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Thursday, 15th October 2015

By email: consumercredit@treasury.gov.au

Ms Danielle Press
SACC Review Secretariat
Financial System and Services Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Press,

Review of the Small Amount Credit Contract (SACC) laws

We welcome the opportunity to contribute to this review of the Small Amount Credit Contract laws, and in particular enjoyed being able to familiarise the review panel with the work of our organisation on Monday 12th October.

The following submission by Good Shepherd Microfinance is in response to the call for submissions to the review of the small amount credit contract laws. We welcome the opportunity to participate in this process, and we welcome the commitment to review these provisions.

Business is booming for both the payday lending and consumer lease sectors in Australia and at the same time this industry is innovating which is partly reflected by the strong growth in online lending.

While regulatory changes in 2013, followed by enhancements in 2014, have had some positive impact on the payday lending industry, we continue to see consumers who are trapped in debt cycles.

We believe that stronger consumer protection is necessary. This includes further enforcement of the current SACC provisions and subjecting consumer lease contracts to the same responsible lending provisions as for the SACC - with regard to disclosure, warnings, caps and suitability assessments.

Feedback from our network of over 247 partner organisations across Australia is that consumer leases have overtaken payday lending as the most opportunistic form of consumer credit. Our microfinance workers are regularly unable to offer fair, safe and affordable loans to consumers who are overwhelmed with debt from multiple consumer leases - that are in some cases compounded by payday loans.

The key recommendations of our submission are:

- Responsible referrals should be compulsory
- Enhanced consumer protection for SACCs through enforcement of the provisions facilitated by mandatory credit reporting at a national level
- Consumer leases to be subjected at the minimum to SACC provisions
- The introduction of mandatory credit reporting

In order to meet the demand for access to safe, fair and affordable microfinance loans, estimated by the Centre for Social Impact to be 325,000 additional consumers[1], an increase in Federal Government investment from $6 million to $100 million per annum in operational funding would be required. This would also mean an increase in capital $30 million to $500 million, with a broader commitment from other sources.

I would be more than happy to discuss our submission with you further.

Yours sincerely,

Adam Mooney
CEO
Good Shepherd Microfinance
Email: AMooney@gsmicrofinance.org.au
Mobile: 0438 363 399

[1] Centre for Social Impact, 'Life Changing Loans at No Interest: An Outcomes Evaluation of Good Shepherd Microfinance's No Interest Loan Scheme (NILS)', March 2014

Contents

About Good Shepherd Microfinance

Good Shepherd Microfinance is Australia's largest microfinance organisation. We offer a suite of people-centred, affordable financial programs for people on low income at different financial stages of their lives. Our aim is to enable clients to realise their own economic wellbeing, as they define it themselves, through appropriate financial services. As a result, people feel valued, accepted and included and in control of their own finances and lives.

National Australia Bank (NAB) and Good Shepherd started working together in 2003, and since that time NAB has made a commitment of $130 million in microfinance capital. Together we have developed microfinance solutions to give Australians living on low incomes access to fair, safe and affordable financial services.

Good Shepherd Microfinance believes that individuals and families living on low income can make sustainable and responsible financial decisions if they have access to the right resources and are protected from exploitative lending arrangements – which is why our four Good Money stores are strategically located in the same strips as payday lenders.

Good Shepherd Microfinance works with 247 accredited community organisations in 670 locations across Australia. Since its establishment, Good Shepherd Microfinance has reached over 170,000 Australians through its programs. To better serve the needs of the three million Australians[2] who are financially excluded, Good Shepherd Microfinance has developed a range of financial products such as: the No Interest Loan Scheme (NILS®), StepUp Loans (low interest loans), Adds Up (matched savings), Debt Deduct and Good Insurance. In addition, Good Shepherd Microfinance is currently developing a Financial Inclusion Action Plan (FIAP) program in partnership with Ernst & Young, Centre for Social Impact and Australian Government Department of Social Services. This program will support business, government, community and academic institutions to develop their own plans and advance financial inclusion in Australia, especially for women.

Our programs enable people to build assets, engage in community life as well as find and keep jobs. Independent evaluations of our microfinance products have shown that over four out of five clients experience a net improvement in social and economic outcomes[3] and that a greater reach of financially excluded Australians would lead in a $19.7bn increase in GDP[4].

Good Shepherd Microfinance and its microfinance network of local, connected community organisations support people on low incomes to get out of the vicious cycle of financial exclusion. However, a significant number of eligible individuals who require small loans cannot benefit from our financial products as they are over indebted due to payday loans or consumer leases which have worsened their already precarious financial situation.

Our submission is directly informed by the experience of our organisation, our provider network and clients regarding payday lending and consumer leases.

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[2] Centre for Social Impact for National Australia Bank, Measuring Financial Exclusion In Australia, April 2014

[3] Centre for Social Impact, 'Life Changing Loans at No Interest: An Outcomes Evaluation of Good Shepherd Microfinance's No Interest Loan Scheme (NILS)', March 2014

[4] Assumption: 7% of excluded segment move up one segment, SPP, May 2014

Introduction

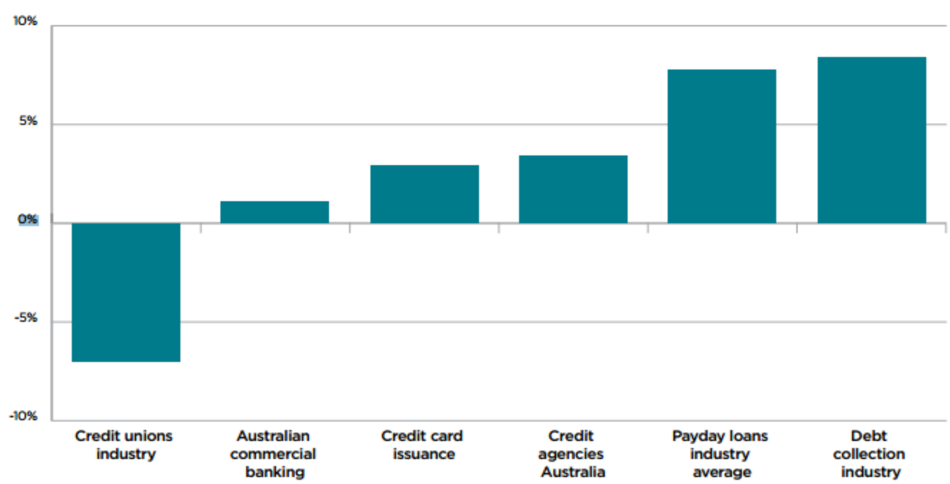
This review presents an important opportunity to improve consumer protection as well as prevent business practices that are having a negative impact on people on low incomes who can least afford it. It comes at a time when the economy is waning, financial stress is increasing and online payday lending and consumer leasing are proliferating.

Our responses to the questions posed in the terms of reference highlight our concerns, our practice wisdom and ideas for the future. These are informed by our 34 years of experience, and are strengthened by rigorous economic analysis.

It is clear that consumers who do not have access to mainstream financial services often think they have no other option than taking a payday loan or a consumer lease. This is highlighted by research undertaken by Digital Financial Analytics and commissioned by Good Shepherd Microfinance in partnership with the Consumer Action Law Centre and Financial Rights Legal Centre, that found 78 per cent of financially distressed households took a payday loan because it was their only option[5].

Our submission is predicated firstly by our concern that the payday lending industry continues growing (by over 7 per cent from 2009 to 2014), as does the number of households seeking payday loans. An estimated 1.1 million people in Australia (15 per cent of the adult population) took out three loans per year on average during this period[6]. Worryingly, there is strong evidence to indicate that this is partly due to an increase in the repeat borrowing and the damaging cycles of debt that follow (see our response to question 5 for more details).

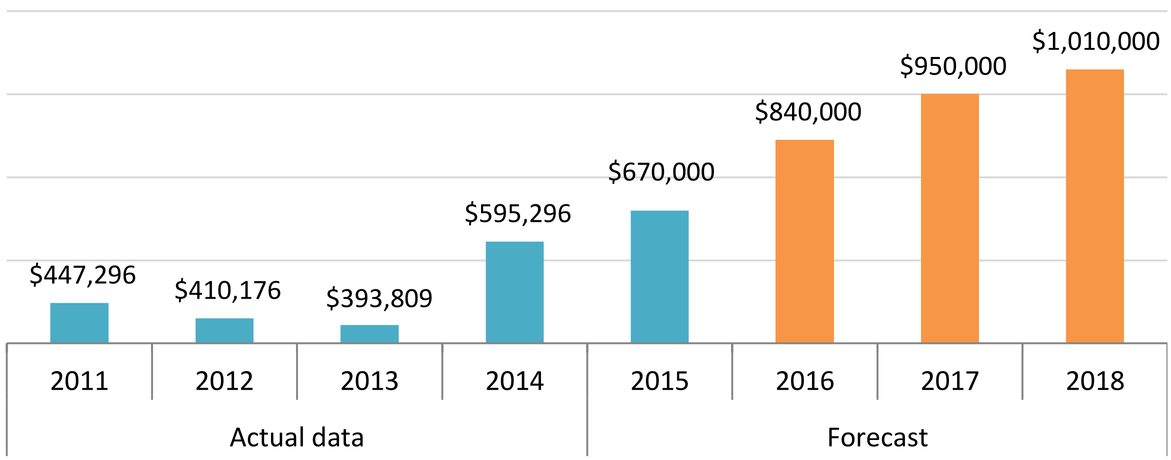
Figure 1: Annual revenue growth rate (2009-14)



Source: JASSA, the Finsia Journal of Applied Finance

[5] Digital Financial Analytics for Good Shepherd Microfinance, the Consumer Action Law Centre and Financial Rights Legal Centre, 'The Stressed Financial Landscape: Payday lending, Credit repair and Advice', October 2015
[6] Ali J. and Banks M., 2014, 'Into the mainstream: The Australian Payday Loans Industry on the Move', Economics Finance and Marketing School RMIT University, JASSA The Finsia Journal of Applied Finance ISSUE 3 2014

Figure 2: Accumulated value ($AUD in 000's) of new payday loans



Source: Digital Financial Analytics

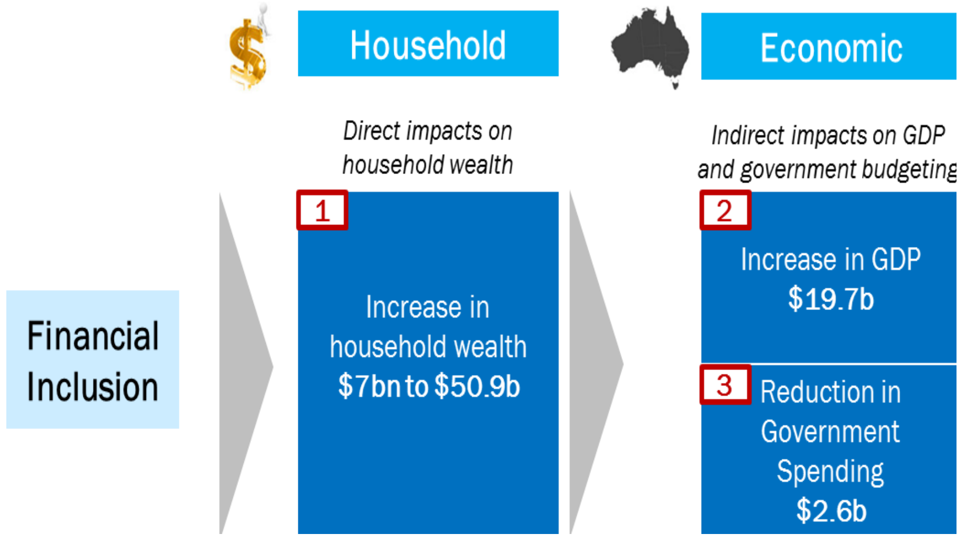
With regard to the consumer lease industry, cases of companies taking advantage of clients on low income are constantly reported to us. To protect the most vulnerable and excluded people in Australia, we are advocating for wholesale reform to this industry backed by strong and well-resourced enforcement

We are also extending an invitation to responsible payday lenders and consumer lease companies to work with us by referring the consumers who qualify for more affordable alternatives - such as those offered through our network of providers across Australia.

Beyond the social and ethical reasons for improving consumer protection there is a strong economic case for doing so too. Research undertaken by Strategic Project Partners in 2014 shows that improving the level of financial inclusion would be expected to increase household wealth, boost nominal GDP and reduce government spending, and that a modest 7 per cent improvement in financial inclusion may lead to a triple-faceted benefit as illustrated on the following page (see Figure 3)[7].

[7] Strategic Project Partners, 'Microfinance and 'inclusion' and economic growth: Quantifying the benefit of increased economic inclusion for individuals and society', commissioned by Good Shepherd Microfinance, May 2014

Figure 3: Economic impact of improving financial inclusion by 7%



Our responses to each question follow.

Small Amount Credit Contracts

Question 1: Competing objectives

Good Shepherd Microfinance believes that the SACC industry has remained viable and profitable despite a more regulated market since 2013, and we recognise the need for consumers to access payday loans and the role these loans play in the market.

The high performance of the industry is correlated to its capacity to adapt and innovate through consolidation and the development of the online market and institution[8]. For example, according to their annual report the SACC leader in the Australian market, Cash Converters, performed strongly in FY 2015 with a 14.6 per cent rise in EBITDA mainly thanks to:

- A 20 per cent increase in online sales through their online webshop.
- The acquisition of seven stores in the last quarter of 2015.
- A 9.8 per cent growth on pawn broking interests.
- A 11.6 per cent growth on cash advance commissions.

As for Money3, another ASX listed SACC company, their revenues rose by 135 per cent in FY 2015.

In addition, Good Shepherd Microfinance acknowledges the existing need for payday loans and that given the urgency in sourcing a small amount of cash, it is unlikely to be fulfilled by other forms of financial services. One of the main findings of *Caught short: Exploring the role of small, short-term loans in the lives of Aust*ralia[9] is that more than 80 per cent of the payday lenders borrowers would not want the industry to be abolished, as they do not know what alternatives they could have.

However, to avoid being 'trapped' in a vicious cycle of debt, the most vulnerable consumers must be protected by adequate regulations as they are the main users and targets of SACCs. Up to 25 per cent of the users live below the poverty line[10] and payday lending stores are mainly located in socio-economically disadvantaged areas[11].

Good Shepherd Microfinance's safe, fair and affordable alternatives to payday lending has already reached reached over 170,000 people but there are over three million of people excluded from the financial mainstream in Australia.

Hence the need to enhance the current SACC provisions and ensure that they are enforced in order to protect all consumers and the most vulnerable in particular.

[8] Ali J. and Banks M., 2014, 'Into the mainstream: The Australian Payday Loans Industry on the Move', Economics Finance and Marketing School RMIT University, JASSA The Finsia Journal of Applied Finance ISSUE 3 2014

[9] Banks, M, Russell, R, Marston, G, Kargar, H, 'Caught short: Exploring the role of small, short-term loans in the lives of Australia', 2012

[10] Parliamentary Joint Committee on Corporations and Financial Services' *Inquiry into the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill* (2011), p.61.

[11] Ali, P et al, 'Payday lending regulation and borrower vulnerability in the United Kingdom and Australia' Journal of Business Law

Case Study: Wagga Wagga NILS (St Vincent de Paul)

Shirley, the NILS microfinance worker in Wagga Wagga, often helps people who are overwhelmed by the debt they have accumulated through Small Amount Credit Contracts. In her view, since the new laws were introduced in March 2013 there has been little change on the impact to clients from payday lending or consumer leases, and she describes the problem as chronic in Wagga Wagga and getting worse. Payday lenders have many different fees which are difficult to understand, new businesses keep opening and the use of online lending is growing.
A significant number of Shirley's clients have four or more concurrent contracts as well as four-year leases with very high APRs. Around 30per cent of people who inquire about a microfinance product at Wagga Wagga NILS are ineligible because they are over-indebted, and 80 per cent of people who apply for a NILS loan are paying off at least one short-term credit contract.

Shirley refers the worst cases she sees to legal aid, but many people do not to follow this up for reasons including that they are embarrassed, that the process is too hard, they don't have access to transportation means, they are fearful about the outcome, and are scared that legal action will mean the lender or consumer lease company will refuse to serve them in the future. Many people feel they have no other option and do not want to do anything that will jeopardise what they consider to be their financial safety net.

Shirley is passionate about her work, thinks these companies should not be allowed to advertise and calls for more government intervention in providing alternatives to people living in poverty.

Question 2: Complexity

Good Shepherd Microfinance supports reducing the complexity of the regulatory regime, as we believe this would result in fewer loopholes, less opportunity for avoidance by operators, reduction in the cost of loans, and will make it easier for ASIC to effectively enforce legislation.

We acknowledge that the regulation enforced in March 2013 has increased the regulatory burden on the SACC industry but it is important to note that despite these provisions, payday lenders are still able to process a cash loan within 60 minutes to a few hours and record rising profits as indicated in our response to Question 1.

One way to do this would be to limit repeat loans (one default loan or more than two loans in the past 90 days) rather than the current rules around presumptions of unsuitability. This would be supported by mandatory positive credit reporting that we believe would be the most efficient way to simplify the process for assessing suitability (see Question 10).

Question 3: Sanctions

Good Shepherd Microfinance acknowledges that ASIC's work has led to numerous sanctions against payday lenders and consumer lease companies for breaches of their obligations.

However, as ASIC's review released in March 2015 revealed, two thirds of payday lenders were highly likely to breach credit laws relating to responsible lending.

We believe that more could be done to ensure that the process of reporting a suspected breach is streamlined, simple and accessible for consumers, financial counsellors, microfinance workers and other calls for. Having access to an online form and a phone number to report such breaches would make the current sanction regime more efficient. Ensuring this process is rapid and responsive would be a strong disincentive against breaching the legislation, and would limit the financial and emotional damage that occurs.

Another suggested enhancement to make the sanctions regime more effective would be to ensure that sufficient resources to identify compliance risks and impose sanctions are allocated, especially in remote Australia. It is important to emphasise that in this sector ASIC's ability to investigate and enforce is crucial, as payday loan borrowers are highly unlikely to take action themselves or seek legal assistance.

In addition, as mentioned in question 2, Good Shepherd Microfinance strongly support the enforcement of mandatory positive credit reporting which would also be a powerful way to enforce the SACC provisions and identify breaches.

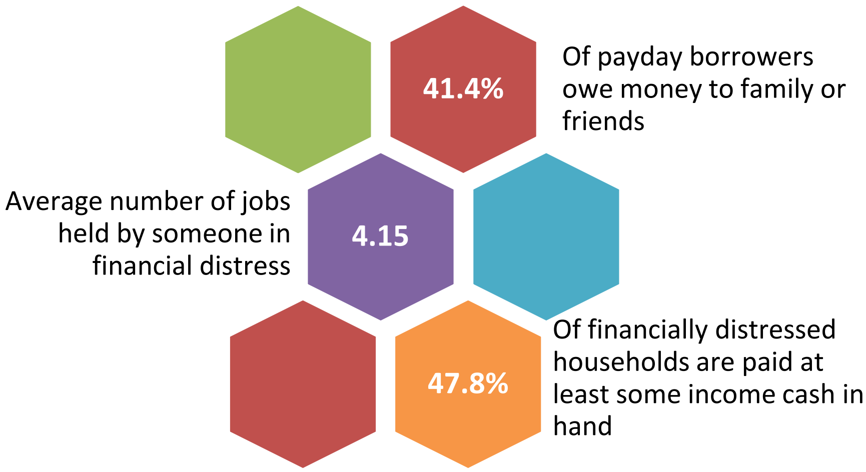
Question 4: Obligation to obtain and consider bank account statements

Good Shepherd Microfinance considers the requirement to obtain and consider bank account statements a necessary part of the process of determining suitability for small amounts of credit, particularly given the financial vulnerability of the client group that uses them.

Bank statements are an important tool for understanding the existence of other credit products, as well as realistically assessing the spending habits of these clients to be able make a decision regarding the affordability of a financial product. This could eventually include making further enquiries where there is conflicting information and enquiring about the existence of more than one bank account.

It should be noted that for many people who are experiencing financial stress, their income flows fluctuate. Therefore banking records do not necessarily provide a complete picture of the financial situation of a loan applicant. Research indicates that many people experiencing financial stress owe money to friends and family, are juggling multiple jobs, and are often receiving some form of income as "cash in hand"[12]. Therefore, checking bank statements should be the considered the **minimum** check to be undertaken during the application process for a small amount credit contract.

[12] Digital Financial Analytics, "The Stressed Financial Landscape: Payday lending, Credit repair and Advice", September 2015



Source: Digital Financial Analytics

The assessment of consumers' bank account statements combined with the information provided through mandatory positive credit reporting would considerably simplify the suitability assessment for a payday loan.

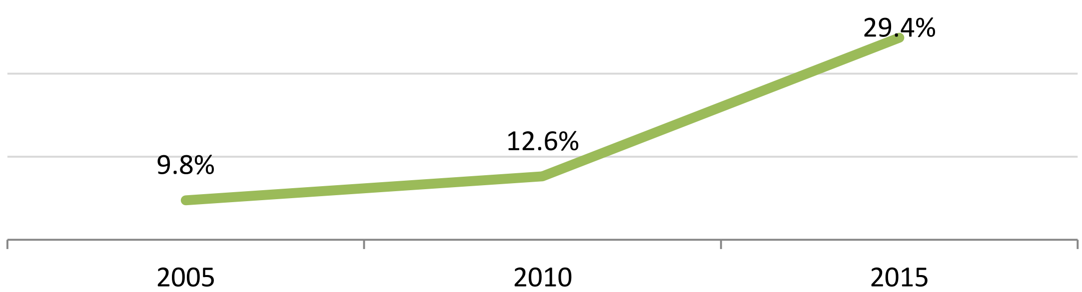
Good Shepherd Microfinance does not endorse the use of any personal information which is confidential and when used by a third party could be detrimental.

Question 5: Restrictions on repeat borrowing

Limiting debt spiral through repeat borrowing is crucial to protect consumers. Research shows that while the proportion of households with payday loans has increased slightly, the number of clients with more than one payday loan has significantly risen in the past five years *(see Figure 4)*.

Despite the current presumptions of unsuitability around repeat borrowing, ASIC's own research found that nearly two thirds of the loans were to consumers who had multiple loans or who had been in default within the last 90 days (ASIC March 2015).

Figure 4: Proportion of payday lending clients with more than one loan (%)



Source: Digital Financial Analytics

Good Shepherd Microfinance considers that the current triggers for presumption of unsuitability (one loan default or more than two loans in the past 90 days) are not adequately protecting consumers from repeat lending.

We call for outright limits, rather than presumptions of unsuitability. That is, a consumer with either one loan default or more than two loans in the past 90 days is ineligible for a SACC.

We also call for the inclusion of consumer leases in repeat and multiple lending provisions. Many of our clients have previously managed a combination of repeat payday loan and consumer lease repayments, and are presenting to our network overwhelmed by their debt burden with very little surplus income. As we will discuss later in this submission, consumer leases should be considered a small amount credit contract and regulated as such. This should include being considered a small amount credit contract under revised repeat borrowing provisions.

Good Shepherd Microfinance believes that mandatory credit reporting would simplify the decision-making process for SACC providers at a low cost per *consumer (see Question 10: National database for more details)* while reinforcing the degree of protection granted to consumers.

With regards to the use of recognised benchmarks to help assess vulnerability to debt cycles, we advise caution be taken. We believe that there are many other indicators of vulnerability that are not within the parameters of these benchmarks including: mental or physical illness; caring responsibilities; and gambling or other addictions.

Question 6: Ban on short-term credit contracts

As far as we are aware the ban on short-term credit contracts with a term of 15 days or less has been effective in preventing loans shorter than two weeks.

We support continuing this ban in the interest of preventing people from accessing loans with unreasonably short time frames.

Question 7: Warnings

Good Shepherd Microfinance supports consumer choice, however we do not believe that current warnings in retail outlets and on SACC websites are adequate. The warning statement should be signed off before contracting the SACC by the consumer either physically at the shop front or electronically (‘Yes, I have read the warning statement information’).

Recent research conducted by Good Shepherd Microfinance shows that less than 12% of the respondents intend to take out a payday loan once given alternative options[13].

With regards to warnings, Good Shepherd Microfinance calls for:

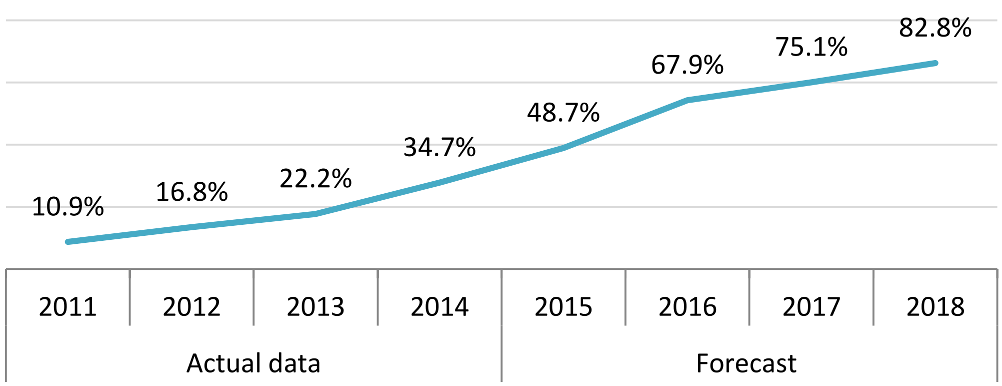
[13] Eccles, K., and McIlwain, G., Life Changing Chats: Impact of the financial conversation on StepUP applicants’ financial literacy and capability, Good Shepherd Microfinance, April 2015

- **Improved online warnings**
  Requiring providers to include a hyperlink to, rather than just a mention of, the MoneySmart website is strongly supported by Good Shepherd Microfinance, given the increase of new online lenders and the findings by ASIC that the inclusion of hyperlinks resulted in a significant spike in click throughs.

  However, to make it easier for online lenders to find the information they need, we recommend a link directly to financial counselling (www.debtselfhelp.org.au) and to no interest loans (www.nils.com.au).

  Also, independent research confirms the strong growth of the online payday lending sector below,[14] reinforcing the need for strong online regulation.

Figure 5: Percentage (%) of payday loans originating online



Source: Digital Financial Analytics

- **Individual warnings**
  It must be acknowledged that general warnings have a low impact on borrowers, as asserted by behavioural economics analysis. This research finds that warnings increase borrower's awareness of the cost of borrowing, but is unlikely to deter borrowers who are in financial crisis and think they have no other financial options[15]. The same research indicates that individualised warnings specific to the financial circumstances of the individual borrower are far more effective.

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[14] Digital Financial Analytics, "The Stressed Financial Landscape: Payday lending, Credit repair and Advice", October 2015

[15] Francis, Karen 'Rollover, Rollover: A Behavioural Law and Economics Analysis of the Payday-Loan Industry' (2010) 88 *Texas Law Review* 611, 622–3.

- **Responsible referrals**
  As we discuss in question 11, Good Shepherd Microfinance believes that responsible lenders should proactively promote financial inclusion through responsible referral of people who are not eligible under responsible lending provisions, to safe and affordable alternatives such as those offered by Good Shepherd Microfinance and our 247 community providers.

  We would support this to become a legal obligation under revised regulations following this review. The implementation of responsible referrals could be part of the development of broader Financial Inclusion Actions Plans, which we would take to be an important sign of industry commitment.

Question 8: Caps on costs

With regards to the cap on cost provisions in the Credit Act, Good Shepherd Microfinance calls for:

- **Maintaining the interest rate cap**
  In our view the current caps have contributed to provide protection to consumers when thoroughly implemented while allowing the SACC industry to operate. Good Shepherd Microfinance considers that they should be maintained as such:
    - Establishment fees at 20 per cent of the credit amount.
    - Monthly fees at 4 per cent of the credit amount.
    - The total fees payable in default to twice the credit amount.

- **Regulating direct debit fees**
  Excluding direct debit fees from the cost cap has the potential to considerably increase the cost of servicing a payday loan, which is likely to be charged back to the consumers. The current feedback from our provider network is that many of our clients get charged up to $100 in direct debit dishonour payment from both their bank and the payday lender for only one instalment.

  These charges do not reflect the actual cost of this service, and in the future the fees charged should only reflect the actual costs to the provider rather than being a potential loophole for taking advantage of the most vulnerable consumers. SACC providers should follow the lead of ANZ which introduced lower fees for low-income earners (from $35 to $10 for a given debit transaction).

  In addition, payday lenders must be obliged to offer consumers other options for loan repayment. When a client does opt to use direct debit they should be protected by a limit to the number of times a given direct debit authority can be used when attempts from their account fail. We believe this limit should be once.

Question 9: Protection for Centrelink consumers

Having effective protection for the people who can least afford loan repayments is essential, particularly considering the high proportion of payday lending clients that receive income from

Centrelink. For example, research by Credit Suisse that reported that 60 per cent of Money3's consumers are Centrelink recipients[16].

With regards to specifically protecting consumers who receive a low income, Good Shepherd Microfinance calls for:

- **Extending protections to all consumers on low income**
  Good Shepherd Microfinance considers that the purpose of a Protected Earnings Amount (PEA) provision is to protect those consumers who would be the most at risk of being harmed by a short-term credit contract. In our view, this means protecting all consumers who would struggle to make loan repayments, and extending this provisions to include other people with on low income[17], not just Centrelink clients.

- **Simplifying and enhancing the protections**
  The current protections for Centrelink consumers are not as effective as they could be as reported by our provider network. We believe that for this group of clients, it is highly unlikely that entering into a payday loan or consumer lease will provide financial benefit. Simplification of this provision could include prohibiting loans to people who receive 50 per cent or more of their income from Centrelink.

- **Responsible referral obligations**
  See response to Question 11.

Question 10: National database

Good Shepherd Microfinance supports the introduction of mandatory positive credit reporting to ensure that payday lenders are better able to make responsible lending decisions. We believe the simplest and most effective way to do this is through Comprehensive Credit Reporting (CCR), however would support the establishment of a database if it is an outcome of this review. One key benefit of adopting CCR would be that it would be embedded in the mainstream financial environment and would not duplicate resources. It would considerably help SACC providers assessing the suitability of a prospective customer more efficiently and accurately than only taking bank statements into account.

Our CEO, Adam Mooney, has significant experience in this area and had an important role in advocating for the establishment of the Cambodia Credit Bureau which was set up in 2012. It is a joint venture between Veda Advantage, Australia, the Cambodian Microfinance Association and the Association of Banks in Cambodia. The aim was to provide financial and credit institutions with the information required to mitigate credit risk and over-indebtedness, and provide a clear and transparent credit reporting infrastructure at a country-level for long-term sustainable economic development for all Cambodians. This has been done by centralising loan information from

[16] McCullagh, Sandra, and Parks, Chris, "Risks in payday lending and goods rental", Credit Suisse, March 2015
[17] As defined by STINMOD (NATSEM)

Cambodia's banks and microfinance institutions (MFIs). In less than six months, it had consolidated credit information from 90 per cent of banks and MFIs according to the Association of Banks in Cambodia. It has significantly improved loan processing times and provided protection from over-indebtedness. The credit bureau processes positive and negative data on individuals and businesses.

Should mandatory credit reporting be the tool to enhance the capacity of SACC providers to meet their responsible lending obligations, Good Shepherd Microfinance recommends the following elements to be should be taken into consideration:

- **Compulsory reporting should include consumer leases**
  As part of this submission we are calling for greater consistency in the regulatory requirements that apply to SACCs and consumer leases. We have witnessed that the most difficult cases of financial hardship are caused by combination of commitment to both types of small amount credit contracts. Consequently, we believe that multiple loan limits should include consumer leases, and that consumer leases should therefore be compulsorily reported.

- **Complementary to other regulation**
  The introduction of a compulsory reporting should be complementary to existing responsible lending obligations and privacy laws, and should not be used as the only tool by lenders to assess suitability. This should not prevail over any other responsible lending obligations and assessments of suitability, and should be required to be used for every customer.

- **Inclusions and timeliness**
  Compulsory credit reporting should ideally be updated in real time and include new account openings and significant changes to existing accounts, such as overdue payments, rectified and settled accounts, rollovers and credit extensions.

- **Client access**
  For both options it is crucial that the privacy of consumer data is protected and that consumers should be able to easily challenge and correct false information on credit reports.

- **Impact on people with low incomes**
  CCR is beneficial as it allows credit providers to better comply with responsible lending obligations, integrates consumer financial information in one system, and allows consumers better access to their own credit record.

  As highlighted by the Consumer Action Law Centre, Financial Rights Legal Centre and Financial Counselling Australia in their submission regarding Principles of Reciprocity & Data Exchange (PRDE), CCR may cause consumers living on low incomes to be confronted to higher credit costs, not just within the payday lending sector but potentially for other financial products including utilities, telecommunications, credit cards and other mainstream financial products.

  Furthermore, privacy legislation must be central to the introduction of mandatory positive credit reporting.

These are legitimate concerns and we believe that any changes in regulation must ensure there is no negative impact on consumers, including in regards to the privacy of consumer information and the potential increase in costs for other financial services.

Question 11: Additional provisions for SACCs

Good Shepherd Microfinance supports the addition of the following provisions:

- **Responsible referrals**
  The addition of compulsory responsible referrals is a key argument of our submission.

  Good Shepherd Microfinance calls for responsible referrals of people who may be eligible for a microfinance product. This includes those who are unsuitable for a SACC (as defined in the provisions) to safe and affordable alternatives such as those offered by Good Shepherd Microfinance through our national network. In practice this means that we support the inclusion of a provision that requires payday lenders and consumer lease companies to make people aware of alternative financial options or financial counselling services.

- **Responsible marketing**
  In our view, responsible marketing rules must be enforced such as more prominent warnings on SACC advertisements. Also, SACC lenders should not be able to send unsolicited offers to consumers.

- **Financial Inclusion Action Plans**
  The implementation of responsible referrals could be part of the development of broader Financial Inclusion Actions Plans, which we would take to be an important sign of industry commitment.

  Good Shepherd Microfinance is currently working in partnership with the Department of Social Services, Ernst & Young, and the Centre for Social Impact on the co-creation of Australia's first Financial Inclusion Action Plan program. This program will result in community, government, business and academia working together on actions that realise economic mobility and financial resilience for people experiencing financial exclusion and hardship. The long-term outcome of this program will see a significant number of people who are currently financially excluded (over three million in Australia) in control of their finances and with improved capability and confidence, by interacting constructively with financial services providers and other organisations.

  To date 35 prominent organisations have already expressed their willingness to be part of a national Financial Inclusion Action Plan program, making tangible commitments as individual organisations towards building the financial resilience of their consumers, staff and the broader communities in which they operate.

Question 12: Anti-avoidance provisions

Good Shepherd Microfinance supports broad anti-avoidance provisions being included in the regulation as call ford for by our partners at the Consumer Action Law Centre. The current provisions leave loopholes for avoidance and in our view, ASIC has limited resources to be able to be able to respond rapidly.

In addition to this it is equally as important that the processes for reporting avoidance schemes to the regulator be simple and clear for consumers, calls for, financial counselors and microfinance workers. As notified in previous submissions, for credit amounts as small as $100, it is unlikely that a consumer will have the resources or see value in taking legal action. It should be easy for people to report suspected breaches of the legislation, with confidence that the regulator will take action quickly.

Question 13: Documentation of suitability assessments

Good Shepherd Microfinance believes it is necessary for compliance, transparency and enforcement that assessments of suitability are accurately documented and that this documentation is required to be retained by the lender for a specified period.

Responsible lending regulations should prohibit payday lenders from providing credit to consumers who cannot afford it or where the repayments would cause substantial hardship. However as ASIC's investigation highlighted earlier this year, there are many instances where the presumptions for unsuitability are triggered but there is no further documentation about why loan applications had progressed.

CONSUMER LEASES

Question 14: Comparable consumer leases

Good Shepherd Microfinance considers that the consumer lease market offers credit-in-disguise, and strongly calls for greater consistency and regulation. Our provider network is overwhelmed by cases of people financially excluded and on low income who have experienced the predatory practices of consumer lease companies which lead them to be in financial hardship. Our provider network advises that the number of clients affected has been growing rapidly over the last five years.

There is also evidence that remote Aboriginal communities have been specifically targeted. In recent years ASIC has investigated and taken action against unscrupulous business practices of consumer lease companies visiting remote communities to sell expensive contracts to consumers. This includes in remote South Australia[18], regional NSW[19], regional Victoria[20], far north Queensland[21] and the Northern Territory[22].

This supports our experience delivering NILS in remote Australia through a remote pilot program in 2012 – 2015. The partner organisations we worked with through this pilot reported to us that clients had very high levels of existing debt from consumer leases and payday loans, for example one client who had repaid approximately $15,000 for a kitchen table and chair set. Existing debt levels in communities around Alice Springs were far higher than Catholicare (our partner in that region) had anticipated, to the extent that they opted out of the pilot program and instead referred indebted clients to legal assistance.

Case Study

Our prospective client, an aged pensioner with no assets, was recently granted the custody of an underage relative due to domestic violence and drug abuse. The pensioner contracted four consumer leases to get the items needed to accommodate the relative. The total cost for these items amounted to 16,000AUD or more than the pensioner has ever been able to save during a lifetime. Because of this high debt ratio, we were unable to provide this prospective client with a safe, fair and affordable loan.

Another prospective client, also an aged pensioner with no assets contracted six consumer leases, including one for a mobile phone with a $287 fortnightly installment and a total cost of $2950 – only for the phone. The pensioner did not have any other option because of a negative credit rating which prohibited the possibility to have access to a regular contract with a telecommunication company.

[18] http://asic.gov.au/about-asic/media-centre/find-a-media-release/2013-releases/13-288mr-asic-action-sees-indigenous-consumers-released-from-contracts/

[19] http://asic.gov.au/about-asic/media-centre/find-a-media-release/2013-releases/13-207mr-asic-hits-ray-rentals-with-a-four-year-credit-ban/

[20] http://asic.gov.au/about-asic/media-centre/find-a-media-release/2013-releases/13-235mr-asic-takes-action-against-rental-companys-franchisees/

[21] http://asic.gov.au/about-asic/media-centre/find-a-media-release/2013-releases/13-228mr-asic-commences-legal-action-against-cairns-based-lender-and-broker/

[22] http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-141mr-asic-accepts-eu-from-amazing-rentals/

In particular, Good Shepherd Microfinance calls for:

- **Comparable pricing to SACC provisions**
  Many consumer leases are very costly ($2950 for a mobile phone as presented in the case study) and clearly designed to take advantage of consumers who think they have no other option. As ASIC research found, the cost of consumer leases can be as high as 884 per cent. We believe that stronger regulation and resourcing of safer alternatives is an essential part of protecting consumers.

- **The removal of Centrepay direct payment from consumer leases**
  Recent research published by RMIT University and ASIC highlights that some consumer leases companies have targeted financially vulnerable consumers who have limited alternative forms of finance. This research indicates a clear link between the higher prices charged to Centrelink consumers, the booming profits reported by these businesses and the fact that risk is mitigated by Centrepay arrangements.

  Centrepay is also used by some businesses to secure consumer confidence, suggesting that their businesses are "government endorsed" such as some mobile trucks in remote communities.

  We are advocating that Centrepay cannot be used for consumer leases, not that people who receive Centrelink payments be banned from taking consumer leases.

  We are instead calling for consumer lease companies to be required to make responsible suitability assessments, including ability to repay, for each consumer based on their personal financial situation. This includes a more thorough assessment of the risk associated with the contract, rather than having that risk mitigated by Centrepay payments.

- **Responsible referrals**
  As we have emphasised throughout this submission, we would welcome the inclusion of a regulation that requires consumer lease companies to responsibly refer consumers on low incomes to low or no cost finance initiatives. This could include online referrals through their websites, as well as having information available in store for eligible consumers and staff trained to refer appropriately.

- **Regulation of aggressive sales tactics**
  In preparing this submission we have been made aware of a number of aggressive sales tactics that should be considered in this review. This includes an example of a consumer inquiring about the cost of lease from a local consumer lease company and the salesperson promptly arriving at the client's house with the product and paperwork ready to go.

- **Clear and simple contract terms**
  Consumers often find the legal contracts for consumer leases unclear and confusing, particularly in regards to their rights and responsibilities at the end of the lease period. This

is particularly so for contracts with a “rent, try, buy” structure where a consumer is given the option to purchase a similar good at the end of a lease.

To improve clarity, consumer lease contracts should state in plain language the process for finalising a lease as well as the possibilities for ownership. This should be part of a simple summary page that includes the overall cost of the lease and details about all possible fees.

At the end of the lease, consumers should be alerted by the consumer lease company in order to cease processing payments and to proactively arrange for ownership of the item to be transferred to the consumer or to be returned to the company without having to physically come to the shopfront and pay the $1 fee.

Case Study

Our client used to work in the community sector but after an accident she had to take early retirement from work. She contracted a consumer lease for a vacuum for $39 a fortnight for 18 months, as stated on her statement. Little did she know after a year of making payments that the barrel and the vacuum were sold separately which extended the lease to 36 months unlike what was stated on her statement. Two options were then offered to her, she could either pay an additional $991 or continue paying for another 18 months and then, buy the vacuum for $1.

- **Transparent advertising and responsible marketing**
  Consumer lease companies currently advertise a minimum price that changes following an inquiry making it impossible for a consumer to shop around without calling each retailer in question and proceeding quite far into an application process. This is a disincentive to shop around. This was made clear by ASIC[23], who concluded that consumer lease companies were charging the most to the people who could least afford it. In other sectors advertised prices should accurately reflect the cost to consumer, and the consumer lease sector is no different and should not be exempted.

  Responsible marketing should also be applied to consumer leases similarly to the existing provisions for banks not to make unsolicited credit card limit increase offers, unless consumers had consented to receive them.

- **Debt collection and item collection**
  Consumers should be protected from intimidation in their home. We are aware of examples where consumer lease companies that use home visits for debt collection or item collection by consumer lease providers and have harassed and intimidated consumers at their place of residence.

[23] Australian Securities and Investments Commission, ‘Report 447: Cost of consumer leases for household goods’, September 2015

At the very least the following examples of leases should be required to comply with SACC provisions:

- **Consumer leases that continue charging consumers beyond the term of the lease.** It is common for consumers to misunderstand their options or lose track of the final repayment date and be overcharged or trapped in a new contractual period.
- **Consumer leases that offer a $1 buy option.** In addition, the companies that offer these must be obliged to finalise leases when they expire and contact the consumer to arrange pickup or transfer ownership of the goods.

Question 15: Applying SACC provisions to comparable consumer leases

With regards to applying the SACC provisions to comparable consumer leases, Good Shepherd Microfinance makes the following points:

- **Cap on costs**
  Please see response to question 16.

- **Clear disclosure of contract terms**
  Consumer leases must be more transparent so that consumers are able to clearly understand the total cost of the contract they are signing. This should include: the overall cost of the lease, the retail price of the leased good, the cost of credit, the cost of credit and all other associated costs. Consumer lease contracts should also include information about how changing the lease terms (e.g. duration) will affect the total cost, and the cost of fees for late payment. None of this information is currently available to consumers at the time of entering the lease which prevents consumers from making an informed decision.

- **Suitability assessments**
  Consumer lease companies should be required to perform the same checks to determine suitability as SACC providers, including obtaining bank statements for the past 90 days and presuming that the contract is unsuitable based on whether they are either in default on a credit contract or have had two or more contracts in the past 90 days. If this review alters these provisions (as we are advocating they should), regulations relating to consumers leases should be altered too.

- **Centrelink clients**
  Good Shepherd Microfinance strongly supports the adoption of specific provisions to protect Centrelink clients similarly to those existing for SACCs. Protecting those clients from being charged higher rates, as we have emphasised previously and capping the total allowable cost of consumer leases are crucial to avoid the most vulnerable falling into a debt spiral.

  An obligation should be in place to refer to organisations offering safe and affordable options.

  A significant number of our loan declines to Centrelink clients are due to their over indebtedness or their lack of surplus income, and ownership of several consumer leases.

- **Multiple credit products**
  The multiple loan conditions that are included in the SACC provisions should also include consumer leases to avoid consumers being overwhelmed by compounding debt. Current regulations specify that consumers can have two concurrent payday loans before triggering presumptions of suitability. To provide adequate protection to consumers on low income, we believe the presumption of suitability should include consumer leases. The current rules have no limit on the number of consumer leases that can be entered into at one time, and our provider network regularly sees clients with a combination of six or more credit contracts (who are also often Centrelink clients).

- **Warnings**
  Additionally, consumer lease companies should be required to use the same warnings such as those required to be used by payday lenders, including hyperlinks to the MoneySmart website, financial counselling (www.debtselfhelp.org.au) for all companies with an online presence.

  These warnings should also include a reference to the existence of alternative options for clients on low-income, such as those offered by Good Shepherd Microfinance.

- **Anti-avoidance provisions**
  Consumer lease companies are likely to seek ways to compensate lost profits through avoidance schemes in finding loopholes in any new regulation that is enacted. Broad anti-avoidance provisions should extend to consumer leases for this reason.

Question 16: Cap on costs for consumer leases

In regard to capping the costs of consumer leases, Good Shepherd Microfinance supports the following elements to be key points:

- **Cash price**
  The cash price of the good should be determined by the recommended retail price (RRP) of the model of the good that is being leased. Regulating the cash price for reconditioned models may be more difficult, but should be addressed in updated legislation as it may be a potential loophole for exploitation.

- **Interest rate and overall cost**
  In our view, the overall cost of a consumer lease should equate with the cost of obtaining a SACC.

- **Allowable fees**
  As with SACC there should be strong prescription in the types of fees that can be included, including in regards to defaulting and direct debits. Capping the total amount that can be charged to 200 per cent of the recommended retail price of the item is one way of doing this. Additionally, ASIC should be resourced to respond rapidly to reports of avoidance schemes in regards to additional fees in the period following any changes to the regulations governing consumer leases.

- **Maximum lease term**
  To protect consumers the allowable lease term should be limited, as the longer a consumer lease is, the higher the cost to the consumer. This is clear from ASIC's report on consumer leases released in September 2015[24]. We are aware of many consumer lease consumers that have consumer leases for as long as four years. We call for a maximum lease term of 18 months.

[24] Australian Securities and Investments Commission, 'Report 447: Cost of consumer leases for household goods', September 2015

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