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**The Royal Australasian College of  
Physicians' submission on the Credit  
Contracts Legislation Amendment Bill**

June 2019

## Introduction

The Royal Australasian College of Physicians (RACP) welcomes the opportunity to submit feedback on the Credit Contract Legislation Amendment Bill (the Bill) to the Finance and Expenditure Select Committee.

The RACP works across more than 40 medical specialties to educate, innovate and advocate for excellence in health and medical care. Working with our senior members, the RACP trains the next generation of specialists, while playing a lead role in developing world best practice models of care. We also draw on the skills of our members, to develop policies that promote a healthier society. By working together, our members advance the interest of our profession, our patients and the broader community.

## Key points

The RACP finds:

- Debt is a social determinant of health affecting physical and mental health and wellbeing
- Payday loans and mobile lenders or truck shops command high interest rates and fees far beyond the value of the original loan, trapping vulnerable people in a spiral of debt
- The Bill does not go far enough to protect vulnerable people as it only applies to loans with an annual interest rate of 50 per cent or more.

## Making it the Norm

In 2017, the RACP called on political parties to make health equity the norm for all people in Aotearoa New Zealand through comprehensive action in the following domains and determinants of health:

- Healthy Housing
- Good Work
- Whānau Wellbeing

Our members see the impacts of cold, damp and unsafe housing; precarious and insecure work and unemployment; and poverty, financial hardship and deprivation on patients and whānau every day. We call for health equity to be the norm to enable all people to achieve the highest possible health and wellbeing outcomes. One of the RACP's recommendations was to address the presence of payday loan outlets in high-needs communities, because of the adverse impacts on health and wellbeing through debt for all whānau members, including children<sup>1</sup>.

The cost of credit is higher for people experiencing poverty and hardship. Poor credit ratings may result from defaulting on past loans, or failing to pay an electricity bill. People with poor credit ratings are often unable to access mainstream finance – even when debts are repaid, the default may remain on a person's credit history for several years<sup>2</sup>. Necessity and availability of payday loan outlets – often

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<sup>1</sup> The Royal Australasian College of Physicians. Make It the Norm: Equity through the social determinants of health. Sydney: The Royal Australasian College of Physicians; 2017 Available from <https://www.racp.edu.au/fellows/resources/new-zealand-resources/new-zealand-election-statement-2017>. Accessed 8 June 2019.

<sup>2</sup> Dale CM. New Zealand's debt society and child poverty. [Internet] Auckland: Child Poverty Action Group; 2014. Available from

located in neighbourhoods with high levels of poverty and deprivation – mean that people will turn to these fringe lenders for small amounts but the exorbitant interest rates and fees that accompany these loans mean that for some, the spiral of debt is impossible to escape.

## Comments on the Bill

The RACP sees the Bill as contributing to collaborative, cross-government activity to reduce the risk of whānau finding themselves in financial hardship, poverty and deprivation. We agree with the assessment of the Ministry of Business, Innovation and Employment (MBIE) in its Regulatory Impact Statement (RIS) that while the reforms proposed cannot directly reduce rates of poverty in New Zealand, they do aim to stop private sector lending practices which cause or deepen hardship<sup>3</sup>.

### Payday lenders

High-cost lenders, also referred to as “payday lenders”, “fringe lenders” or “loan sharks” offer unsecured personal loans for nominal amounts – anything from \$100 to \$10,000 or more. These loans may be for a short period of time: a couple of days to several weeks, or between two and 12 months. In Aotearoa New Zealand, the credit practices of these lenders create financial hardship for Māori, Pasifika and whānau living on lower incomes. When loans cannot be repaid on time and interest compounds, due to already meagre household incomes, whānau may find themselves within a cycle of debt which has direct and indirect impacts on the physical and mental health and wellbeing of whānau and communities<sup>4</sup>.

### Mobile lenders or truck shops

The inclusion of mobile truck shops in the Bill is particularly welcomed. Truck shops sell a variety of household goods including clothing, toys, electronics and furniture at prices higher than recommended retail prices. Truck shops and other mobile traders take advantage of vulnerable people by making their services available in areas of higher deprivation. The Commerce Commission has found that some mobile traders are actively exploiting vulnerable consumers, with people being charged high costs to purchase goods (which frequently incorporated a loan not explicitly identified as interest or fees); and predatory and irresponsible behaviour<sup>5</sup>.

### Interest rates

The proposed Bill introduces

1. A limit on the accumulation of interest and fees on high cost loans to 100 per cent of the original loan principal, over the life of the loan, and

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<https://www.cpag.org.nz/assets/Backgrounders/140225%20CPAG%20Debt%20Backgrounder%20Feb2014%20FINAL.pdf>. Accessed 8 June 2019.

<sup>3</sup> Ministry of Business, Innovation and Employment. Consumer credit regulation review: regulatory impact statement. [Internet] Wellington: Ministry of Business, Innovation and Employment; 2018. Available from

<https://www.mbie.govt.nz/dmsdocument/2031-coversheet-consumer-credit-regulation-review-pdf>. Accessed 5 June 2019

<sup>4</sup> Signal L, Lanumata T, Bowers S. Punching loan sharks in the nose: effective interventions to reduce financial hardship in New Zealand. [Internet]. Health Promot J Aust. 2012; 23(2):108-11. Available from <https://onlinelibrary.wiley.com/doi/abs/10.1071/HE12108>. Accessed 5 June 2019.

<sup>5</sup> Commerce Commission. Mobile Trader Project 2014/2015. [Internet] Wellington: Commerce Commission; 2015. Available from [https://comcom.govt.nz/data/assets/pdf\\_file/0035/95993/Mobile-Trader-2014-2015-Project.pdf](https://comcom.govt.nz/data/assets/pdf_file/0035/95993/Mobile-Trader-2014-2015-Project.pdf). Accessed 5 June 2019.

2. Applies this limit **only** to loans with an annualised interest rate of 50 per cent or more

We note that the Bill is in alignment with Cap Option A: limit the accumulation of interest and fees as detailed in the MBIE RIS which will be intended to strike the balance between the potential to reduce harm from high-cost lending; maintain access to high-cost lending for those that wish to utilise this type of finance (consumer choice); and apply reasonable compliance costs for the payday loan industry. The impact analysis shows that this option is the most viable due to its low risk, and the likelihood of the policy change resulting in a small improvement in the status quo<sup>3</sup>.

By setting the loans the proposed legislation applies to as only those with annualised interest rate at 50 per cent or more, the Bill does little to mitigate harm across the board or prevent more people being caught in a debt spiral. Further, the proposed legislation does not address

- the utilisation of high-cost loans as a source of financial “assistance” or stop-gap measure by whānau to address unexpected costs
- the complexity of loan contracts, including the uncompetitive rates and fees charged by lending companies
- targeting of groups that may be more at risk through availability and physical presence of loan companies and mobile traders within communities
- the prices for goods as charged by mobile traders – although mobile traders and truck shops will now require certification under the Credit Contracts Act 2003 and owners will be required to pass a ‘fit and proper person’ test, there are no additional protections for consumers.

## The Bill does not go far enough

The RACP does not believe the Bill goes far enough to address the harms resulting from unmanageable debt. The data within the MBIE RIS suggests significant indirect harm can be attributed to the stress of managing high-cost loans, and this has a pervasive impact on all whānau members, regardless of age. In one survey cited, 89 per cent of tenants said they ran out of food due to lack of money at least sometimes; 43 per cent held debt to lenders, and 42 per cent were being pursued by debt collectors<sup>3</sup>. There is strong anecdotal evidence from non-government organisations (NGOs) and budgeting services that people are resorting to private high-cost lenders to cover basic costs, including food, utilities and rent<sup>2 6 7 8</sup>.

The recent report from FinCap and the Justice Innovation Centre highlights the main reasons people sought to access high-cost loans, with “living costs or household expenses such as food or utilities”; “covering rent” and “to meet the costs of a vehicle” cited as the top three reasons high-cost lending is taken out by clients. When the drivers of high-cost lending are identified, “unable to obtain credit in other ways” was cited by more than 70 per cent of respondents, followed by the ease and availability of finance, and the need to access high-cost finance to pay down other debt<sup>6</sup>.

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<sup>6</sup> FinCap and Justice Innovation Centre. Survey of financial mentoring and budgeting services in Aotearoa on high-cost loans, debt collection and other consumer credit issues. Research report. Wellington: FinCap and Justice Innovation Centre; 2019. Available from <https://www.fincap.org.nz/resources/>.

<sup>7</sup> Winter C. Women who fell prey to ‘predatory’ lenders break the loan cycle. [Internet] 27 July 2018. Available from <https://www.stuff.co.nz/business/105047319/victims-of-predatory-lenders-break-the-loan-cycle>. Accessed 5 June 2019.

<sup>8</sup> Stop the Debt Trap Alliance of Oregon and the Centre for Responsible Lending. In distress: Low-income Oregonians report heavy debt levels with long-term consequences. Portland, Oregon: Stop the Debt Trap Alliance and the Centre for Responsible Lending; 2019. Available from <https://www.responsiblelending.org/research-publication/low-income-oregonians-report-heavy-debt-levels-long-term-consequences>. Accessed 11 June 2019.

## International action

There are numerous examples of governments (at the state and federal level) taking action to reduce the risk of significant harm from payday lenders, including several of New Zealand's comparator countries – the United Kingdom, United States and Canada. A review published by the Australian Securities and Investments Commission (ASIC) in 2015 recommended that further investigation into payday lenders was undertaken by an independent panel, which recommended that legislation be introduced to cap the total amount on high-cost loan repayments to 10 per cent of a consumer's net income, and strengthen lender responsibilities to prevent consumers falling into debt through multiple high-cost and short term loans<sup>9 10</sup>.

In the United States, payday lending is regulated at the state level: 13 states have prohibited payday lending; a further three states have lower-cost lending where the interest is capped but consumers may still be subject to tiered fees and charges<sup>11</sup>.

The United Kingdom's Financial Conduct Authority made a range of changes to the law in 2015 aimed at reducing the risk of harm and long-term debt, which includes a cap of 100 per cent on the total amount of the loan, a £15 limit on default fees, and capping daily interest rates at 0.8 per cent. Further, caps are not limited to loans with an annualised interest rate – the cap of 100 per cent applies to all loans<sup>12</sup>. The FCA continues to undertake work in this area, most recently expanding its review to include consumer credit through rent-to-own schemes and overdrafts<sup>13</sup>. Since the FCA began enacting changes to high-cost consumer credit, it has reported<sup>14</sup>:

- 800,000 fewer people have taken out a payday loan in the 18 months since regulation was introduced
- £300 million paid back to consumers in redress
- 8 per cent drop in default rates

There are a range of options available to New Zealand legislators, including prohibition. The RACP strongly encourages the Select Committee to recommend the legislation is strengthened to at least the levels of the United Kingdom to reduce the risk of significant harm to consumers who are often already experiencing extreme hardship.

## Health implications

Over 90 per cent of financial capability and budget services stated that they believed their clients were worse off overall as the result of taking out a high-cost loan, and many service providers stated that clients would be better off if they had been denied access to a high-cost loan<sup>6</sup>. High-cost and payday

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<sup>9</sup> Australian Securities & Investments Commission. Payday lenders and the new small amount lending provisions. Report 426. [Internet]. Canberra: Australian Securities & Investments Commission; 2015. Available from [https://siterearch.asic.gov.au/s/cache?collection=asic&url=https%3A%2F%2Fwww.asic.gov.au%2Fmedia%2F3038267%2Frep-426-published-17-march-2015.pdf&profile=asic&hl=\(%3F\)%5Cbreports%5Cb%7C%5Cbreport%5Cb%7C%5Cb426%5Cb](https://siterearch.asic.gov.au/s/cache?collection=asic&url=https%3A%2F%2Fwww.asic.gov.au%2Fmedia%2F3038267%2Frep-426-published-17-march-2015.pdf&profile=asic&hl=(%3F)%5Cbreports%5Cb%7C%5Cbreport%5Cb%7C%5Cb426%5Cb). Accessed 11 June 2019.

<sup>10</sup> Small Amount Credit Contracts Review Panel. Final report. [Internet]. Canberra: Treasury of the Australian Commonwealth Government; 2016. Available from [http://consumercredit.treasury.gov.au/content/sacc\\_review.asp](http://consumercredit.treasury.gov.au/content/sacc_review.asp). Accessed 11 June 2019.

<sup>11</sup> Consumer Federation of America. Legal status of payday loans by State. [Internet]. Available from <https://paydayloaninfo.org/state-information>. Accessed 11 June 2019.

<sup>12</sup> Base D. FCA payday loan caps: your FAQs answered. [Internet]. Page updated December 2018. Available from <https://www.money.co.uk/guides/fca-payday-loan-caps-your-faqs-answered.htm>. Accessed 11 June 2019.

<sup>13</sup> Financial Conduct Authority. High-cost credit review update. [Internet]. Page updated January 2018. Available from <https://www.fca.org.uk/publications/feedback-statements/high-cost-credit-review-update>. Accessed 11 June 2019.

<sup>14</sup> Financial Conduct Authority. Changes in payday lending since FCA regulation. Infographic. [Internet] London: Financial Conduct Authority; 2016. Available from <https://www.fca.org.uk/media/changes-payday-lending-fca-regulation>. Accessed 11 June 2019.

loans are often visible, actively advertised and marketed, and present in neighbourhoods characterised as areas of higher deprivation. In these communities, mainstream banking facilities have been replaced with non-traditional lending outlets<sup>16 15</sup>.

An American study suggested that total debt, and how the debt is constituted (loans, overdrafts, mortgages, credit cards, unsecured loans etc) is a greater indicator of wellbeing than household income alone. Debt can have positive and negative attributes; for example mortgage debt is part of asset attainment (property), whereas credit card or unsecured debt can lead to borrowers classified as high-risk, have poor credit ratings and unable to access finance from more traditional institutions<sup>2 15</sup>.

Short-term loans are increasingly found to be a risk for population health<sup>16 17</sup>. Psychosocial factors including stress (and toxic stress) and mental health conditions such as depression and anxiety are posited as key mediators between social determinants and poor health outcomes<sup>16</sup>. Reporting subjective high debt-to-asset ratio (remaining in debt after liquidating all assets) is associated with significantly higher perceived stress and depressive symptoms and worse self-reported health<sup>8</sup>. Interviews with people experiencing debt described intense feelings of stress, depression, and emotional and physical suffering stemming from their debt and the constant management of household resources that accompanied their efforts to pay it off<sup>15</sup>.

Payday loans and the repayments demanded by this form of credit have been shown to have a significant impact on physical health: blood pressure (systolic and diastolic), adiposity, waist circumference, and higher levels of c-reactive protein (an inflammation biomarker linked to cardiovascular disease)<sup>17 18</sup>. The impact of these health conditions can be compounded by a person's exposure to other social determinants of health, showing a cumulative effect<sup>2</sup>. Poor housing, unemployment, low wages, poor access to nutritious food, no transport options and little access to healthcare can compound when household income is effectively maintained and entrenched by access to high-cost consumer finance.

## Recommendations and conclusions

The RACP calls for the Credit Contracts Legislation Bill to be strengthened to ensure meaningful change is enacted in an industry which causes undue harm to people, whānau and communities in Aotearoa New Zealand. We recommend the Bill is amended as follows:

1. The Bill includes provision to amend the purposes of the Act to explicitly state an objective to prevent harm that may result from consumer credit lending.
2. The interest cap applies to all lending regulated under the Credit Contracts and Consumer Finance Act 2003, rather than only loans with an annualised interest rate of 50 per cent or more.
3. A limit on all default, administration/maintenance and establishment fees is proposed. This should be a nominal fee.

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<sup>15</sup> Sweet E, Nandi A, Adam E, McDade T. The high price of debt: Household financial debt and its impact on mental and physical health. [Internet] Soc Sci Med 2014; 91:94-100. Available from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3718010/>. Accessed 5 June 2019.

<sup>16</sup> Drentea P, Lavrakas PJ. Over the limit: the association among health, race and debt. Soc Sci Med [Internet] 2000; 50:517-29. Available from <https://www.ncbi.nlm.nih.gov/pubmed/10641804>. Accessed 7 June 2019.

<sup>17</sup> Sweet E, Kuzawa CW, McDade TW. Short-term lending: Payday loans as risk factors for anxiety, inflammation and poor health. SSM Pop Health. [Internet] 2018; 5:114-21. Available <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6005810/>. Accessed 7 June 2019.

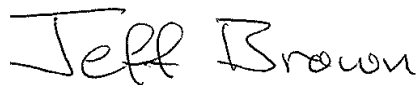
<sup>18</sup> Eisenberg-Guyot J, Firth C, Klawitter M, Hajat A. From Payday Loans to Pawnshops: Fringe Banking, The Unbanked, And Health. [Internet] Health Affairs 2018; 37(3): 429-37. Available from <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2017.1219>. Accessed 7 June 2019.

MBIE should work with local governments to encourage limits on the availability and access to payday lenders within their communities, particularly where permits for new brick-and-mortar and mobile traders are proposed.

The Select Committee should also recommend that initiatives which encourage alternative, socially-responsible lending models are scaled up, to encourage ethical and affordable credit options being made available to consumers. These could be partnerships with iwi, NGOs or social services providers.

The RACP thanks the Expenditure and Finance Select Committee for the opportunity to comment on the Bill and looks forward to the government taking action in this space, given the harm experienced by people, whānau and communities by predatory lenders. To discuss this submission further, please contact the RACP's New Zealand Policy and Advocacy Unit at [policy@racp.org.nz](mailto:policy@racp.org.nz).

Nāku noa, nā

A handwritten signature in black ink that reads "Jeff Brown". The signature is written in a cursive, slightly slanted style.

Dr Jeff Brown  
New Zealand President  
**The Royal Australasian College of Physicians**