



## **Fair Trading (Small Amount Credit Contracts and Consumer Leases) Amendment Bill 2020 (South Australia)**

Prepared as a submission to the South Australian Government

**November 2020**

For more information, please contact:

**Major Paul Hateley**  
Head of Government Relations  
The Salvation Army Australia

**Address:** 2-4 Brisbane Avenue, Barton ACT 2600  
**Mobile:** 0413 830 201  
**Email:** [government.relations@salvationarmy.org.au](mailto:government.relations@salvationarmy.org.au)

**Table of Contents**

Statement of Recognition ..... 1

Introduction ..... 2

The Proposed Bill..... 3

Interaction with the Commonwealth Act ..... 5

Small Amount Credit Contracts ..... 6

Consumer Leases..... 8

Community Impact .....10

Conclusion .....111

About The Salvation Army .....122

## Statement of Recognition

The Salvation Army acknowledges the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to this land and the ongoing living cultures of Aboriginal and Torres Strait Islander peoples across Australia.



## Introduction

The Salvation Army welcomes the opportunity to make this submission on the Fair Trading (Small Amount Credit Contracts and Consumer Leases) Amendment Bill 2020 (**the Bill**).

The Salvation Army is one of Australia's largest providers of social services and programs, including our work with people in, and at risk of, financial hardship. The Salvation Army provides a wide range of services and support to people across Australia as part of realising our vision and living our values.

**The Salvation Army supports the Bill and recommends that it be passed.**



## The Proposed Bill

The Salvation Army understands the proposed Bill would amend the regulatory framework for small amount credit contracts (commonly known as payday loans) and consumer leases to provide greater consumer protections.

The Bill is intended to apply in addition to, and without detracting from, the Commonwealth *National Consumer Credit Protection Act 2009* or the National Credit Code.

The Bill seeks to:

- Ban unsolicited small amount credit contract invitations and door-to-door consumer lease sales.
- Introduce a right for consumers to recover any money paid under an unsolicited loan or lease agreement and for consumer leases, the option to keep the good for the base price.
- Ban early termination fees for small amount credit contracts.
- Enforce equal amount repayments at equal intervals across the life of small amount credit contract loans.
- Set a cap on lease payments.
- Restrict loan and lease payments to 10 per cent of a consumer's net income.
- Ensure lessors disclose the base price of the good and the difference between the total repayments and the base price.
- Ensure lessors and those who provide credit assistance obtain and consider 90 days of bank statements before entering into a lease with a consumer, and record in writing the assessments of a consumer's suitability for a loan.
- Restrict the way account statements provided in connection with a payday loan or consumer lease may be used or disclosed.



## The Salvation Army's Moneycare financial counselling service

Moneycare is The Salvation Army's financial wellbeing and capability service. It has been operating for over 30 years in Australia, delivering a range of free and confidential services such as financial counselling, financial capability support, financial literacy and capability workshops, and microfinance. These services support people in financial hardship by addressing their immediate crisis situation and help them build long-term capabilities and resilience in managing financial hardship.

Moneycare services build on The Salvation Army values of empathy and dignity, with an emphasis on building trusting relationships with people who are accessing our services. Since 1990, Moneycare has helped thousands of people experiencing, or at risk of experiencing, financial and social exclusion.

Research has shown the value of Moneycare services. In 2012 Swinburne University of Technology found that The Salvation Army's financial counselling services had a positive impact in debt resolution, wellbeing, financial capability and advocacy. 94 per cent of those surveyed wishing that that they had sought Moneycare's help sooner.<sup>1</sup>

Moneycare is focused on evidence-based strategies and high-quality service delivery. In 2016 outcomes measurement tools were developed and a pilot was conducted in the 2017-18 financial year. In 2019 outcomes measurement was embedded into our case work processes.

In the 2019-20 financial year, 13,757 individuals were supported by Moneycare with over 52,000 sessions held throughout the year. A total of 6,371 individuals participated in the outcomes measurement survey nationally. The top five main presenting issues at intake were debt, money management, physical or mental health, employment issues, and gambling or alcohol and other drug addiction.

The survey revealed statistically significant positive changes in clients' financial resilience through their engagement with Moneycare. Significant positive changes were also made in clients' reported debt levels and life satisfaction, as well as improvement in mental health and levels of personal wellbeing. Specifically, we found:

- 53 per cent of clients had no difficulty meeting necessary living expenses after engagement with Moneycare, an increase from 16 per cent at intake.
- 67 per cent of clients had no problems with debt after engagement with Moneycare, an increase from 16 per cent at intake.
- 69 per cent of clients reported population-comparable normal level of satisfaction with life after engagement with Moneycare, an increase from 10 per cent at intake.
- 79 per cent of clients reported no probable mental illness at exit, an increase from 55 per cent at intake.

<sup>1</sup> Brackertz, N. (2012). *I wish I'd known sooner! The impact of financial counselling on debt resolution and personal wellbeing*. The Salvation Army. <https://researchbank.swinburne.edu.au/file/d9786ab2-4879-4344-9533-e7f04932a438/1/PDF%20%28Published%20version%29.pdf>



## Interaction with the Commonwealth Act

It is unclear how the Bill would interact with the proposed changes to the *National Consumer Credit Protection Act 2009 (the Commonwealth Act)* as announced by the Commonwealth Government on 25 September 2020.

These proposed changes include:

- Restrictions on the value of loan and lease repayments for people who receive income from Centrelink.
  - A person who receives 50 per cent or more of their net income from Centrelink will be prevented from spending more than 20 per cent of their net income to Small Amount Credit Contracts (**SACC**) and consumer lease repayments, with no more than 10 per cent of this being allocated toward SACC repayments.
  - For a person who receives less than 50 per cent of their net income from Centrelink, repayments on either a SACC or consumer lease cannot be more than 20 per cent of their net income (40 per cent in total).
- Introducing a cap on costs and fees for consumer leases, limiting these to no more than the sum of the price of the goods hired, plus an establishment fee of no more than 20 per cent of the good's price.

The Fair Trading (Small Amount Credit Contracts and Consumer Leases) Amendment Bill 2020 seeks to restrict consumer lease repayments to a maximum of 10 per cent of a person's net income.

Additionally, the precise obligations of licensees in complying with both the Commonwealth and state laws would benefit from continued examination. Section 45L(1)(a) requires a licensee to provide written evidence that a lease is compliant with the terms of sections 128 and 129 of the Commonwealth Act. The Salvation Army is supportive of the need for the assessment of suitability for loans, however there may be scope to clarify how the negative obligations set out in section 128 of the Commonwealth Act, and section 45L will be complied with in practice.

### Recommendations

- That the South Australian Government work with the Commonwealth Government to ensure that the intent of the Bill is not negated by changes to the Commonwealth Act.
- That the South Australian Government provide guidance to licensees to ensure all obligations under the Bill can be complied with.

## Small Amount Credit Contracts

The amendments bear strong similarities to the Commonwealth National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019, which was also supported by The Salvation Army.

The Salvation Army has extensive experience working with people seeking financial counselling and capability services, primarily motivated by changes to their financial circumstances. To combat financial disadvantage, The Salvation Army operates Moneycare, a program that offers free financial counselling to those in need. Through Moneycare, qualified financial counsellors provide crisis intervention and financial resilience services.

Our experience shows that there is a significant correlation between engagement with payday lenders and consumer lease providers, and individuals on lower incomes, social security benefits and those experiencing poverty.

Our data<sup>2</sup> shows that people accessing Moneycare typically:

- Spent less on necessities compared to Australian households, specifically on food, transport and health. This likely reflects a prioritisation on payments for unavoidable costs such as housing and utilities, resulting in people not being able to afford things that average Australians normally enjoy, such as eating out, owning a car or having private health insurance.
- Had stagnant incomes, and housing costs were a continuous source of stress. People accessing Moneycare generally spent 35 per cent of their income on housing, compared to 20 per cent in average Australian households.
- Had a much higher incidence of housing stress, with 64 per cent experiencing housing stress in the 2017-18 financial year. People in the private rental market were most at risk of housing stress. In 2017-18, 74 per cent of survey participants in private rental properties experienced housing stress, compared to other housing types: owners with mortgage (61 per cent), social housing (42 per cent), and rooming/boarding house (68 per cent).

We know, from on-the-ground experience, that people in crisis experience cognitive overload, which impacts their decision making. Their focus, understandably, is on meeting their most pressing and immediate needs, often to the detriment of their long-term financial health.

---

<sup>2</sup> The Salvation Army Australia. (2018). *Moneycare: 10 Years On: A decade of challenge and resilience*. <https://www.salvationarmy.org.au/subscribe/sites/auessalvos/files/about-us/TSA-moneycare-10-year-analysis-report.pdf>





Quick access to the finance they need to get through the week is particularly appealing for someone who needs to find a way to:

- Pay the rent to avoid eviction.
- Pay their next car loan instalment to avoid repossession and continue to get to work.
- Pay a higher-than-expected electricity bill to keep the lights on.

Sufficiently robust regulatory controls on predatory lending prevents people in this situation from being sold a 'quick fix' that is ultimately more harmful in the long-term.

The Bill will have a positive impact on people experiencing hardship and financial stress as it seeks to strengthen controls around lending practices, particularly the practices of credit providers regarding credit cards, payday loans and consumer leases.

### Tim's Story

First referred to The Salvation Army's Moneycare service team six months ago, Tim\* was drowning under a number of payday and other quick loan repayment obligations.

Coming from a background of generational disadvantage, Tim is on a part-disability pension due to a range of health issues. Tim's partner is also on a disability pension and was recently hospitalised. As a result of COVID-19 closures, Tim lost the few hours of weekly work he had driving a shuttle bus for a club. Tim sought out a loan to cover the basic costs of living, but was bombarded with text messages from lenders offering additional loans, which was very tempting considering his already tight financial situations.

Tim's Moneycare financial counsellor was able to guide him to take charge of his finances. She also advocated with lenders on Tim's behalf. Eventually, with the help of his financial counsellor Tim was able to get the interest waived on several loans and negotiated repayment options with others.

A major concern for his financial counsellor was how Tim kept getting payday loans when his circumstances should have triggered the lender's obligations under 'responsible lending' practices. The loans were extremely easy to apply for and get, but the implications would have lasted for a very long time.

For those, like Tim, who are deep in a debt spiral the sense of fear and helplessness can be overwhelming, putting those who are already in financial difficulty into a debt spiral. Usually people who apply for these loans have exhausted all other resources, but the reality is that it is often a deep trap, and that easy fix can soon become a deep, deep hole of debt that only magnifies existing problems.

\* Name has been changed

## Consumer Leases

As with pay day loans, consumer leases present an opportunity for those with limited incomes to access household products at what seems like a highly affordable repayment rate. However, the existing loose restrictions on this form of finance can act as an entry into an unmanageable level of debt.

The Bill seeks to keep repayments manageable through a combination of repayment and fee caps, as well as a requirement for preliminary assessments. This will act as a check to prevent people finding themselves in unsustainable leases.

The Bill places a cap upon the proportion of a person's income which can be diverted towards all leases with a single licensee to 10 per cent of the persons' income, including fees. Our understanding would be that a person may still find themselves in a position to enter into leases with multiple providers. The Bill also creates a cap for fees, including interest and delivery fees, which minimises bill shock when a person with a fixed income comes to make repayments.

The Bill's other requirements of providing upfront information about the total cost of the lease, preventing canvassing for lease contracts, and requiring additional assessments for suitability prior to the lease present significant safeguards for vulnerable people from being persuaded into unsuitable and unmanageable lease agreements.

### Janet's Story

When 52-year old Janet\* contacted a homewares rental company to organise a small television for her bedroom, she had no idea it would lead to aggressive upselling, intimidation and a significant debt that would have a severe impact on her health and wellbeing.

Janet was unable to meet her basic needs such as rent, food, medication and utilities, after having entered into unaffordable rental contracts. Her financial commitment was exhausting half her income and leaving her in severe financial hardship.

As a result of skilful upselling techniques employed by the rental company, Janet's original plan for a small bedroom television soon turned into a 65-inch TV, an additional TV, two mobile phones, an iPad, MacBook, a bedroom suite and later a washing machine – to a total of 15 individual rental contracts. Concerned that she wouldn't be able to afford what she was being upsold on her low income, she says she was repeatedly told by the company that she would be able to cover the repayments.

"It was the way that they had gone around things to upsell items, not to give the amount ... because they hadn't worked it out. That's what they kept saying to me – they hadn't worked the fortnightly payments out as of yet. But when they do, they will inform me," says Janet.

"Well into the contract, I was told it was \$450 per fortnight. Well I nearly fell over. I said, 'I can't afford that' and they said, 'well you purchased the goods, so you have to pay for it'."

When she was unable to keep up with the payments, Janet was visited by what she describes as a 'large bully' – who came to her door demanding her key card to take out the \$450 owing. He also added an extra \$20 to her fortnightly debt because she was now behind.

"I couldn't live. I just could not live. I couldn't pay my bills. I couldn't do anything because all my money was going to [them]."

Janet's health was also suffering due to the stress she was under, trying to keep up with the payments. Already prone to epileptic seizures, she started experiencing them much more frequently, causing her to feel weak and sick on a regular basis.

After three months of not knowing what her payments were and another four months struggling alone to manage the debt, Janet sought financial counselling through The Salvation Army's Moneycare service. At this point, Janet's debt had snowballed to over \$26,000 – significantly more money than the value of the goods combined.

After investigating and escalating the issue to Internal Disputes it was identified that 'maladministration' had taken place, as no confirmation of Janet's place of residence was determined nor how much she was paying in rent, let alone other essential expenses.

This is the first time Janet has ever been in a situation like this and wants other people – particularly those on low incomes – to be aware of the dangers of these rental arrangements, which can leave families in very serious debt.

She advises people stressed over debt not to struggle alone but to reach out to a financial counsellor for support – "they're there to help you, they're trained in the area of being able to help you".

\* Name has been changed

## Community Impact

The Salvation Army serves people who are experiencing marginalisation and vulnerability. These are often the same people who often find themselves financially troubled with predatory debt. Predatory debt is amongst the most rapidly growing debt categories, including pay day lending, that our community members present with.

A recurring theme from our front-line staff is that payday loans and consumer leases are far too easy to access (as a result of rapid digital access growth) with few barriers to qualify. Evidence from our Moneycare services has found that the number of people with payday loan and consumer lease debts accessing our services has increased significantly over the last decade, particularly for people aged 18-24 years. The proportion of people with predatory debt grew from 6 per cent in the 2008-09 financial year to 13 per cent in the 2017-18 financial year and tripled in real terms to a median value of \$1,383.

In the 2017-18 financial year more than 20 per cent of 18-24 year-olds accessing our services had payday loans or consumer leases. Our experience also suggests that people who live in social housing and those who have other forms of unsecured debt are also more likely to access payday loans and consumer leases. These are groups who are often highly susceptible to predatory lending, and lack of regulatory oversight has seen these types of loans grow to unacceptable levels within vulnerable cohorts, and can restrict their future financial security.

Our casework experience suggests that there is a significant need for safeguards to ensure that people experiencing financial stress are not preyed upon by predatory lenders. The government's Bill enacts a number of critical changes which may prove to be highly effective and save South Australians not only money, but financial and emotional stress.



## Conclusion

Again, The Salvation Army thanks the South Australian Government for the opportunity to present evidence of the need for, and benefits of, the protections outlined in the draft Bill and strongly encourage that it be passed in its current form.

Our background as a provider of financial advice, and as a grass roots outreach organisation, has shown that the current consumer lease and small amount credit contracts system lacks the oversight and regulation necessary to prevent the exploitation of people in tricky financial circumstances.

As such we feel the government's proposed changes are an effective and reasoned method to address these issues and will act to supplement the Commonwealth *National Consumer Credit Protection Act 2009* to prevent predatory lending practices.

## About The Salvation Army

The Salvation Army is an international Christian movement with a presence in 128 countries. Operating in Australia since 1880, The Salvation Army is one of the largest providers of social services and programs for people experiencing hardship, injustice and social exclusion.

The Salvation Army Australia has a national operating budget of over \$700 million and provides more than 1,000 social programs and activities through networks of social support services, community centres and churches across the country. Programs include:

- Financial inclusion, including emergency relief
- Homelessness services
- Youth services
- Family and domestic violence services
- Alcohol, drugs and other addictions
- Chaplaincy
- Emergency and disaster response
- Aged care
- Employment services

As a mission driven organisation, The Salvation Army seeks to reduce social disadvantage and create a fair and harmonious society through holistic and person-centred approaches that reflect our mission to share the love of Jesus by:

- Caring for people
- Creating faith pathways
- Building healthy communities
- Working for justice

We commit ourselves in prayer and practice to this land of Australia and its people, seeking reconciliation, unity and equity.

### Further Information

The Salvation Army would welcome the opportunity to discuss the content of this submission should any further information be of assistance.

Further information can be sought from Major Paul Hateley, National Head of Government Relations, at [government.relations@salvationarmy.org.au](mailto:government.relations@salvationarmy.org.au) or on 0413 830 201.

