30 per cent of borrowers stating that the loan was for "children's needs" or "school trips". This figure has increased by around 25 per cent since 2005.

Table 1: Breakdown of emergency cash for household expenses (per cent)

	2005	2010	2015
Children's needs	19.6	21.1	22.7
Clothing	17.8	19.1	21.6
Medical bills	13.6	14.2	15.1
Food	15.3	13.2	11.4
Healthcare needs	12.8	11.4	10.8
School trips	5.6	7.9	9.1
Fares/travel costs	5.6	7.2	8.3
Other	9.7	5.9	1.0
Total	100	100	100

Source: Reproduced from Table 17 in The Stressed Finance Landscape Data Analysis (2015)[24]

Increasing costs for essentials such as housing, electricity and healthcare are exacerbated by stagnating wage growth and the very low rates of income support such as Newstart (now Jobseeker) and Youth Allowance. Newstart allowance puts people receiving it below the poverty line and has not been increased in real terms for more than 25 years. As a result,

[22] Financial Inclusion Project (2018), Interview with the President of the Financial Counselling Association of Queensland and QCOSS.

[23] Digital Finance Analytics and Monash University Centre for Commercial Law and Regulatory Studies (CLARS) (2015), *The Stressed Finance Landscape Data Analysis*, https://goodshepherdmicrofinance.org.au/assets/files/2016/06/The-Stressed-Financial-Landscape-Data-Analysis.pdf.

[24] Ibid.

individuals already facing challenges are being left further behind and vulnerable to the practices of payday lenders and consumer lease companies.

Predatory practices

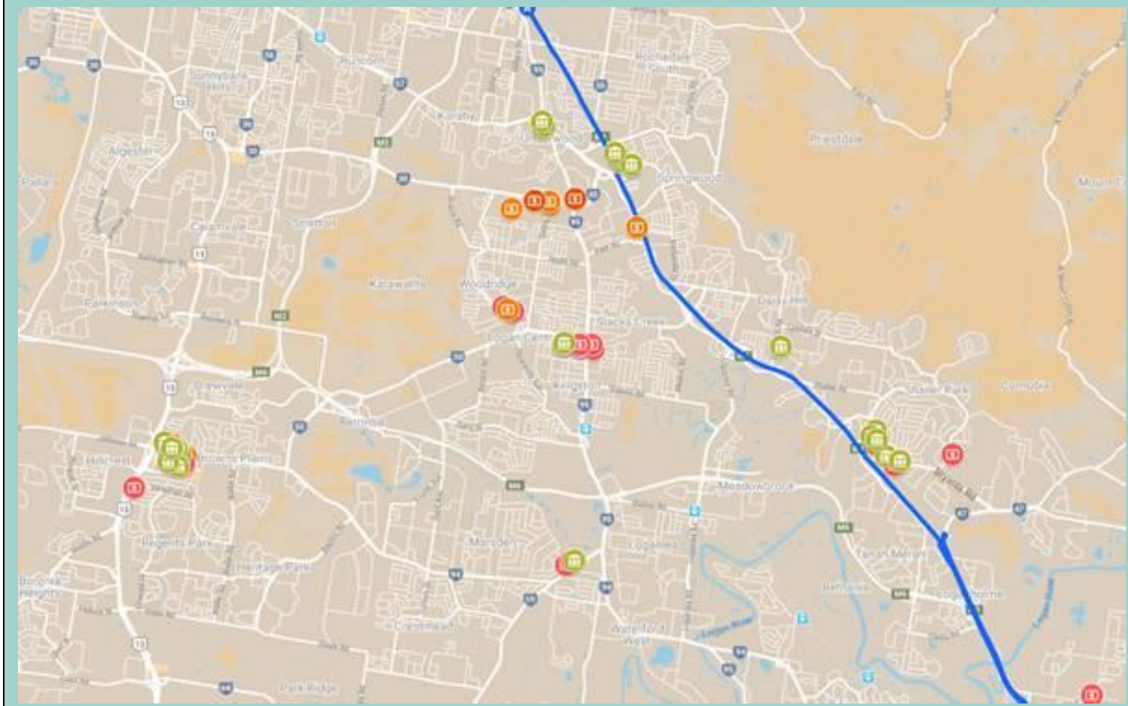
High-cost credit businesses target low-income areas and vulnerable communities. A map developed by Financial Literacy Action Group (FLAG) shows how lenders are clustered in low socio-economic areas.

Box 1: Logan credit map

The Logan FLAG wanted to uncover the drivers behind the use of high-cost credit in Logan, and what services can do to redirect people to lower cost options. Their first step was assessing the geographical location and visibility of pay day lenders in the area.

By mapping the credit providers on an interactive map, they found that high cost credit businesses were clustered in lower socio-economic areas, while more affluent suburbs had plenty of banks but no payday lenders. High-cost credit businesses that were mapped included payday lenders, pawnbrokers, consumer lease agencies and car yards that use either the consumer lease model or in-house high-cost credit. High-cost credit businesses like payday lenders were highly visible on the streetscape, marketing fast and easy cash with big, bright signs and slogans such as "*Bad credit? Don't sweat it!*"

Below is a screen shot of the Credit Map. Banks and credit unions are represented by green icons, where high cost credit shopfronts are represented by red (payday lender) and orange (consumer lease) icons. More details can be found at this link: https://communitydoor.org.au/blog/logan-financial-literacy-action-group-doing-things-differently-to-create-change



The Logan credit map makes it clear that high cost credit providers are purposively targeting people who think they have no other options or those who are locked out of the traditional credit market due to low incomes.

Payday lenders and consumer lease companies are also known to engage in aggressive marketing techniques targeting people on low incomes, including:

- establishing prominent billboards
- targeting local papers, radio and locally targeted television commercials in low socio-economic areas
- cyclical targeting of existing borrowers who are close to finalising payment arrangements, with offers of extension or new loans.

High cost credit businesses are making people's lives worse

The combination of low incomes, the cost of living, easy access to credit and unfair lending practices leads to unmanageable debt. Inability to repay loans leads to poor credit ratings, which then further excludes people from being able to access mainstream financial products and services and traps them in a debt cycle.

FLAG members have reported stories of people putting pay day and consumer lease repayments before vital budget items like their rent or electricity. Payday and consumer lease providers often deliberately time repayments to coincide with income payments, often leaving the borrower with insufficient money to pay for the basic items.

Modelling from Digital Finance Analytics in the *The Debt Trap report* (2019) shows that over a five-year period, around 15 per cent of payday loan borrowers fall into a debt spiral.[25] On that basis, an additional estimated 324,000 Australian households have been allowed to enter a debt path that may result in an event such as bankruptcy.

Access to safe financial services and products are integral in enabling people to meet basic needs such as schooling, health care, accommodation and employment. When these basic social provisions and needs are not met, the cost of financial exclusion is far reaching and may cause violence, drug use, depression, stress, poor health outcomes and a diminished outlook on life.[26]

Irresponsible lending

Many operators engage in irresponsible lending, creating debt that many people cannot repay.

High-cost credit businesses regularly do not undertake proper credit checks and fail to assess the capacity of the borrower to make the repayments. The Australian Securities and Investment Commission ('ASIC') has taken action against the big lenders - for example, Cash Converters, who failed to make reasonable inquiries into borrowers' income and expenses and signed people up for loans that were unsuitable for them. As a result of this action Cash Converters refunded $10.8 million to its clients and paid a penalty of $1.35 million.[27] Despite these penalties and enforcement action, consumer advocates such as the Consumer Action Law Centre have not seen any real change in industry behaviours.[28]

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[25] Consumer Action Law Centre (November 2019), *The Debt Trap: How payday lending is costing Australians,* https://consumeraction.org.au/wp-content/uploads/2019/11/Payday-Lending-Report_FINAL_UPDATED_WEB-1.pdf.
[26] Saunders, Peter, Naidoo, Yuvisthi, & Griffiths, Megan (2008), *Towards new indicators of disadvantage: Deprivation and social exclusion in Australia*, Australian Journal of Social Issues 43(2): 175-194.
[27] ASIC (9th Nov 2016), *Cash Converters to pay over $12M following ASIC probe,* ASIC Media Release, https://asic.gov.au/about-asic/news-centre/find-a-media-release/2016-releases/16-380mr-cash-converters-to-pay-over-12m-following-asic-probe/.
[28] Consumer Action Law Centre (2018), *Submission to the Senate Inquiry on Credit and financial services targeted at Australians at risk of financial hardship (p8)*. https://consumeraction.org.au/wp-content/uploads/2018/11/181112-Final-submission-Senate-Inquiry.pdf.

This is confirmed by stories from community organisations who report to QCOSS multiple examples of payday lenders providing people on low incomes with multiple loans at the same time or allowing a second loan to be taken out to pay the balance of the first.

In 2018 QCOSS did research on access to essential services in Woorabinda, an Aboriginal community in Central Queensland. The following case study in the report on *Energy Issues in Indigenous Communities*[29] shows how a vulnerable customer has no option but to use consumer leases schemes to get basic furniture and appliances (See Box 2).

Box 2: Case study - Irresponsible lending - Woorabinda
A Woorabinda energy customer had moved to Woorabinda to escape domestic violence. She had been paying household goods off on a 'rent to own' consumer lease. In the course of the violence, her home contents were destroyed. Nevertheless, she was still required to continue payments even though she no longer had the goods. She also now needed to furnish her new home with the bare essentials, but because she was on Newstart and was already financially overcommitted, she was unable to buy through reputable furniture and appliance stores that practice responsible lending. Without cash or transport, she also could not shop around for second-hand furniture. Her existing consumer lease company offered to extend the amount and term of her existing contract. She agreed and they delivered cheap low-quality furniture and low energy star appliances. She now owes them more than $14,000. Her Centrelink income is $14,424.80 per year.

Current protections are inadequate

Payday lenders and consumer leases are currently regulated by ASIC. In 2019 ASIC received additional power (product intervention power) to address significant consumer detriment caused by financial products, regardless of whether they are lawfully provided.[30] While these powers are welcome, they will not be enough to make this industry fairer. They do not:

- limit fees that can be charged
- cap loan amounts relative to income and capacity to pay
- prevent predatory practices.

Introduction of the Bill will address the issues outlined above and address the predatory and unfair practices of the high-cost credit industry.

We need to act now

All Australians should have access to safe, fair and affordable financial products and services.

Current protections against predatory payday lenders and harmful consumer lease providers are inadequate and are exacerbating the financial vulnerability of individuals and contributing to the entrenchment of structural disadvantage.

Thank you for the opportunity to comment on the Bill.

[29] QCOSS (August 2018), *Energy Issues in Indigenous Communities: Woorabinda, QCOSS,* https://www.qcoss.org.au/publication/qcoss-report-energy-issues-in-indigenous-communities-woorabinda/.
[30] s1023D(1)(b) of the Corporations Act sets out the criteria that ASIC is required to take into account in considering whether a product has resulted, will result or is likely to result in significant consumer detriment. http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ca2001172/s1023e.html.