October 2020

RESPONSIBLE LENDING CAMPAIGN

Campaign Kit, 2020

consumer action law centre

financial counselling australia

ABOUT

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for consumers experiencing vulnerability and disadvantage through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

Financial Counselling Australia (FCA) is the national voice of the financial counselling profession in Australia. We are a not-for-profit organisation that:

- Provides resources and support for financial counsellors
- Advocates to increase access to financial counselling;
- Works to raise the profile of financial counsellors;
- Advocates for a fairer marketplace; and
- Works to improve hardship processes for people in financial difficulty.

There are about 950 financial counsellors working in Australia. Through their efforts, thousands of Australians are able to overcome financial hardship.

Consumer Action and Financial Counselling Australia are located on the land of the Kulin Nations. We acknowledge all Traditional Owners of Country throughout Australia and recognise the continuing connection to lands, waters and communities. We pay our respect to cultures; and to Elders past, present and emerging.

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01 WELCOME TO THE CAMPAIGN

Dear colleague,

While our communities face reduced income support, impending financial 'cliffs' as loan deferrals come to an end and uncertain economic times, the Government has used COVID-19 as a cover to propose axing our responsible lending laws. The dangers of irresponsible lending are well known and cause significant harm to individuals, families, communities and the economy. We cannot allow the Government to take away our responsible lending laws.

Our responsible lending laws were introduced following the Global Financial Crisis to help level the playing field between individuals and lenders. The laws provide critical consumer protections that deterred lenders from providing unaffordable and unsuitable loans, and offered redress for people when those laws were breached.

This campaign kit is intended for community legal centres, financial counselling services and community workers across Australia who want to help stop these changes to the law proceeding. This campaign kit provides information about the proposed changes, the potential impact on clients and ways to get involved , plus tools including template letters and briefing papers. We hope it will be useful for your own campaigning.

Sharing your own perspectives and client stories is powerful in this campaign. Meeting with Federal politicians and engaging with local media is very influential. These resources can and should be adapted to make them relevant for your particular organisation and local area.

We will be holding virtual information sessions for campaign supporters and providing regular updates via email. If you would like to sign up for these updates, please register here: https://consumeraction.org.au/irresponsible-lending.

If you receive responses from politicians, appear in the media, or have other ideas or updates to share please feel free to send these to campaigns@consumeraction.org.au so we can share with other supporters.

Together we can save our responsible lending laws and protect our communities from unsafe and irresponsible lending.

Sincerely,

Gerard Brody

CEO, Consumer Action Law Centre

Fiona Guthrie

CEO, Financial Counselling Australia

02 WHY DO WE NEED TO SAVE OUR RESPONSIBLE LENDING PROTECTIONS

RESPONSIBLE LENDING – WHAT IS IT?

Australia's responsible lending laws were introduced in 2009, following the Global Financial Crisis (GFC). The laws require banks to ensure a loan is not unsuitable and check a borrower's financial situation. A loan will be unsuitable if the borrower can't afford to make repayments or the loan doesn't meet the borrower's "requirements and objectives". The laws are a preventative measure to make sure banks don't sell loans, including credit cards, to people who can't afford to repay them.

Responsible lending obligations cover all consumer credit products including:

- Car loans
- Personal loans
- Mortgages
- Credit cards

The laws do not apply to loans that are mainly for business purposes.

These laws are currently enforced by the Australian Securities and Investments Commission (ASIC). ASIC has powers to enforce the law against lenders and brokers that provide unsuitable loans to people.

WHAT IS THE GOVERNMENT PROPOSING?

Lenders and brokers would no longer be required to ensure a loan is 'not unsuitable', and generally not required to verify information provided by borrowers.

Borrowers would be restricted in what action they can take when lenders or brokers sell unsuitable loans.

ASIC's enforcement powers for bank loans and penalties for wrongdoing would be removed.

These changes (if they pass Parliament) would apply to all loans sold from March 2021. The changes would not apply to payday loans or consumer leases/rent-to-buy.

WHAT IMPACT WOULD THIS HAVE?

These changes would lead to more bad behaviour by lenders and brokers, which could include:

- More unsuitable and unaffordable loans provided with fewer rights for borrowers
- Mortgages – loans provided based on people's assets, rather than their ability to repay, meaning more homes repossessed because people can't make repayments
- Finance brokers – more issues with inaccurate information on loan applications
- Credit cards – more unaffordable credit limits
- Car loans – more pressure on consumers to sign up to loans from car dealers
- Retailers – unsuitable loans like high interest credit cards pushed onto shoppers at the checkout

The impact on individuals and families would be significant, including:

- More people struggling to meet unaffordable loan repayments and experiencing financial stress;
- More people struggling to put food on the table, get access to services (including doctors, specialists,

education and transport) and pay other household debts (gas, water, electricity, internet, telephone);
- More problems with health and wellbeing (including financial stress and mental health issues) and increased pressure on family relationships;
- More people needing help from financial counsellors and other support services, with some not knowing where to find help and feeling disempowered by their lack of consumer rights;
- Increased financial exclusion as more people get caught in debt spirals and take out high cost or unaffordable loans.

David's story below is just one example of how irresponsible lending can impact a person's life:

DAVID'S STORY

David (name changed) is a sole trader who is currently on JobKeeper, having lost all his work during the COVID-19 pandemic. David called the National Debt Helpline in distress, because he didn't know how he was going to pay his debts as he had a number of long-term debts he was struggling with, totalling over $100,000, including multiple credit card debts, a car loan and personal loans.

David recounted that his debts had gradually accrued over a number of years. Even prior to the pandemic, David had felt trapped by debt, as he was forced to put nearly all of his income toward the repayments.

David said he remembered fearing that he couldn't afford his car loan in particular before he bought it, but recalls being pressured to purchase the car, and being told not to worry about the repayments.

David also said that he was caught in a debt spiral, where he felt forced to get more credit just to pay off other loans, and he thought this was obvious from his finances at the time.

David told a financial counsellor he felt overwhelmed, as he has no idea how he will afford the repayments on these loans once COVID-19 related loan deferrals end, and thought that his only option was bankruptcy. David's description of his finances suggests that if responsible lending obligations had been properly followed, he wouldn't have obtained as much credit, would not now be saddled with so much debt and wouldn't feel so stressed and anxious.

David's case is not an isolated one. The Banking Royal Commission uncovered alarming misconduct by lenders and brokers. Despite the Banking Royal Commission scathing report, we have continued to see poor behaviour. This kind of misconduct will only be turbocharged if these laws are removed, and the regulator is muzzled.

There will also be broader impacts on the economy and household debt levels. Australia already has one of the highest household debt levels in the world, with the ratio of household debt to disposable income at 185%. In October 2020, a University of Melbourne survey found more than 20% of people were feeling financially stressed, and having difficulties paying for essentials. With 1 in 10 loans deferred during the COVID-19 crisis (amounting to $274 billion), we expect many to reach for additional credit as repayments resume which is likely to worsen their financial situation.

HOW CAN WE STOP THIS?

We need to show our politicians that these changes would hurt people and communities in their electorates. We need to tell them that we must keep the consumer protections in our lending laws. Together we can stop these laws passing Parliament, but we must act quickly.

03 WHAT ARE PEOPLE SAYING?

"If Australia can't have the support of the Treasurer against misconduct in the banking, superannuation and financial services, then we, as a democratic nation are in trouble. The Royal Commission was brought about to stamp out irresponsible lending by banks and crippling debt which was putting Australians at risk of bankruptcy, homelessness and suicide."

Robert Regan, Banking Royal Commission witness

"I am disturbed that the Government is now proposing to remove the responsible lending laws, which were introduced after the global financial crisis and that Commissioner Hayne found justified (given the evidence showed the banks were failing to comply with the laws) to attempt to protect consumers from the misconduct of banks and that any reduction of lending protections might affect the wider community, particularly those who are most vulnerable and at risk to unscrupulous sales or advertising."

Rev Grant Stewart, Banking Royal Commission witness

"Those on low incomes who own their homes apply for loans and... will be at risk of becoming homeless if a loan is approved based on asset lending."

Financial counsellor

"Stimulus packages are no doubt hiding the true impact of COVID on small businesses and individuals, the winding back of responsible lending will come at the same time people will be trying to access funds in any manner possible. It's a frightening thought."

Small business financial counsellor

"It is hard to see how the stated reasons for easing what's asked of banks and other lenders make much sense, and the timing is strange."

Professor Kevin Davis, *Professor of Finance, University of Melbourne*

"With so many Australian households in precarious financial circumstances, it's hard to think of a worse time to water down consumer credit laws. But that is exactly what the Morrison government plans to do, in defiance of a key recommendation of the Banking Royal Commission."

Stephen Jones MP, *Shadow Financial Services Minister*

"Looser lending standards will result in higher profits, higher dividends, and more money to flowing into the most overpriced housing in the world. This will perpetuate the cycle of high household indebtedness, falling home ownership, and greater financial instability. This is not the pathway to recovery."

Senator Nick McKim, *Australian Greens*

04 TAKE ACTION

Right now industry lobbyists are working hard to persuade our politicians to axe responsible lending rules. The good news is that together we well and truly outnumber them, but we need as many lawyers, financial counsellors and community workers as possible contacting politicians to tell them how axing these protections will harm their electorates.

We have a short window of time. Here's what we can do:

- Email your local federal MP and senators
- Request a meeting – and keep asking until you get one!
- Write a letter to the editor of your local paper
- Speak to local media
- Share content on social media, tagging your local federal MP

05 KEY CAMPAIGN MESSAGES

Real stories are incredibly powerful for this campaign, so be sure to draw on experiences from your work, and the impact this change will have on people. Steer away from being drawn into the Government's story about 'personal responsibility', 'financial literacy' and 'access to credit' - tell your story.

For more information about words to use and words to avoid, [see this helpful guide]

1. THIS WILL HURT INDIVIDUALS AND FAMILIES

Axing protections in our lending laws will hurt individuals and their families. Lenders should be doing their part to help people recover from the crisis – not lobbying to remove consumer protections. Our responsible lending laws are like a health check for our finances, and removing them will hurt people.

2. THIS WILL LEAD TO A DEBT DISASTER

Removing these protections during a recession could lead us to a financial crisis. Prior to COVID, we already had some of the highest levels of personal debt in the world – responsible lending was one of the only things that has kept us from spiralling into a whole-of-economy debt disaster in Australia. This proposal risks extending the COVID recession, damaging the economy and the quality of life for millions of people.

3. REMEMBER THE BANKING ROYAL COMMISSION

These changes go against the very first recommendation of the Banking Royal Commission (Rec 1.1), which was to not amend these laws. The Government is pandering to the banks, despite the heartbreaking stories at the Royal Commission showing the banks can't be trusted. The Government is legalising bad banking behaviour.

06 GUIDE TO WRITING TO POLITICIANS

WHY WRITE TO POLITICIANS?

Federal MPs and Senators have the power to stop these changes going ahead. By sharing the impact these changes will have on people and communities in the MP or Senator's electorate, you can convince them to oppose these laws.

STEP ONE: IDENTIFY YOUR MP (OR SENATOR)

If you're unsure which MP is relevant to your local area, you can search for them on the Parliament House website here: https://www.aph.gov.au/Senators_and_Members

You are more than welcome to email campaigns@consumeraction.org.au if you're unsure who your MP or senator is.

STEP TWO: WRITE TO YOUR MP (OR SENATOR)

You can send an email via our DoGooder platform (https://consumer-action-law-centre.good.do/irresponsiblelending/emailmp/), but often a tailored individual approach is more effective. Some email inspiration below:

Dear Senator/MP

I write to raise my serious concerns with the Government's proposals to axe consumer protections in our lending laws.

In my role at [organisation], I help people to stand up to the banks and other lenders. I have spoken with people who are totally overwhelmed with debt. These laws help people to get back on their feet, and deter lenders from offering unsuitable loans.*

[insert case study, ideally from the MP's electorate – see "David's story" above as an example]

Our lending laws are there to help stop these situations happening. The banks and other lenders have breached these laws, but at least there is some deterrent and form of redress for people when that happens at the moment. The Government is planning to remove these protections in the middle of a recession, when it's more likely than ever that people will be desperate and more vulnerable to being taken advantage of by lenders.

This proposal from the Government directly contradicts the very first recommendation of the Financial Services Royal Commission, which was to not change our lending laws. Axing protections in our lending laws will only serve to hinder our economic recovery, and harm Australian families.

Can I count on your vote against these proposals? I would be grateful for the opportunity to meet with you to discuss further about how these changes would impact our local community.

Regards

[insert name/address/organisation]
**Only use your organisation's name if you have permission to do so.*

07 GUIDE TO MEETING WITH POLITICIANS

WHY MEET WITH POLITICIANS?

Meeting with politicians is a very effective way of sharing your story and views. It increases the likelihood that a politicians will engage with the issue, and support the campaign. For example, we recently met with Ed Husic MP along with parents who tragically lost their son to suicide to talk about the need for stronger payday lending laws. After the meeting, Mr Husic made a passionate speech in Parliament about our meeting and why we need to have stronger laws against predatory lending. You can view the speech here.

Lenders and brokers are meeting with politicians all the time, and it is important politicians hear the other side of the story. Your MP is there to serve you – they are your representative. This is their job. They listen to concerns of community workers and community members regularly, and value your expertise.

STEP ONE: IDENTIFY YOUR MP (OR SENATOR)

If you're unsure which MP is relevant to your local area, you can search for them on the Parliament House website here: https://www.aph.gov.au/Senators_and_Members

You are more than welcome to email campaigns@consumeraction.org.au if you're unsure who your MP or senator is, or want some tips for your upcoming meeting.

STEP TWO: REQUESTING A MEETING

Make sure you put your request in writing. You can call your MP's office directly, but it's likely you'll be asked to follow up with a request in an email or letter.
A meeting request letter needn't be long, just make sure you include:

- Your name and if you're representing an organisation*
- The fact that you or the people you assist are constituents
- Why you're requesting the meeting e.g. "I would like to request a meeting to discuss my concerns and experience regarding irresponsible lending."
- Who will be attending the meeting (if there is someone else coming with you)
- A specific timeframe when you would like the meeting to take place e.g. "If you have time to meet with me in the next three weeks, that would be most appreciated."

It's a good idea to follow up your request in writing with a phone call to make sure it's been received.

(*If you say you're from an organisation, such as a financial counselling agency, you will need the permission of your agency to do this. Otherwise you can write in your personal capacity. For example, you could say "My name is xxx and I have been a financial counsellor for xx years. In my work over this time, I have seen (and then explain – you don't need to refer to your employer.")

STEP THREE: MEETING PREPARATION

Once you've secured your meeting, you'll want to:

- Make sure you know how to pronounce the MP's name
- Find out what party they belong to and if they're a member of any Committees and if they hold any portfolios
- Read the MP's first speech to find out what their priorities are. You can find it on their profile on the Australian Parliament website (under "Speeches")
- Do a quick Google search to see if they've made any recent comments relevant to responsible lending

STEP FOUR: DRAFT AN AGENDA

You'll likely have anywhere between 15-30 minutes of your MP's time. It's a good idea to prepare a rough agenda ahead of the meeting, but you can also just approach it as a friendly chat without a set agenda. Here's a rough agenda you might want to use or adapt.

STEP FIVE: AFTER THE MEETING

Send a follow up letter or email after the meeting to thank them for their time, re-state your ask (or re-state their commitment if one was provided), and send them any additional information they might have asked for in the meeting.

If you still don't receive a commitment from then in two weeks time, follow up with them.

DRAFT AGENDA

1. *Introductions*
2. *What your concerns are regarding the Government's proposal to repeal responsible lending laws*

- *Do you have personal experience with irresponsible lending?*
- *Do you work with clients who have experience with irresponsible lending?*
- *Can you provide some specific examples of irresponsible lending?*

3. *Ask your MP what their position is on repealing responsible lending laws and how they plan to vote in Parliament*
4. *Ask them for any advice they might have about who else to contact*
5. *Thank them for their time and let them know you'll follow up*

TIPS:

- Team up with other people in your electorate. It will demonstrate that there is appetite within their community for them to protect responsible lending laws, and can provide moral support for your meeting.
- Don't forget to ask for a commitment in your meeting, and let your MP know you'll follow up.
- Don't worry too much about the details of responsible lending laws or the proposals – focus on the impact on your clients and community if the laws are changed. The template briefing paper (see below) has the more detailed information the politicians need.

08 GUIDE TO SPEAKING WITH MEDIA

CONTACT LOCAL MEDIA

Local TV, radio and print media are keen to receive pitches for stories, particularly if there is a 'human' angle. The first step is to reach out to your local media outlet with a brief summary of the story you can offer. You can often find contact details for local media online. You can also contact us to see if we have any contacts we can provide.

An example pitch below:

Good morning

We are a community legal centre based in Melbourne, that provides advice to thousands of Victorians every year on consumer law and finance issues. We regularly see the impact of irresponsible lending practices by the banks in our work, which was also an issue highlighted by the Banking Royal Commission.

We are dismayed at the Treasurer's announcement that he intends to axe consumer protections in our lending laws only 18 months after the Banking Royal Commission Final Report was handed down. It is a recipe for disaster to let banks return to the Wild West of lending in the middle of a recession.

I am a solicitor at X, and would be happy to speak with you further about the proposals and how it will impact Victorians, and what we see in our work. We can also arrange for a client to share their story with you.

You can call me on X. I look forward to hearing from you.

FOLLOW UP

If you don't hear back, follow up again to see if the journalist is interested.

MAXIMISE THE IMPACT YOU MAKE:

Limit yourself: you only need three key points

Avoid jargon: Use words that a general audience (your family) can understand don't use acronyms if you can help it

Take your time: If you need a moment to think, just say something simple like 'that's a good question' or even make a joke while you gather your thoughts. Be yourself though and don't fake it!

YOU ARE THE EXPERT!!

Your years of study and accumulated knowledge are a highly valuable resource. In an increasingly complex world, you can be relied upon to share accurate facts, give advice, direction, and clarification in your area of expertise.

MEDIA DO'S

Get back to journalists/producers when you say you will.

Ask for 30 minutes to gather your thoughts and call back.

Ask for their deadline and respect it.

Ask the journalist how much he or she understands about the topic.

React honestly, participate in debate.

Get to know individual journalists.

MEDIA DONT'S

Repeat 'facts' second-hand (check the accuracy of your sources).

Try to slant the facts or tell only half the story.

Use quotable quotes when responding to a question. Instead use complete sentences that make sense to the audience who have not heard the question asked by the reporter.

Give false information, never lie, it's not a good approach.

Expect photos or other source material to be returned.

PREPARATION

Are you the right expert?

Suggest another expert or put the journalist/producer through your organisation comms person.

Make notes about the points you want to cover. Limit notes to three points you want to make and think of six different ways to make each point. This will help you avoid rambling or going off on tangents and will help you to keep control.

Is there anything you can't discuss? Make sure you have covered all your bases.

MEDIA DO'S

Educate journalists about your point of view.

Find out who else the journalist is going to be talking to on the issue.

Always give accurate information.

Suggest stories, publicise your activities, identify new angles and media opportunities.

Be as helpful as possible.

MEDIA DONT'S

Take a friendly journalist for granted.

Think your refusal to respond will kill a negative story.

Provide lengthy research reports without summaries of key points.

Criticise small mistakes.

Say 'this is off the record.' Confidentiality is never assured.

Never say 'no comment'- it allows the reporter to put words into your mouth.

PREPARATION

Please be aware that the copy editor may make changes at the last minute. It is also important to note that in many instances, the reporter does not write headlines or photo captions.

Share personal experiences. This doesn't mean you need to give up a position of expertise - it means allowing your personality to shine through as well.

Be yourself, be relaxed and try to weave your story (and stories of others) into your interview.

09 WRITING LETTERS TO THE EDITOR

The humble letter to the editor can have a big impact. MPs and their staffers often trawl through this section of the local paper to find out the issues that people are talking about in their community.

TIPS FOR WRITING YOUR LETTER:

Keep on topic. Choose the idea you want to convey and stick to it. Get straight to the point, and only include essential information.

Keep it brief. Aim for 150 words, most papers won't print anything more than 200 words.

Keep it local. Explaining how this issue will affect your local community will increase the chances of having your letter published.

Keep it polite. Your letter can be strong, but avoid aggressive or offensive language that might make your MP dismiss your letter.

Keep it to one publication. A newspaper will be more likely to publish your letter if they know it won't be published anywhere else.

Keep it relevant. If the paper has recently published a story on the issue, make sure you refer to it in your letter.

Keep it personal. Use your own words, and if you can, include a relevant personal story.

Proofread. Proofread. If there's one thing that will lessen your chances of being published, it's spelling and grammatical errors. Get someone else to read it before you send it off.

Include your contact details. The publication will want to verify who you are before publishing your letter, so it's a good idea to mention:

Your name
Your address (street name, suburb, and postcode)
Your contact number
Your email address

HOW TO WRITE YOUR LETTER

1. CHOOSE THE RIGHT NEWSPAPER

Which newspaper is your MP most likely to read? Look up the word limit for letters to the editor for that particular newspaper, the submission deadline, and the email address or website form where you should submit your letter.

2. PERSONALISE THE LETTER

Think about how to make this relevant to you and your local community. Do you have a relevant personal story about how the issue would affect you, or someone you know? What is it about this issue that has you riled up? What's the change you want to see?

3. CALL FOR ACTION

If your MP has already spoken against the laws, make sure to mention this in your letter and thank them for taking a stand. If they haven't, encourage them to do so.

4. SEND IT IN!

You've drafted your letter, now it's time to submit it. Some papers will ask you to copy your letter into the body of an email while others will require you to use their website form. Whatever the format, be sure to include your contact details, including your real name, address and phone number. Most publications won't publish your letter without this.

You can also find these tips here: https://consumeraction.org.au/how-to-write-a-letter-to-the-editor/

AN EXAMPLE
LETTER TO THE EDITOR

Here is a recent letter to the editor from Fiona Guthrie about the campaign, which was published in the Australian Financial Review on 14 October 202:

> *Michael Roddan complains that Australia's top consumer groups are holding a lopsided debate about plans by the government to wind back Australia's responsible lending laws ("Over-the-top response bad for lending", October 2).*
>
> *What we were doing was providing a briefing for politicians and their advisers about why these proposals will not only harm individuals, but also the economy. Organising that sort of discussion is a perfectly reasonable thing to do.*
>
> *Any of us would be very happy to debate this issue at any time. Bring it on.*
>
> *The Financial Review is happy to criticise responsible lending laws in its editorials and to publish critical opinion pieces, but the best we can do on the other side is have the occasional letter published. Your newspaper is not providing balanced coverage.*
>
> *Fiona Guthrie*
> *CEO, Financial Counselling Australia*

TEMPLATE
BRIEFING PAPER

NOTE: You can adapt this briefing paper to your own organisation. You can attach this briefing paper to your emails to MPs and Senators, or take it to your meeting with them. It should not be published online, as the intended audience is politicians rather than the general public. If you need a Word version, please contact us at campaigns@consumeraction.org.au.

RESPONSIBLE LENDING

KEY POINTS

- Currently we have protections in our lending laws that ensure that loans are affordable and not unsuitable for people.
- These laws were introduced following the Global Financial Crisis (GFC) of 2007-08 to modernise Australia's consumer credit laws.
- Treasury told the Banking Royal Commission these laws enhance macroeconomic performance.
- The Banking Royal Commission recommended these laws be more strongly enforced – not rolled back – in its Final Report.
- Any rollback of these critical protections during a recession would be a disaster for families in hardship and our nation's recovery.

CURRENT CONSUMER PROTECTIONS

The consumer protections in our lending laws that are under threat apply to consumer credit, including mortgages, personal loans, payday loans, car loans and credit cards. The laws do not apply to loans that are predominantly for business purposes.

Credit providers and credit assistance providers (such as finance brokers) must comply with the obligations in the National Consumer Credit Protection Act 2009. These obligations require credit providers to:

- make reasonable inquiries about a person's financial situation, and their requirements and objectives;
- take reasonable steps to verify this information; and
- assess whether the credit is 'not unsuitable' before providing a loan.

These obligations are currently enforced by the Australian Securities and Investments Commission (ASIC).

The obligations are flexible and scalable depending on the circumstances. ASIC's guidance says that the steps required will 'vary depending on different circumstances relevant to the [borrower's] particular application'.

PROPOSAL TO AXE PROTECTIONS IN OUR LENDING LAWS

Treasurer Josh Frydenberg announced on 25 September 2020 that the Government intends to remove these consumer protections in our lending laws.

Banks and other lenders (except payday lenders and consumer lease providers) would only be subject to Australian Prudential Regulation Authority (APRA) standards. These standards are much weaker than our current responsible lending obligations and would remove the requirement for lenders to ensure loans are suitable for individual borrowers.

Lenders also wouldn't be required to verify information provided on loan applications except in limited circumstances. This would allow lenders to turn a blind eye to brokers who provide misleading information on applications, as exposed during the Banking Royal Commission.

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RESPONSIBLE LENDING

ASIC would also lose its powers to enforce responsible lending laws against banks. APRA would instead be responsible for keeping the banks in line, despite its mandate to maintain the safety and soundness of financial institutions (rather than take enforcement action for misconduct).

The changes would also remove the 'dominant purpose' test for business loans. Instead, responsible lending laws won't apply to a loan that has a genuine business purpose, so long as it's not minor or incidental to the overall purpose of the loan. We expect a surge in unlicensed 'small business lenders', who are not required to be members of the Australian Financial Complaints Authority, taking advantage of struggling families through sham business loans as a result. There are no caps on the fees or interest these lenders can charge.

These changes would hurt individuals, families and the economy. The proposals fly in the face of the very first recommendation made by the Banking Royal Commission.

MORE HOUSEHOLD DEBT WILL LEAD TO A DEBT DISASTER

In May 2020, ratings agency Fitch Ratings warned one of Australia's biggest risks is the nation's highly indebted households. It said household debt, at 186.8 per cent of disposable income, was one of the highest levels among triple A rated countries while it posed "an economic and financial stability risk". [1]

A recent RBA paper noted that Australia's high lending standards, along with low loan-to-valuation ratios and banks' high level of capital, meant our banks are highly resilient to adverse shocks to households despite these figures. As one of the pillars holding up our economy, the risks of winding back our high lending standards are clear.[2]

Axing consumer protections in lending during a recession, when many Australians are facing reduced incomes and financial hardship, is a dangerous step. With 1 in 10 loans currently deferred (amounting to $274 billion),[3] we expect many to reach for additional credit as repayments resume which is likely to worsen their financial situation.

In April 2020, the RBA warned:

...the level of household debt and elevated housing prices are longstanding risks for the Australian financial system. In the period ahead, many households will find their finances under strain due to efforts to contain the virus.[4]

Strong lending standards will support, not detract from, our economic recovery.

REMEMBER THE BANKING ROYAL COMMISSION?

The first recommendation of Commissioner Kenneth Hayne was that responsible lending laws should be enforced, not changed (Recommendation 1.1). The Government's proposal directly contradicts this recommendation and disregards the work of the Royal Commission.

The stories shared at the Royal Commission shocked Australia and demonstrated the need for

1. https://www.smh.com.au/politics/federal/agency-puts-australia-on-notice-amid-concerns-about-household-debt-20200522-p54viv.html
2. Reserve Bank of Australia, Research Discussion Paper, 'How Risky is Australian Household Debt?', May 2020.
3. https://www.apra.gov.au/temporary-loan-repayment-deferrals-due-to-covid-19-june-2020
4. https://www.rba.gov.au/publications/fsr/2020/apr/overview.html

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RESPONSIBLE LENDING

stronger rules and oversight of financial services. Removing lending obligations would reduce both the oversight of, and consequences for, misconduct by these very same lenders. Banks can't be trusted to do the right thing by borrowers.

HARM TO INDIVIDUALS AND FAMILIES

Our lending laws protect people from being mis-sold unaffordable credit. The Banking Royal Commission showed the harmful sales culture in banks. Removing these protections will result in bankers targeting more people with unsuitable loans, potentially saddling them with a lifetime of harmful debt. Over-indebtedness impacts physical and mental health, family wellbeing and ability to pay for essentials like education and health. In some cases, it will lead to bankruptcies and home repossessions.

We often speak to people who are overwhelmed by their debts. Some are suicidal. Some are considering bankruptcy, while others are on the verge of homelessness. This proposal would only increase the number of people who need help, and who are experiencing this harm.

PAYDAY LENDERS AND LEASES

The Treasurer also proposed changes to consumer protections for small amount credit contracts (payday loans or SACCs) and consumer leases ("rent-to-buy"). The proposals fall drastically short of the Government-commissioned expert review recommendations on SACCs in 2016. The Government accepted most of the recommendations nearly four years ago, but has failed to act.

The Treasurer is leaving people at risk of falling into a debt spiral, by doubling the recommended protected earnings cap for payday loans or consumer leases from 10% to 20% for employed people. This means people could have up to 40% of their income used for repayments on these dangerous high cost credit products. The proposal would also allow consumer lease providers to charge an extra 20% establishment fee on leases above what was recommended.

[Insert your contact details, organisation logo and case studies]*

* Only use your organisation's name if you have permission to do so

APPENDIX A

11 MORE INFORMATION ABOUT THE CHANGES

The Government has released a fact sheet with details of the proposed changes – available here.

A summary of the changes is set out below:

- Responsible lending obligations would be removed for all consumer credit (except payday loans and consumer leases), including mortgages, personal loans, car loans and credit cards.
- Banks would only be subject to existing Australian Prudential Regulation Authority (APRA) standards, including APS 220 and Prudential Practice Guide 223. Some of these standards won't be in effect until January 2021 – 10 months after the responsible lending obligations are axed.
- Most obligations in the Prudential Standard APS 220 for banks would be applied to non-ADI lenders. There are a number of issues with relying on APRA standards:
    - APRA standards require lenders to have appropriate policies and systems in place to assess whether a borrower has the capacity to repay without facing undue hardship – this is much weaker than the current law, which prohibits lenders from providing 'not unsuitable loans' to individuals and requires a suitability assessment to be undertaken.
    - A breach of the law would only occur when a lender is found to not have the required policies and systems in place or fails to materially comply with its own systems and policies. Failures would need to be systemic – individual failures would not be considered a breach.
- Lenders also wouldn't be required to verify information provided on loan applications, unless there were reasonable grounds to suspect it is unreliable.
- ASIC would also lose its powers to enforce responsible lending laws against banks, including the ability to seek court-ordered civil penalties up to a maximum of $210 million. APRA would instead be responsible, despite its role being to protect the integrity of the financial system rather than take enforcement action. APRA's main enforcement tool is to impose heightened capital requirements on ADIs and has never taken legal action against a bank.
- The 'dominant purpose' test has also been removed for business loans. Instead, responsible lending laws won't apply to a loan that has a genuine business purpose, so long as it's not minor or incidental to the overall purpose of the loan. This leaves many people, particularly those working in the gig economy, at huge financial risk.
- Consumer rights to obtain compensation for loss and damage 'resulting from' the breach of the responsible lending laws would be removed.
- Responsible lending obligations would be removed for mortgage brokers. It is unclear what standards, if any, would apply to other types of finance brokers.
- Specific protections relating to credit cards and reverse mortgages could also be removed for some lenders. This includes the recently hard-fought for requirement that a credit card limit be affordable over a three-year period.

More detail about the APRA standards that are likely to apply is below:

WHAT IS THE REQUIREMENT	WHAT ARE ITS LIMITATIONS
PRUDENTIAL PRACTICE GUIDE 223 • requires assessment and verification of income, living expenses and other commitments • requires an interest rate buffer or 2.5 percent when calculating the serviceability of a loan	Only applies to mortgages, not other credit products. PPG 223 is regulatory guidance only and does not amount to legal standards – it's made 'to assist ADIs comply' with regulatory standard on risk management. Purpose is to ensure risk management by the bank, not to provide for consumer protection. Allows the use of benchmark – either HEM or HPI in loan calculators to estimate a borrower's living expenses, with a margin. As such, does not respond to the position of the borrower. No ongoing monitoring by an expert conduct regulator to determine compliance, and no enforcement activity by the regulator. APRA's enforcement is conducted 'behind closed doors' and there is very limited, if any, focus on public deterrence.
PRUDENTIAL STANDARD 220 – CREDIT QUALITY • requires effective credit risk management system • requires maintain provisions and reserves adequate to absorb existing and estimated future credit losses	Purpose is to ensure risk management and prudential safety, not to provide for consumer protection. Lacks any specific requirements around considering borrower's financial position or ensuring loan is suitable. No ongoing monitoring by an expert conduct regulator to determine compliance, and no enforcement activity by the regulator. APRA's enforcement is conducted 'behind closed doors' and there is very limited, if any, focus on public deterrence.

APPENDIX B

12 WHAT INDUSTRY IS SAYING

The lending changes are being backed by industry ahead of the formal announcement on Friday, with Master Builders Australia saying it could speed up decisions for Australians trying to buy their homes

Sydney Morning Herald
24 September 2020

The big four bank stocks surged $14.6 billion on Friday following the government's decision to scrap responsible lending laws by March Next year.

Australian Financial Review
25 September 2020

Australia's major banks have welcomed the shake-up to the country's credit laws, claiming the red-tape-cutting reform will boost the economic recovery from the coronarvirus pandemic.

Commonwealth Bank, ANZ, NAB and Westpac have embraced the Federal Government's ditching of responsible lending obligations that will result in lenders being subject to one less rule when providing loans to customers.

News.com.au
25 September 2020

Property Council of Australia chief executive Ken Morrison said the change "will help more Australians buy or invest in property", adding that it would improve housing supply and affordability.

domain.com,au
25 September 2020

The Australian Banking Association, which on its website claims to support the existing standards, welcomed the death of responsible lending rules. "Ensuring the flow of credit to families and businesses, with the right consumer protections is paramount" chief executive Anna Bligh said.

The Guardian
24 September 2020

APPENDIX C

13 TRICKY QUESTIONS AND IDEAS FOR RESPONSES

What about all the people that want credit and can't get it?

Selling people unaffordable credit is harmful. It is neither generous nor good economic policy. Setting people up to fail, to lose their homes or declare bankruptcy, is something Australia decided we didn't want to do. More debt will only worsen someone's financial situation if they are struggling to make ends meet.

What about APRA regulation – why is it not good enough?

APRA's standards and guidance does not provide protection or rights for individual borrowers. The purpose is ensuring there are processes for risk management by the bank, rather than consumer protection. There are no specific requirements to ensure loans are suitable or checking an individual borrower's financial position. APRA's role is to protect the financial stability of banks, not to protect borrowers. There would be less rights for borrowers to take on the banks in court or at AFCA, less regulatory oversight and fewer penalties for misconduct.

Why should the banks be liable if people lie on their applications?

Products like credit cards or reverse mortgages are complex and banks are in a much better position to assess a person's ability to repay than an individual borrower. For most people, purchasing a car or a home is only something they will do a few times in their lives, while the banks are well practiced at these transactions. Open Banking means lenders can use technology to very quickly and accurately assess whether a loan is suitable and affordable for someone.

Further, under the current system, even if lender has contravened their responsible lending obligations, borrowers must still generally pay back the principal amount borrowed. Borrowers are still 'on the hook' for the loan.

What about small business owners that cannot get credit?

Responsible lending obligations don't apply to loans that are predominantly for a business purpose. For example, if a small business obtains a loan to purchase a motor vehicle, which is to be used 60% of the time for work purposes but will also be available for personal use, the loan is not subject to the responsible lending obligations.

There are very few protections for small businesses. Under these changes, there will be even fewer as the 'predominant purpose' test referred to above would be removed. Small business lenders are not required to be members of AFCA, there are no caps on interest and fees, and no obligations to check affordability. These changes will open the door to a wave of sham small business lending, where these rogue lenders give predatory loans to families under the pretence of being for a 'business purpose'.

We didn't have a Global Financial Crisis here; this isn't the same as in America

While we may have not had a sub-prime lending crisis like the United States, it is wrong to think Australia didn't have home-grown lending problems before 2009. Small investors and retirees were devastated by the collapse of Storm Financial, where unsuitable loans were taken out to invest in the failed company.

Our organisations have assisted hundreds of consumers that suffered real harm from unsuitable loans made before 2009. Australia already has the second highest level of household debt in the world. Many families are already leveraged to their eyeballs, even under historically low interest rates. Lax lending standards will push many people over the edge.

The Government is just simplifying the laws - removing red tape

The Government's proposal would create a complex and illogical regulatory system for lending that has one set of rules for the banks, and one set for non-banks. The Government is removing protections for consumers and backflipping on the very first recommendation of the Banking Royal Commission. Moving oversight of bank lending to APRA is giving the banks a free kick, while other lenders would still be regulated by ASIC. The proposed changes will harm, people, families and the economy. People will have to forgo the basics like food, rent and power just so they can pay their loans.

Lenders won't lend money to people if they think they won't repay them

People who struggle to make repayments are very profitable. They often pay the most in fees and charges. Bankers and brokers are incentivised to sell as many loans as possible through bonuses, commissions and sales targets. Many people will prioritise paying the bank over paying for other essentials, so while they might not technically default, they are in significant hardship.

The banks and lenders have evolved and are far better at not giving people credit they can't afford.

Financial counsellors support clients every day who, even under the current regime, have been sold unaffordable debt. These laws mean people who have been loaned money they can't afford to pay back have some access to redress.

The Government says the reforms introduce new protections for consumers, including capping the cost of some products, as well as capping the proportion of income a consumer can devote to some products.

The "new protections for consumers" refers to changes to proposed payday loans and consumer leases. These changes will be basically useless. The proposed 'reforms' means that a person who is employed can still spend 40% of their income on payday loans and consumer leases.