

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

Legal Aid NSW submission to the  
Senate Economic Legislation  
Committee

*26 February 2020*

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**Legal Aid**   
NEW SOUTH WALES

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## About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 24 offices and 221 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with LawAccess NSW, community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 29 Women's Domestic Violence Court Advocacy Services.

The Legal Aid NSW Civil Law Division focuses on legal problems that impact most on disadvantaged communities, such as credit, debt, housing, employment, social security and access to essential social services. The Civil Law Service for Aboriginal Communities provides legal advice and assistance to Aboriginal people and communities in regional and remote communities in NSW.

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## Introduction

Legal Aid NSW welcomes the opportunity to provide a submission to the Senate Economic Legislation Committee's Inquiry into the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2) (the **Bill**).

Legal Aid NSW supports the consumer protection improvements proposed in the Bill. This submission proposes amendments to the Bill to strengthen protections, particularly for disadvantaged and vulnerable consumers.<sup>1</sup>

Given the significant lapse in time since the inquiry which led to these reforms took place, Legal Aid NSW recommends that Parliament act swiftly in passing the Bill to prevent further detriment to consumers of Small Amount Credit Contracts and Consumer Leases.<sup>2</sup>

### 1. Anti-avoidance measures – Clause 38

Legal Aid NSW supports the broad anti-avoidance protections proposed at clause 38 of the Bill. These protections are essential to prevent credit providers from circumventing the rules and protections provided by the *National Consumer Credit Protection Act 2009* (Cth).

However, we are concerned that the Bill does not address the ongoing artificial distinction between 'sale by instalment contracts' and consumer leases, which was identified as problematic in the *Final Report of the Independent Review of Small Amount Credit Contracts*.<sup>3</sup>

#### *Sale by instalment contracts and consumer leases*

Legal Aid NSW is aware of several providers that exploit the distinction between consumer leases and sale by insurance contracts to circumvent the 48% interest cap that applies to sale by instalment contracts.<sup>4</sup> In some cases, providers require the consumer to nominate a person to give the goods to at the end of the contract, to construct the 'sale by instalment' contract as a consumer lease.

David's case study below demonstrates the injustice and confusion caused by contract terms designed to avoid the 48% interest cap by artificially representing a sale by instalment contract as a consumer lease. We consider that this conduct should be

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<sup>1</sup> Senate Economics References Committee, *Credit and Financial Services Targeted at Australians at Risk of Financial Hardship* (2019) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Creditfinancialservices/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Creditfinancialservices/Report)>.

<sup>2</sup> See also, Legal Aid NSW submission to The Treasury, *Review of small amount credit contract laws* (October 2015), Legal Aid NSW submission to NSW Fair Trading, *Review of Small amount Credit Contract Laws Interim Report*, (February 2016), Legal Aid NSW Response to Financial Systems and Services Division, The Treasury, *Review of Small Amount Credit Contract Laws Final Report*, (May 2016).

<sup>3</sup> Treasury, *Final Report of the Independent Review of Small Amount Credit Contracts*, (2016) <https://treasury.gov.au/consultation/review-of-small-amount-credit-contracts-final-report>

<sup>4</sup> *National Consumer Credit Protection Act 2009* (Cth) Schedule 1, National Credit Code, s 32A.

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prevented by including sale by instalment contracts within clause 323C (4)(a) of the Bill or within a legislative instrument.

**Case Study:**

David is an Aboriginal man in his fifties who receives Disability Support Pension. David attended school until year 8 and describes his ability to read and understand complex documents as limited.

David approached his local 'consumer lease provider' after his mobile phone stopped working. David remembers that the sales representative took copies of his Centrelink statement, asked him some brief questions and told him that he would pay \$78 from his pension each fortnight for the new phone. David recalls the sales representative saying something about them giving the phone to his partner, but that he "*shouldn't worry about that.*" The sales representative then had David sign and initial several documents.

David was confused about the 'consumer lease provider' giving the phone to his partner and did not ask more about the contract because he found the entire process confusing.

Under the lease, David was required to pay \$4,052 over 2 years for a phone with a retail price of \$822.50. This equates to interest charges of 244.25% per annum.

Until he approached Legal Aid NSW for advice, David thought he was repaying the cost of the phone by instalments and did not understand the implication of the proposed change in ownership at the end of the contract on his consumer rights.

Furthermore, the 'lease' did not meet David's requirements and objectives – to purchase a replacement mobile phone.

## 2. Cap on fees and charges for consumer leases – Clause 58

The Bill introduces a cap on the total payments that can be made under a consumer lease. The proposed permitted cap for consumer leases for a fixed term is the sum of the base price of the goods hired under the lease and 0.04 multiplied by the base price for each whole month of the consumer lease, to a maximum of 48 months.

Legal Aid NSW supports the introduction of a cap on the cost of consumer leases. However, we are concerned that the proposed design introduces further complexity for all parties in working out the permitted cap. Adopting a cap based on the 48% annual percentage rate would be the most simple and efficient model for consumers and lessors to understand and exercise their rights and obligations.

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*Permitted delivery fee – proposed s 175AA(8)*

We do not consider that lessors should be permitted to charge a separate fee for the reasonable cost of delivery of the goods to the lessee. The proposal relies on lessors charging fair amounts for delivery where the lessee is unable to determine what is reasonable in the circumstances. This is particularly relevant in remote and regional areas, where lessors often deliver goods to multiple consumers living in the same town in a single delivery.

We are concerned that the permitted delivery fee may be used by lessors as a cost-shifting mechanism and a means to disguise the true cost of credit. Legal Aid NSW considers that if delivery fees can be charged, they should be constrained by legislative instrument, as is the case with installation fees.

### 3. Canvassing of consumer leases at home – Clause 62

Legal Aid NSW regularly sees clients who enter unsolicited consumer lease contracts while visiting family or friends. This is particularly common for clients living in remote Aboriginal communities. To ensure that the Bill is consistent with its aims, we recommend that proposed section 179VA(1) of the Bill be amended to read:

“A lessor or a person who provides credit assistance must not visit a place of residence for the purpose of inducing a person who resides there, **or other person at or visiting the premises**, to apply for or obtain a consumer lease for household goods, except by prior arrangement by the lessor or person who provides credit assistance with a person who resides there.”