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ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

Submission on behalf of Consumer Action Law Centre (Part 1)

1. Introduction

1.1. This written submission is provided by Consumer Action Law Centre (**Consumer Action**).

1.2. Consumer Action is an independent, not-for-profit consumer organisation based in Melbourne. The centre works to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation and policy work and campaigns.

1.3. In 2016/17, Consumer Action responded to 11,146 calls from people seeking financial counselling, and 5,502 calls from people seeking legal advice. Consumer Action's legal practice represented 130 clients with their disputes with traders, including through courts, tribunals and external dispute resolution (**EDR**) schemes. Consumer Action also provided legal advice and assistance to 978 financial counsellors and community workers, and made over 60 submissions to various inquiries and consultations.

1.4. The comments provided in this submission are based on our extensive experience supporting consumers of financial services through advice and assistance. Relevantly, our services assist with banking, all forms of consumer credit including mortgages and car loans, insurance (other than following road traffic accidents), consumer leases, debt collection and debt management services.

1.5. Misconduct in these sectors affects all consumers, but has a disproportionate impact on the lives of low-income, vulnerable and disadvantaged people. The harm experienced by these groups often goes unnoticed—their voices are not the loudest. Consumer Action urges the Commission to focus its inquiries on the misconduct that affects Australia's most disadvantaged consumers.

1.6. The submission responds to two questions posed by the Commissioner:

- What kinds of misconduct by financial services entities occurring since 1 January 2008 has Consumer Action identified? What was the nature, prevalence and effect of each of those kinds of misconduct?
- What kinds of conduct, practices, behaviours or business activities by financial services entities occurring since 1 January 2008 has Consumer Action identified which it considers have fallen below community standards and expectations? What was the nature, prevalence and effect of each of those kinds of misconduct?

2. Misconduct by financial services entities

2.1. For the purposes of this submission, misconduct in the banking and financial sector is categorised into two areas: (a) irresponsible lending (covering credit cards, car finance and mortgage lending); and (b) unlawful sales practices (mis-selling of insurance, property spruiking and timeshare).

2.2. _Irresponsible lending_

2.3. Irresponsible lending involves advancing credit in circumstances where it is not suitable for the borrower's circumstances, or where it leads to unacceptable risk of borrower hardship or default. While the *National Consumer Credit Protection Act 2009* (Cth) requires lenders and intermediaries to lend responsibly, complaints from consumers to our centre demonstrate many instances of irresponsible lending. The conduct of lenders, intermediaries and other relevant parties is relevant for determining if lending has been responsible.

2.4. The key steps a credit provider must take to meet its responsible lending obligations include:

- making reasonable inquiries about the consumer's financial situation, and their requirements and objectives;
- taking reasonable steps to verify the consumer's financial situation; and
- making an assessment about whether the credit contract is 'not unsuitable' for the consumer, including whether payments can be made without 'substantial hardship'.[1]

2.5. It is common that these steps are not adequately followed by lenders. Data collected from the Code Compliance Monitoring Committee (**CCMC**) Annual Compliance Statement program indicates that the provision of credit has been one of the top categories of self-reported Code of Banking Practice (**the Code**) breaches over the last five years.[2] The 13 banking groups that subscribe to the Code self-reported 2,328 breaches of the provision of credit obligations in 2015-16, which was an increase of 76% on 2014-15.[3] It is likely there were far more breaches that were unreported or undetected given the number of consumer credit-related calls our centre receives.

2.6. The use of automated systems to process and approve applications for unsecured credit is particularly problematic. The CCMC found that automated systems are used to process approximately 97 percent of applications for unsecured credit, with 65 percent of those applications ultimately being approved. There is a significant risk of lenders breaching responsible lending obligations if relying solely on automated processes as it is unlikely to provide a full and up-to-date picture of a person's financial circumstances. The CCMC states that:

> *'At this point in time banks have not demonstrated, to the CCMC's satisfaction, that the use of an automated system or statistical credit scoring model alone is sufficient to comply with the Code obligations…'*[4]

2.7. *Credit cards*

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[1] Division 3 and 4, Part 3-2, *National Consumer Credit Protection Act 2009* (Cth). Division 4 and 6 of Part 3-1 deals with credit assistance (intermediaries).

[2] CCMC, *Annual reports*, available at: http://www.ccmc.org.au/news-and-publications/annual-reports/.

[3] CCMC, *Own Motion Inquiry Provision of Credit*, January 2017, Appendix 2, available at: http://www.ccmc.org.au/cms/wp-content/uploads/2017/01/CCMC-Inquiry-Report-Provision-of-credit-January-2017.pdf.

[4] As above, p 5.

2.8. Poor lending practices in relation to credit cards are a significant issue. Lenders often do not properly assess a customer's ability to repay a credit card limit, and offer credit card limit increases or balance transfer deals without properly assessing a customer's current financial situation. Lenders also commonly fail to make sufficient inquiries about a customer's purpose for credit cards as part of an application process. The CCMC made similar observations about credit card lending by Code subscribers.[5]

Case study 1: Joanne's story

We were contacted by Joanne (name changed). Joanne is a nurse and single mother of two children. Joanne's credit card debt has spiralled out of control. Joanne had a credit card with an $8,500 limit. Over a few years, Westpac slowly increased her limit to $15,500. Joanne was struggling to control her debt, and when it reached $12,500, Westpac offered to transfer it to a personal loan. When the balance was transferred, Westpac gave Joanne her card back with the full $15,500 credit limit available again, and had recently issued her another card with a limit of $15,000. We are instructed that there was no suitability assessment undertaken when Joanne was given back her card with the full credit limit available again. Then the debt just piled up. Joanne has now declared bankruptcy.

2.9. Credit card limits continue to grow rapidly with total current credit card limits at $152 billion, which is an increase of almost $40 billion over the past 10 years.[6] Credit cards account for 68 percent of applications for unsecured credit,[7] with the majority of Australian households (55 percent) now carrying a net credit card debt.[8] Statistics from the Reserve Bank of Australia (**RBA**) show that there were almost 16.7 million credit card accounts with outstanding balances of $52.2 billion as of November 2017.[9] This represents an almost 20 percent increase in balances over the past 10 years. Over 60 percent of outstanding balances is accruing interest ($31.7 billion).[10]

2.10. Credit card debt is a substantial source of complaint to Consumer Action's telephone financial counselling service. For example, 31 percent of callers reported a credit card debt in December 2017 (out of a total of 769 callers for the month). Of these, 46 percent involved credit card debts of greater than $10,000. Around 24 percent had credit card debts greater than $20,000 and seven percent had debts greater than $50,000. It is not irregular for people to be calling with credit card debts greater than $100,000.

2.11. There is significant concentration of credit card market with the major four banks. The Australian credit card market features around 100 credit card brands offering over 250 products. However, banks provide approximately 88 percent of credit cards on issue in Australia, and account for approximately 81 percent of balances outstanding.[11]

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[5] As above, p 5
[6] RBA, *Credit and Charge Card Statistics C1*, November 2017, available at: https://www.rba.gov.au/statistics/tables/.
[7] CCMC, above n 3.
[8] ABS, *6523.0 Household Income and Wealth, Australia, 2015-16*, October 2017, available at: http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/6523.0~2015-16~Feature%20Article~Household%20Debt%20and%20Over-indebtedness%20(Feature%20Article)~101
[9] RBA, above n 6.
[10] RBA, above n 6.
[11] Senate Standing Committee on Economics, *Final Report: Matters relating to credit card interest rates*, 2015, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Credit_Card_Interest/Report/c02.

2.12. While credit cards can assist to smooth the irregularities of income and expenditure, it is not difficult for a person to become caught in a harmful debt spiral. Those who have persistent credit card debt—that is, they are not re-paying the outstanding balance each month—are likely to experience harm. This harm may be financial (high interest rates or fees), but it may also be non-financial (such as forgoing essential expenditure or experiencing personal distress).

2.13. It may be suggested that lenders do not benefit from extending credit to people who are unable to repay. However, there are clear incentives for credit card lenders to advance more credit than the borrower can reasonably repay—this situation drives the income stream (interest payments) for the bank. It is our experience that many consumers struggle for years at a time to make repayments to their credit accounts without ever reaching the point of default (see paras 3.2 to 3.7 for discussion about design of credit cards).

2.14. *Car finance*

2.15. Poor lending practices also occur in the motor vehicle finance market. In the 2016-17 financial year, Consumer Action's Legal Practice received 1,098 calls about car problems from consumers and community workers in Victoria, more than any other consumer product category. This amounts to 20.7 percent of total calls. Nearly 30 percent of motor vehicle calls related to car loans and motor vehicle repossessions. The volume of complaints relating to motor vehicles not only reflects systemic problems with car lending, but also the critical importance of motor vehicles to consumers. For many of the people who contact our centre, their car is their most significant asset and is essential to their day-to-day lives.

2.16. Consumer Action's casework experience suggests there is systemic irresponsible lending in the car finance market, particularly for vehicle purchases by low-income and disadvantaged consumers. These concerns have been validated by various Australian Securities and Investments Commission (**ASIC**) enforcement actions against car financiers for misleading statements and irresponsible lending, including:

- Volkswagen Financial Services Australia Pty Ltd (**VWFSA**) paying a penalty of $216,000 after ASIC issued 20 infringement notices for alleged misleading statements made by VWFSA as part of its '*1% you can't ignore*' advertising campaign;[12]
- BMW Australia Finance Ltd providing at least $72 million in redress for consumers for responsible lending failures;[13] and
- Esanda, ANZ's former car finance business, being subject to civil penalty proceedings and agreeing to remediation for breaching responsible lending laws.[14]

2.17. While some consumers approach lenders directly to apply for a car loan, it is common for an intermediary (usually the car dealer) to 'broker' a loan at the car yard as part of the sale process. In our

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[12] ASIC, *Media Release, 17-410MR Volkswagen Financial Services Australia pays $216,000 penalty for misleading advertising*, 28 November 2017, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-410mr-volkswagen-financial-services-australia-pays-216-000-penalty-for-misleading-advertising/.

[13] ASIC, *Media Release, 16-417MR ASIC action sees BMW Finance pay $77 million in Australia's largest consumer credit remediation program*, 6 December 2016, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-417mr-asic-action-sees-bmw-finance-pay-77-million-in-australias-largest-consumer-credit-remediation-program/.

[14] ASIC, *Media Release, 18-013MR ASIC acts against ANZ for breaching responsible lending laws in its former Esanda car finance business*, 18 January 2018, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-013mr-asic-acts-against-anz-for-breaching-responsible-lending-laws-in-its-former-esanda-car-finance-business/.

experience, brokers often complete loan application documents and liaise directly with lenders without borrowers having any contact with the lender. This gives rise to significant risks for irresponsible lending and, in some cases, fraud.

Case study 2: Aroha and Luke's story

In May 2016, Luke and Aroha (names changed) attended Harrison Motoring Group (**HMG**) in Melton, Victoria and decided to purchase a vehicle and signed a sale contract. They paid a deposit of $1,000. When they signed the sale contract, HMG arranged for Luke and Aroha to be approved for a $20,417.30 loan with the Bank of Melbourne (**BOM**) to fund the balance of the sale price. As part of the transaction, Luke and Aroha were also sold loan insurance, gap insurance and tyre and rim insurance (**the insurance**) with Swann Insurance (**Swann**) without their knowledge.

At the time of applying for the loan, Aroha and Luke were newly arrived migrants from New Zealand of Samoan background. They had 5 dependent children. Luke was working fulltime as a semi-skilled labourer earning approximately $951 per week net. Aroha was not working, and was receiving Centrelink benefits of approximately $469 per week net.

In about August 2017, the car experienced significant mechanical issues which Luke and Aroha couldn't afford to fix. Luke and Aroha then contacted Consumer Action for assistance.

The loan application documents showed that Bank of Melbourne was on notice of Luke and Aroha's income at the time of the loan, and the fact that they had 5 dependents. There were no expenses documented in the loan application other than their rental expenses. The loan application erroneously stated that their contents were worth $80,000. The loan was unaffordable, meaning Luke and Aroha could not make repayments without suffering substantial financial hardship. They have now settled their dispute with the BOM and Swann.

Case study 3: Sally's story

Sally (name changed) is a 56-year-old single mother with 2 children. She has been unable to work since 2012 following a serious fall. She now relies on Newstart allowance as her sole source of income.

On 26 July 2012, Sally purchased a Ford Focus from [redacted] for $21,500. Despite her very low income, she was given a loan with St George Finance Pty Ltd through a finance agent at [redacted] for the purchase of the vehicle. Sally had attempted to get finance for the purchase of a car from several different lenders prior to contracting [redacted]. She was denied finance on all such occasions due to her poor credit record.

At the time of the loan, Sally was receiving approximately $450 per week as a combination of wages from part-time childcare work and assistance from family members. The fortnightly payments on the loan amounted to approximately 28 percent of her income. Sally suffered significant financial hardship under the loan, and also had serious mechanical problems with the car. Sally sought assistance from Consumer Action and has now settled her dispute with the bank and trader.

2.18. The growth of the 'gig economy', for example ridesharing and delivery services, has also meant that the line between business and consumer credit has blurred. Unscrupulous brokers and lenders have taken advantage of this lack of clarity by pressuring or suggesting that consumers take out 'business' loans to avoid licensing requirements and complying with the protections offered by the consumer credit laws. While this misconduct currently appears to be limited to non-bank fringe lenders (which appear to fall outside the Commission's terms of reference), these practices can be promoted by brokers (intermediaries between borrowers and lenders, which are included in the terms of reference).

Case study 4: Pensri's story

We have been instructed as follows. Pensri (name changed) migrated from Thailand to Australia 8 years ago and works as a massage therapist. She sends money back to her children in Thailand. Pensri needed a car to get to work. Needing finance, Pensri says she applied to big banks and smaller lenders but all of her loan applications were knocked back.

Pensri approached a broker and provided details of her income and expenditure including bank statements. At the time, her income was around $500-$600 per week. Pensri instructs that the broker said there was only one lender who would give a loan to someone with her dire financial position. The broker asked for the details of the ABN that she used as a massage therapist—Pensri thought this was simply to verify her income.

Pensri was referred to the lender and signed a contract of sale for a vehicle for approximately $23,500. She then signed a contract with the lender. Pensri thought she was getting a loan and that she owned the car outright in her personal name. In fact, she had been signed up to what is described as a 'rent-to-buy' equipment finance contract using her ABN, with a weekly rent of $308.74 and a minimum term of 12 months. The contract reveals a Broker Origination Fee of $825.

Within a few weeks, Pensri was defaulting on the repayments which she could not afford. The lender refused a hardship application and is now attempting to repossess her car. The lender does not hold an Australian Credit Licence and is not a member of an EDR scheme. Pensri has become extremely stressed by her situation and is getting less work and a reduced income. Pensri's dispute is ongoing.

2.19. *Mortgage lending*

2.20. Irresponsible lending in the context of skyrocketing property prices in major cities and record-low interest rates has resulted in more Australians than ever being in mortgage stress. The number of Australian households facing mortgage stress has soared by nearly 20 percent in the past six months to more than 921,000 and is on track to top 1 million by next year, according to Digital Finance Analytics (households are defined as stressed when net income (or cash flow) does not cover ongoing costs).[15]

2.21. Irresponsible mortgage lending can have severe consequences, including the loss of the security of a home. Consumer Action's experience is that older people are at significant risk, particularly where they agree to mortgage or refinance their home for the benefit of third parties. This can be family members or someone who holds their trust. A common situation involves an adult child persuading the older person to enter a secured loan/mortgage contract as the borrower and assures them that they will make all the repayments. The lack of appropriate inquiries into the suitability of a loan only comes to light when the adult child defaults on loan repayments and the bank commences proceedings for possession of the loan in order to discharge the debt. The following case study published by the Financial Ombudsman Service (**FOS**) provides a similar example.[16]

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[15] DFA Financial Analytics, *Households under mortgage stress gun in December*, 3 January 2018, available at: http://digitalfinanceanalytics.com/blog/households-under-the-mortgage-stress-gun-in-december/.

[16] FOS, *Circular*, Issue 16, January 2014, available here: https://www.fos.org.au/the-circular-16-home/case-studies/case-studies/.

Case study 5: FOS case study - Anne's story

Anne, a retiree and pensioner, owned her home. She entered into a loan contract with her son, Brian, to provide funds to extend her home so her son could live with her. Anne secured the loan with a mortgage over her home, and Anne and Brian's ability to pay the loan was based on Anne's pension and Brian's wage. Anne could not afford the loan solely on her income.

After approving the loan, the financial services provider (FSP) also provided further advances under the loan contract. The money was used to pay Brian's outstanding credit card debts, and for Brian to purchase a car.

Brian left his job to travel overseas and stopped making repayments on the loan. Anne could not afford the repayments and the FSP said it would take possession of Anne's home. Anne lodged a dispute with FOS.

After considering the dispute, FOS concluded that Anne was appropriately a co-debtor in the original loan contract, as she had received a direct benefit from the loan (the extension to her home and therefore an increase in its value). However, FOS considered that she was not liable for the further advances as she did not directly benefit from the application of the funds. Even though the repayment of Brian's credit card debts may have provided more towards the household income, FOS concluded that this was not a direct benefit to Anne. Neither was the purchase of a car for Brian, as there was no information to show that Anne used the car or relied on Brian to transport her.

2.22. The use of "benchmarking" by major lenders when undertaking affordability assessments is a significant problem, and risks breaching responsible lending laws. ASIC's regulatory guide on responsible lending states that the obligation to make reasonable inquiries about a consumer's financial situation 'involves obtaining information about the consumer's actual income, expenses and other circumstances that are likely to affect their ability to meet the financial obligations'.[17] The Federal Court has also stated that examining living expenses is an important part of the responsible lending assessment.[18]

2.23. Despite this, our experience of assisting clients with disputes relating to responsible lending on mortgages suggests that there is a reliance on using living expense benchmarks such as the Henderson Poverty Index (**HPI**) and the Household Expenditure Measure (**HEM**). The Australian Prudential Regulatory Authority (**APRA**) has similarly raised concerns about these measures. While the use of benchmarks to verify living expenses can protect against instances of borrowers underestimating their expenditure, this depends upon the robustness of the measure. APRA states that it has concerns about whether these benchmarks provide realistic assessments of a borrower's living expenses.[19] In the same vein, ASIC has issued proceedings against Westpac in the Federal Court

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[17] ASIC, *RG 209: Credit licensing: responsible lending*, available at: http://download.asic.gov.au/media/2243019/rg209-published-5-november-2014.pdf.

[18] *ASIC v The Cash Store (in liquidation)* [2014] FCA 962 at [42].

[19] APRA, *Speech: Housing – The importance of solid foundations*, 21 November 2017, available at: http://www.apra.gov.au/Speeches/Pages/Housing-The-importance-of-solid-foundations.aspx

for failing to properly assess whether borrowers could meet repayment obligations, due to the use of benchmarks rather than the actual expenses declared by borrowers.[20]

2.24. Similarly, there are concerns about the adequacy of interest-rate buffers in affordability assessments. In a report on interest-only loans, ASIC has stated that it is has observed significant variations in the approach lenders take to including appropriate buffers.[21] This issue can affect all borrowers, particularly in a period of low interest rates. Should rates increase, many people may find that their loan becomes quickly unaffordable. Where borrowers have interest-only loans, this problem is exacerbated. Once the interest-only period ends (commonly after the first 5 years), the repayment amount will increase substantially as repayments will also contribute to the principal component of the loan. It has been reported that around one-third of interest only borrowers do not know that they have this style of mortgage, raising concerns about the adequacy of communication and disclosure at the point of loan entry.[22]

2.25. The combination of these issues means that much of the harm caused by irresponsible lending in the home loan sector is yet to come. Should interest-rates increase, many people who have entered into loans where affordability assessments have been inadequate are likely to find themselves unable to make repayments.

2.26. *Other harmful lending*

2.27. A final example of irresponsible lending involves fringe products, including payday lenders and consumer leases. The providers of these products appear to be excluded from the Commission's terms of reference, which does not appear to cover non-bank lenders. There are, however, intermediaries between borrowers and lenders in this sector that may be caught by the terms of reference (for example, lead generators). These products are particularly harmful and targeted at the most vulnerable. For more information on misconduct in the fringe finance industry and the impact on vulnerable Australians, please refer to our submission to the Small Amount Credit Contract Review.[23]

2.28. *Impact of irresponsible lending*

2.29. The most recent statistical tables from the Reserve Bank of Australia demonstrate very high levels of household debt in Australia. The ratio of total debt to income is now 199.7 and housing debt to income is 137.5.[24] Both ratios are the highest on record. The proportion of households who are over-indebted is also up from 21% in 2003-04 to 29 percent in 2015-16.[25] This over-indebtedness has been driven by our biggest lenders and intermediaries. While lenders, and arguably many Australians, seem to be

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[20] ASIC, *17-048MR ASIC commences civil penalty proceedings against Westpac for breaching home-loan responsible lending laws*, 1 March 2017, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-048mr-asic-commences-civil-penalty-proceedings-against-westpac-for-breaching-home-loan-responsible-lending-laws/.
[21] ASIC, *Report 445, Review of interest-only home loans,* August 2015, available at: http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-445-review-of-interest-only-home-loans/.
[22] UBS Evidence Lab, *Australian Mortgages Survey*, October 2017, excerpted here: http://www.austmm.com/2017/10/08/ubs-evidence-lab-survey-of-907-australians/.
[23] Consumer Action, *Submission to Small Amount Credit Contract Review*, October 2015, available at: https://consumeraction.org.au/review-of-the-small-amount-credit-contract-laws-submission/.
[24] RBA, *Statistical Tables, Household Finances – Selected Rations E2*, available at https://www.rba.gov.au/statistics/tables/
[25] ABS, above n 8.

growing comfortable with the idea of being over-stretched, the reality is that high levels of debt pose significant risks to individual wellbeing and Australia's financial stability.

2.30. In its recent report on rising household debt, the Australian Bureau of Statistics (**ABS**) cautioned that 'high levels of debt, when considered against the value of current household income and assets, indicates vulnerability in the event of an economic shock, such as increases to interest rates, the loss of a job, illness or injury, a change in family circumstances or a drop in asset prices.'[26] While interest rates are currently low, if they rise even by a small proportion, many households will be put under significant financial pressure. We are already seeing evidence of increased financial pressure amongst Australian households, with the National Debt Helpline telephone financial counselling service receiving a record 160,000 calls in 2016-17, an increase of 11% on the previous year.[27]

2.31. The political and wider-public attention tends to focus on irresponsible lending and over-indebtedness only when it affects the wider economy in times of financial market stress. However, arguably the most significant harm occurs at an individual and family level. The greatest impact of irresponsible lending is felt by marginalised borrowers whose inadequate income is further reduced by servicing debt. People struggling with debt often prioritise loan repayments over other essentials due to fear of bankruptcy or having assets repossessed. Studies have found links between high levels of personal debt and lower standards of living, with reduced spending on food and other household essentials.[28] Highly indebted individuals can be financially excluded and struggle to access mainstream credit, pushing them to high cost predatory lenders like payday lenders.[29]

2.32. Over-indebtedness can also have significant longer-term impacts, potentially affecting a person's capacity to provide for housing, health, education and retirement.[30] Problem debt can have a harmful effect on physical and mental health and personal relationships, and can contribute to family breakdown.[31] Debt worries also impact on people's ability to work, by affecting their attendance or concentration.[32] Personal financial issues have been found to the leading cause of stress by the Australian Psychological Society, while other studies have found that individuals with unmet loan payments had suicidal ideation and suffered from depression more often than those without such financial problems.[33] Studies have also likened unpaid financial obligations with poorer subjective health assessments and health-related behaviour.[34]

2.33. *Unlawful sales practices*

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[26] ABS, above n 8.
[27] Financial Counselling Foundation, *The Need*, accessed 19 January 2018, available at: http://financialcounsellingfoundation.org/the-need.html.
[28] Citizens Advice, *A Debt Effect? How is unmanageable debt relate dot other problems in people's lives?*, July 2016, p. 11, available at: https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/The%20Debt%20Effect.pdf.
[29] Consumer Action, above n 23, p. 11.
[30] Ali, McRae and Ramsay, 'Consumer Credit Reform and Behavioural Economics: Regulation Australia's Credit Card Industry', *Australian Business Law Review*, Volume 40, Issue 2, 2012.
[31] Step Change, *Statistics Yearbook Personal Debt*, 2014 p 24, available at: https://www.stepchange.org/Portals/0/documents/media/reports/statisticsyearbooks/StepChangeDebtCharityStatisticsYearbook2014.pdf; Consumer Action, above n 25.
[32] Step Change, *Life on the Edge*, 2014, p 3, available at: https://www.stepchange.org/Portals/0/StepChangeLifeontheEdgereport.pdf.
[33] Australian Psychological Society, *Stress and wellbeing survey*, 2015, p 27, available at: http://www.psychology.org.au/Assets/Files/PW15-SR.pdf; Turunen and Hiilamo, *Health effects of indebtedness: a systematic review*, BMC Public Health, 2014, available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4060868/#B31
[34] Turunen and Hiilamo, *Health effects of indebtedness: a systematic review*, BMC Public Health, 2014, available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4060868/#B31

2.34. Sales practices by financial entities and intermediaries can involve substantial misconduct.

2.35. Financial products and services commonly have credence attributes, where performance and quality of the good is not apparent even after purchase, and in many cases not apparent for a long time after purchase. This means assessing quality can be very difficult, which in turn can create incentives for fraudulent behaviour. In nearly all cases, the consumer relies on the expertise of the seller to ensure the service fits their requirements. However, the legislative framework around financial advice is insufficient and includes numerous exceptions.

2.36. *Insurance mis-selling*

2.37. In relation to insurance, it is common for products to be sold under 'no advice' or 'general advice' models. This means that the seller is not taking into account the consumers particular circumstances, such as their objectives, financial situation and need. This lack of specific advice has resulted in widespread selling of insurance which is unsuitable for the people buying it.

2.38. Insurance sold under these models is sold either directly by insurers or through distributors such as banks, car dealerships, retailers and airlines. Third-party distribution arrangements benefit insurers by giving them access to valuable consumer segments, for example, customers at car dealerships and members of retail loyalty schemes.

2.39. A defining characteristic of third-party distribution arrangements is the payment of commissions and other incentives by insurers to distributors. These arrangements have distorted some insurance markets. For example, insurers distribute insurance through car dealerships, such as consumer credit insurance (**CCI**), guaranteed asset protection (**GAP**) insurance and loan termination insurance (collectively known as 'add on insurance'). ASIC valued this market at $1.6 billion in the years 2013-15.[35] Access to car dealerships is so valuable to insurers that this market exhibits reverse competition, where insurers have competed for access to the market by offering car dealers commissions of up to 79 percent and other incentives.[36] ASIC has called this 'a market that is failing consumers'.[37]

2.40. Reverse competition and sales incentives in this market significantly benefit car dealerships and insurers, to the detriment of their customers. Some key indicators of this are that:

- in recent years, insurers paid four times more to car dealers in commissions than they paid out in customer claims,[38]
- the insurance is extremely expensive, costing up to 18 times more than equivalent insurance bought directly from an insurer,[39]

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[35] ASIC, *Report 492: A market that is failing consumers: The sale of add-on insurance through car dealers*, September 2016, para 19, available at: http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-492-a-market-that-is-failing-consumers-the-sale-of-add-on-insurance-through-car-dealers/.
[36] ASIC, above n 35, para 20.
[37] ASIC, above n 35.
[38] Insurers paid $602.2 million in commissions versus $144 million in claims over 2013-15: ASIC, above n 35, para 20.
[39] ASIC, *Report 471: The sale of life insurance through car dealers: Taking consumers for a ride*, February 2016, para 4, available at: http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-471-the-sale-of-life-insurance-through-car-dealers-taking-consumers-for-a-ride/.

- the insurance is also very low value across the board, with loss ratios of 9 percent overall and just 5 percent for CCI,[40]
- many customers have been sold add-on insurance in circumstances in which it unsuitable for them because:
    - they are ineligible to claim on it—for example, they have been sold CCI with unemployment and disability cover but they do not meet the employment requirements and/or have a pre-existing medical condition, and
    - it is unlikely to be valuable to them—for example, they have been sold CCI with a death benefit when they are young and have no dependents.
- it is common for consumers to be misled or taken advantage of unconscionably in the sales process for add-on insurance,
- a significant proportion of customers did not know they had bought it at the time. This was typically because the documents were 'hidden' within documents which they were asked to sign under pressure.

Case study 6: Paul's story
Paul instructs that he was led to believe he needed GAP insurance to get approval for a loan when buying his Toyota RAV4 five years ago, at a cost of an extra $1,090. He says the GAP insurance was worthless to him, because he had comprehensive insurance which would cover the vehicle if it was a total loss. Paul used Consumer Action's website DemandARefund.com to get a refund.

Case study 7: Bernadette's story
Bernadette advised us that she got a car loan and two insurance policies (CCI and gap) were added without her consent. Bernadette used DemandARefund.com to get a refund of $4,300. She said that this meant she was able to pay off her car loan two years early.[41]

2.41. A 2015 report published by Consumer Action estimated that Australian insurers and warranty providers might be due to pay over $70 million in refunds to consumers for add-on financial products mis-sold each year.[42] This was an estimate was based on the amount of premiums sold in consumer credit insurance sector (as disclosed through APRA statistics, $370 million per year[43]) and Consumer Action casework experience (and reviewing similar markets in the UK[44]) that one in five consumers who bought an add-on financial product did not know they had purchased add-on insurance.[45]

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[40] ASIC, above n 35, para 47. Comparative ten-year loss ratios averages are over 60% for home insurance and 67% for motor vehicle insurance: Australian Prudential Regulation Authority, *General Insurance Claims Development Statistics – Highlights (December 2016)*, November 2017, p 5, available at: http://www.apra.gov.au/GI/Publications/Pages/General-Insurance-Claims-Development-Statistics.aspx.
[41] Esther Han, 'How to get money back from 'junk' insurance policies', *The Sydney Morning Herald*, 6 June 2016, available at: http://www.smh.com.au/business/consumer-affairs/how-to-get-back-money-from-junk-insurance-policies-20160603-gpb0cb.html.
[42] Consumer Action, *Junk Merchants: how Australians are being sold rubbish insurance and what we can do about it*, December 2016, available at: https://consumeraction.org.au/junk-merchants-report-how-australians-are-being-sold-rubbish-insurance-and-what-we-can-do-about-it/.
[43] APRA, *Quarterly General Insurance Performance Statistics*, December 2014 (reissued 17 March 2015), available at: http://www.apra.gov.au/gi/publications/pages/quarterly-general-insurance-statistics.aspx.
[44] UK Financial Conduct Authority, *Market Study 14/1, General insurance add-ons: Provisional findings of market study and proposed remedies*, March 2014, page 7, available at: https://www.fca.org.uk/publication/market-studies/ms14-01.pdf.
[45] DemandARefund.com user data similarly suggests a one in five ratio for consumers that were unaware that they were sold add-on insurance. DemandArefund.com was established by Consumer Action in March 2016 to enable people to generate a letter of demand to obtain a refund from an insurer that mis-sold them add-on insurance.

2.42. This figure is likely to be severely under-estimated. First, add-on insurance can be sold unlawfully in circumstances where the consumer was aware of the purchase (for example, the consumer was misled or taken advantage of unconscionably). Second, an ASIC report estimated that the sector is worth closer to $530 million per year.[46] Misconduct in this sector is likely to have costed consumers over a billion of dollars over the last ten years.

2.43. ASIC has begun to respond to the widespread consumer harm in this market by:

- proposing a legislative instrument to impose a delay between the sale of a car and the sale of add-on insurance in car dealerships, to curb the opportunity for pressure selling of unsuitable, expensive insurance;[47]
- indicating it will impose stricter distribution monitoring requirements on insurers;[48] and
- negotiating consumer remediation schemes for mis-sold add-on insurance totalling more than $120 million.[49]

2.44. Despite ASIC's work, there is still low-value, unsuitable add-on insurance being sold in car dealerships. While some people have or will obtain refunds through ASIC-negotiated remediation programs, through tools like DemandARefund.com (through which consumers have claimed over $800,000 in premium refunds), or through individual complaints, there is likely to be hundreds of millions still refundable to consumers due to industry misconduct.

2.45. In addition to this direct financial impact, this sort of misconduct impacts people when they come to try and claim on insurance but find it of limited value. This experience of 'claim shock' at the 'moment of truth' can be deeply distressing to people who are already at a very vulnerable point in their lives. In this sense, misconduct at the point of sale can have a significantly damaging impact people's lives.

2.46. These unexpected claims denials severely impact people's lives. Insurance claim denials impact people's housing security, health (particularly mental health), families and work. Unexpected claims denials are a clear causal factor in customers losing trust and confidence in their insurers. The people who obtain legal assistance often believe that they would not have been able to successfully dispute their claim denial without a lawyer.

Case study 8: Jake's story

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[46] ASIC, above n 35.
[47] ASIC, *CP 294: The sale of add-on insurance and warranties through caryard intermediaries*, August 2017, http://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-294-the-sale-of-add-on-insurance-and-warranties-through-caryard-intermediaries/.
[48] As above, n 46.
[49] ASIC, *17-189MR Virginia Surety to refund over $330,000 to add-on insurance customers*, 20 June 2017, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-189mr-virginia-surety-to-refund-over-330-000-to-add-on-insurance-customers/; *17-258MR QBE refunds $15.9 million in add-on insurance premiums*, 2 August 2017, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-258mr-qbe-refunds-159-million-in-add-on-insurance-premiums/; *17-446MR Swann Insurance refunds $39 million in add-on insurance premiums*, 19 December 2017, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-446mr-swann-insurance-refunds-39-million-in-add-on-insurance-premiums/; *18-008MR Allianz refunds $45.6 million in add-on insurance premiums*, 17 January 2018 http://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-008mr-allianz-refunds-456-million-in-add-on-insurance-premiums/; *18-009MR Suncorp refunds $17.2 million in add-on insurance premiums*, 17 January 2018, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-009mr-suncorp-refunds-172-million-in-add-on-insurance-premiums/.

Jake (name changed) was 19 years old when he got his first job and bought his first car. He got finance through the car yard. The salesperson visited him at his home and advised him to get loan protection insurance (CCI), because he was young and therefore, according to the seller, more likely to lose his job.

In fact, Jake would be ineligible to claim on the unemployment cover, because he was on a casual employment contract. Jake also had disability cover under the CCI. He had pre-existing mental illness, so the disability cover was of very limited value. The salesperson also added GAP insurance to the loan, which Jake did not know at the time.

When Jake became unable to work due to mental illness, his mother called the insurer to make a claim. She says she was told the insurance only covered very serious conditions such as cancer. According to Jake the stress of the claim denial exacerbated his mental illness.

2.47. While this kind of misconduct is prevalent in car dealership sales, other third-party distributor networks bear the same risks of incentive-driven mis-selling. In particular, some banks, credit unions and other finance providers have mis-sold CCI with credit cards and loans. Commissions and incentives drive these sales in much the same way.

Case study 9: Steve's story[50]

Steve (name changed) instructs us that he took out a home loan with a major bank in 2013. He says the loan was for a relatively small amount—Steve had received an inheritance which paid for most of the house and the loan was for the remainder. A few months after taking out the loan, he approached the same bank again and applied for a credit card to pay for some renovations on the home. Steve instructs that he was a full-time carer for his wife, who has a disability.

According to Steve, both he and his wife are solely reliant on Centrelink income. During the application process, he says that the bank staff added CCI (including an unemployment benefit) to the credit card. According to Steve, he did not ask to buy insurance and the CCI he ended up with was not explained to him. He doesn't recall what was said about insurance when he applied for the credit card—he said that 'they just start talking and don't stop, then say: "you understand all that", and you just say "yeah"'.

However, it should have been clear to the bank staff that both Steve and his wife—who did all their banking with this bank—were solely reliant on social security and neither could have claimed the unemployment benefit.

Steve says that he paid around $90 per month on CCI premiums for two years. By the time the two years had passed, his wife's medical condition worsened and Steve needed to spend more money on renovations to make the home suitable to a person with limited mobility. Steve instructs that this extra expense caused financial strain and he rang the bank to ask if the insurance policy he had would cover the period of financial difficulty.

According to Steve, the bank staff told him that his policy would only cover him if he became unemployed. Steve responded that he wasn't working when he was sold the policy. According to Steve, the bank staff 'didn't have any real answers' about why he had been sold the policy. Steve called back

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[50] This case study was first published in the Junk Merchants report, as above n 42.

later and cancelled the policy. Consumer Action gave assistance to help Steve apply for a refund on the premiums he paid.

2.48. The extent of CCI mis-selling by banks, credit unions and finance providers is not currently publicly known. Outcomes of an ASIC surveillance into past CCI practices by banks may provide some information.[51]

2.49. Direct sales of life insurance under a no advice model are another area where mis-selling is occurring. Similar to some add-on insurance, direct life insurance is relatively complex and people have been sold it when they did not need or understand it.

Case study 10: Brett's story
Alan instructs that an insurer cold-called his home one day. His son Brett (names changed) answered the telephone. Brett is aged in his thirties and has Down Syndrome. Alan understands that through the course of the telephone call, Brett was sold life insurance. Alan found out Brett had bought the life insurance and tried to cancel it. He says he had significant difficulty in doing so. He had to seek legal advice before finally cancelling the policy and obtaining a refund.

2.50. ASIC has found that more direct life insurance claims are declined compared with retail life insurance (sold with advice) or group life insurance claims, and that there are generally higher lapse rates associated with direct life insurance.[52] This would suggest that more unsuitable sales may be occurring through the direct life insurance channel.

2.51. Exploitative advertising and marketing of direct life insurance continues to be an area of high risk and concern for vulnerable consumers. It is particularly concerning because these policies can be expensive and a significant proportion of Australians already have group life insurance in their superannuation.

2.52. An example of poor selling practices is the highly emotive advertising of life insurance as 'love insurance', with spiels such as 'Think of a romantic gesture… Flowers, chocolates, a candlelit dinner perhaps. But what about making the commitment to looking after your loved ones after you're gone?'[53] This type of advertising is counterproductive to any efforts to encourage people to make an informed decision to buy a suitable product.

2.53. *Property spruiking*

2.54. The property investment advice or property 'spruiking' industry has been blighted by misconduct. Property investment advisors typically sell property investments through seminars, courses and other events. They can use misleading conduct and pressure tactics to convince people to take part in schemes such as land banking or rent-to-buy brokering.

2.55. Entities involved in this sector may or may not have an Australian Financial Services Licence (**AFSL**), so some entities may be considered outside the scope of the Commission's terms of reference. However,

[51] ASIC, *17-255MR Banks to overhaul consumer credit insurance sales processes*, 1 August 2017, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-255mr-banks-to-overhaul-consumer-credit-insurance-sales-processes/.
[52] ASIC, *Submission to Senate inquiry into consumer protection in the banking, insurance and financial sector*, March 2017, para 476, available at: http://download.asic.gov.au/media/4536718/asic-submission-consumer-protection-in-the-banking-insurance-and-financial-services-sector-march-2017.pdf.
[53] ANZ Life insurance, https://www.wealth.anz.com/love-insurance, accessed 12 January 2018.

some of these entities may be engaging in unlicensed financial services or be related to mortgage brokers, financial planners or introducers. Banks and other authorised deposit taking institutions tend to be involved by advancing loans to purchase property spruiked by property investment advisers.

2.56. The most high-profile misconduct by property spruikers in recent years includes:

- Henry Kaye was engaged in misleading and deceptive conduct and was later was disqualified from managing a corporation for five years for operating multiple failed companies which provided property investment services and advice.[54]
- Jamie and Dennis McIntyre were banned from providing financial services or managing corporations for ten years, after their land banking businesses were held to be unlawful, unregistered managed investment schemes.[55] The land option agreements sold to consumers by the McIntyres' businesses were held to be financial products.
- Rick Otton and his We Buy Houses business made false or misleading representations in seminars, coaching, books and advertising which promoted rent-to-buy and similar strategies.[56] The penalty is pending.

2.57. A key concern is that property investment advice is not regulated as financial advice under the *Corporations Act 2001* (Cth) and *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).[57] This regulatory gap has been acknowledged numerous times, including by ASIC in 1999,[58] a Federal Parliamentary Joint Committee report in 2005,[59] a Victorian Parliamentary Inquiry in 2008,[60] and a Senate Committee report in early 2016.[61] This means that property spruikers do not have to hold AFSL, provided they are not found selling or advising on financial products. However, the contractual arrangements ultimately sold by property spruikers are complex and can involve significant financial risk, for example through options, licences and of-the-plan arrangements.

2.58. While the prevalence of misconduct in this sector is unclear, Consumer Action has assisted multiple people who have been financially ruined by purchasing properties from people employing rent-to-buy or vendor finance strategies such as those spruiked by Otton. These brokers typically target people who could not otherwise buy a home, because of their income, savings or credit history. They often operate without AFSLs and do not comply with other regulations (for example, for real estate agents).

Case study 11: Will's story

Will and Mara (names changed) had three children. Will worked as a salesman earning approximately $35,000 per year and Mara was receiving parenting payments from Centrelink. Will had two adverse credit listings and was paying back several debts.

Will and his friend Adbi wanted to buy a house together. They searched online and found Mike, a rent-to-buy agent. Mike said that if they signed up to a rent-to-buy agreement, he would help them get

[54] ASIC, 1*0-160AD ASIC disqualifies Henry Kaye from managing corporations for five years*, 20 July 2010, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2010-releases/10-160ad-asic-disqualifies-henry-kaye-from-managing-corporations-for-five-years/.
[55] *Australian Securities and Investments Commission v McIntyre* [2016] FCA 1276.
[56] *Australian Competition and Consumer Commission v We Buy Houses Pty Ltd* [2017] FCA 915.
[57] Property is not a financial product under s 12BAA of the ASIC Act.
[58] ASIC, *Report 05: Review of the financial advising activities of real estate agents—interim report*, July 1999, available at: http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-5-review-of-financial-advising-activities-of-real-estate-agents-interim-report/.
[59] Parliamentary Joint Committee on Corporations and Financial Services, *Property Investment Advice—Safe as Houses?*, June 2005.
[60] Parliament of Victoria Law Reform Committee, *Final Report: Inquiry into Property Investment Advisers and Marketeers*, April 2008.
[61] Senate Economics References Committee, *Scrutiny of Financial Advice Part I—Land banking: a ticking time bomb*, February 2016.

finance in three years. Will was reassured by Mike that the property value would increase and he would help him get a bank loan.

Will and Mara signed a vendor terms/instalment contract for $429,000. Abdi was not on the paperwork. They paid an $8,000 deposit and the First Home Owners Grant of $20,000. Abdi moved in with them. Will and Abdi made weekly payments for three years, totalling over $100,000.

Towards the end of the three years, Abdi moved out. Will was now earning $60,000 and asked Mike to arrange a bank loan. Mike could not get Will a loan. Will believed this was because the property was only valued at approximately $360,000, and he still had credit defaults.

Will tried to end the vendor terms contract and get a partial refund. Mike said it was not possible. Mike offered to reduce their payments to $350. Eventually Will had trouble getting in touch with Mike at all.

Will and Mara continued to live in the property and sought legal assistance to get a refund of the money they had paid in excess of market rent, which was over $80,000. With the assistance of a lawyer, Will came to a satisfactory settlement with Kerry, the property owner. Will, Mara and the family then moved out, after almost five years in the home.

2.59. *Timeshare*

2.60. The sale of timeshare frequently involves very high-pressure sales and conduct which could be regarded as unconscionable and/or misleading or deceptive. Timeshares are a form of ownership or right to use a particular property or properties, such as a holiday villa, for a set period of time. Some schemes are points-based, where you buy points (or credits) that you can redeem at a number of holiday accommodation properties in various locations.

2.61. Timeshares are commonly sold at a seminar, where gifts or other incentives are provided for attendance. Once a consumer attends a seminar, they can become 'captured' and subject to high pressure tactics. No assessment appears to be made as to the suitability of the product for the relevant consumer even though the product is relatively expensive and may be financed with a relatively high interest loan. Problems can arise when people come to use the accommodation as there is limited available options or poor quality accommodation, there can be restrictions imposed (for example, a requirement to book far in advance) or additional fees applied. People who seek assistance from Consumer Action about these products commonly have very limited understanding about how the scheme operates as incomplete explanation has been provided by timeshare sellers.

Case study 12: Alice's story

Alice (name changed) contacted our legal advice line in September 2017 after signing up to a timeshare scheme in September 2015. Alice told us that at the time of signing up she was pregnant and working two jobs earning around $800 per week. Alice's husband was working part time.

Alice and her husband had used her in-laws' timeshare credits to travel to Sydney for a weekend. While they were staying at the hotel, Alice says that they were approached and offered a gift voucher and free breakfast if they attended a seminar about the timeshare scheme. Alice and her husband attended the seminar, and Alice says the sales staff pushed them very hard to sign up. Alice and her husband eventually signed up, but when Alice contacted us she said they had only used their resort credits twice. Alice said that the sales pitch made the resorts seem 'lovely' and 'easy', but in reality the resorts weren't worth the money they paid and it was very difficult to book accommodation at the resorts they had enough credits for.

At the time of contacting us, Alice said they were still paying off over $14,000 in debt to the timeshare operator at a 13.25% interest rate. Alice contacted the timeshare scheme to cancel but says she was told that the only way to get out would be to sell the credits. We provided advice to Alice to assist her to resolve her dispute with the timeshare operator, and are unaware of the outcome of her complaint.

2.62. Timeshares are specifically included as a managed investment scheme under the *Corporations Act 2001* (Cth).[62] While this regime does impose licence conditions relating to cooling-off, fees and charges and deposits, timeshare advice is exempt from the ban on conflicted remuneration.[63] The remuneration of sales staff is primarily commission-based.

2.63. As many as 170,000 Australians pay about $270 million annually on timeshare.[64] During 2017, Consumer Action received 27 requests for assistance relating to timeshare. The impact of inappropriate timeshare purchase can be significant, involving additional annual fees for many years, an inability to sell the "investment", as well as unaffordable loan repayments causing credit defaults and/or debt collection.

3. Conduct falling below community standards and expectations

3.1. Conduct, practices, behaviours or business activities by financial services entities that fall below community standards and expectations is widespread. This submission focuses on (a) the design of credit cards; (b) marketing of credit; (c) design of low-value insurance products; (d) excessive fees; (e) poor customer service and complaints handling; and (f) debt management firms.

3.2. *Design of credit cards*

3.3. One example of conduct which falls below community standards and expectations involves the design of credit products that encourage long-term indebtedness.

3.4. A significant number of consumers are attracted to credit card offers that don't relate to price or suitability. Lenders generally compete by offering low annual fees, interest-free periods, 'free' balance transfers or member reward schemes to attract borrowers. These offers are 'teasers', in that they hide the true cost of the card. Credit card lenders 'bundle' these complex pricing structures in their marketing and product information, which makes the overall costs difficult for the average consumer to understand. Consumers may make poor decisions because they struggle with the complexity of information. Faced with complexity, consumers often resort to simple, but potentially biased, decision rules. Potential borrowers may also fall prey to superficially appealing but poor value offers, such as rewards points.[65]

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[62] Section 9, *Corporations Act 2001* (Cth)
[63] Regulation 7.7A.12C, Corporations Regulations 2001(Cth)
[64] John Rolfe, Public Defender: Leaving the grandkids a timeshare debt, *Daily Telegraph*, 3 November 2016, available at: https://www.dailytelegraph.com.au/news/opinion/public-defender/public-defender-leaving-the-grandkids-a-timeshare-debt/news-story/90453f6a4b37d598884aca96eae00ab4.
[65] Dr Richard Tooth, *Behavioural economics and the regulation of consumer credit*, August 2012, para. 35, available at: http://www.srgexpert.com/wp-content/uploads/2015/08/Consumer-Credit-Behavioural-Economics-Case-Study-2012-Final.pdf.

3.5. Lenders eventually offset the costs of these 'teaser offers' by charging high standard interest rates on outstanding balances and new purchases. This takes advantage of two additional consumer behavioural biases: overconfidence and lack of self-control. Consumer overconfidence about their prospects or ability to control future spending may lead them to overestimate their ability to pay back debt. This can cause insensitivity to the repayment obligations over the life of the contract and may result in consumers being unprepared for adverse events and use other credit to address short-term needs. Consumers tend to be optimistic and underestimate the likelihood of adverse events that might necessitate further borrowing.

3.6. If consumers underestimate their future borrowing, issuers can be expected to raise the long term, contingent elements of the credit card price (such as interest rates that apply after teaser periods and late fees). Credit card providers under-price the short-term, non-contingent elements of the credit card contract to take advantage of consumers' tendency to be overconfident about their ability to repay the amount owing.

3.7. Consumers who find themselves unable to pay their entire credit card balances every month are then cross-subsiding others who pay off their accounts regularly and incur almost no interest. People who are unable to make repayments on time, or overdraw their accounts, pay more fees and interest. This makes them arguably the most profitable customers for the banks, and means they are ultimately paying for the reward points and interest free periods the wealthier enjoy.

3.8. *Marketing of credit*

3.9. An example of conduct which falls below community standards and expectations, but may still be legal, involves the marketing and advertising of credit. Consumers, as humans, are subject to a number of behavioural biases that mean their actions predictably depart from perfect rationality. Credit providers use marketing techniques to exploit these biases.

3.10. One example of what might termed ‘irresponsible credit marketing’ is unsolicited offers for credit. These offers are designed to encourage consumers take up more debt. Such offers can involve the lender sending the borrower a ‘pre-approved’ credit limit increase. These offers exploit consumers’ behavioural biases by encouraging consumers to make decisions without property cognition,[66] through loss-framing the offers,[67] and presenting the offers as the status quo.[68] The net result is that consumers take on additional credit against their better interests.

3.11. There have been some efforts by legislators to tackle unsolicited credit marketing, but this has been limited. Restrictions have applied to credit cards only, and not to other forms of consumer credit.

3.12. The prohibition on unsolicited credit card limit increase offers[69] can be easily circumvented by lenders using the ‘consent’ loophole.[70] Lenders can continue to send unsolicited credit limit increase offers

[66] Harrison, P, Mass, M, and Consumer Action Law Centre, *Congratulations You’re pre-approved! An analysis of credit limit upselling letters*, August 2008, pages 18-19, available at: https://consumeraction.org.au/wp-content/uploads/2012/04/Congratulations-Youre-Pre-Approved.pdf.
[67] Harrison, above n 66, p 30.
[68] Harrison, above n 66, p 29.
[69] Section 133BE, *National Consumer Credit Protection Act 2009* (Cth)
[70] Section 133BF, *National Consumer Credit Protection Act 2009* (Cth); regulation 28LH and 28LI, *National Consumer Credit Protection Regulations 2010* (Cth)

provided the consumer has 'opted in'. However, typically these offers are not clear and are made through means such as by phone, via online banking portals, in the contract fine print or through text message prompts. Reforms have been proposed which would see all unsolicited credit limit increase offers banned, unless a consumer proactively requests an increase from the lender.[71] This restriction would not apply in relation to marketing for overdrafts, personals loans and other types of credit.

3.13. Another example of irresponsible credit marketing involves use of marketing lists and 'pre-screening'. Database marketing involves lenders profiling customers who are likely to be profitable, and then tailoring and pricing products that the most profitable customers are likely to accept.[72] Pre-screening allows lenders to use information in credit reports for marketing rather than assessment purposes.[73] This means that lenders can filter lists of individuals who meet chosen criteria from a credit reporting agency, making credit marketing more efficient and profitable.

3.14. As technology has developed and consumer data become more available through data brokers and others, lenders have become more sophisticated in targeting offers for credit. Examples of targeted credit marketing practices include: targeting of borrowers with persistent credit card debt with 'balance transfer' offers; targeting of borrowers with multiple debts, for example, promoting debt consolidation; and promotion of further borrowing to 'solve' over indebtedness. Borrowers who respond to these sorts of marketing strategies can find that their financial position worsens rather than improves.

3.15. *<u>Low-value insurance products</u>*

3.16. Other examples of conduct that may not involve breaches of the law but may nevertheless be harmful include the selling of low-value products. Two examples can be provided: add-on insurance, and funeral insurance.

3.17. Add-on insurance products are sold with motor vehicles, loans and credit cards. The mis-selling issues with these products (detailed at paragraphs 2.32 to 2.43 of this submission) are compounded by the fact that they are often expensive and contain many exclusions and conditions. While selling insurance under general or no advice models which is unsuitable is not a breach of any law per se, some of the products are so low in value that they fail to meet community expectations of what payment protection insurance should provide.

3.18. The most prevalent problems with add-on insurance products include:

- very low loss ratios—9 percent for add-on insurance sold in car dealerships and 34 percent for CCI sold through ADIs;[74]
- very low benefits—in some cases the total benefit payable is less than the total premium paid;
- unemployment cover exclusions for people who are self-employed or work casually or part-time—often people are sold the products without knowing about this important exclusion, even where the salesperson is aware of their employment status;

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[71] Treasury Laws Amendment (Banking Measures No. 1) Bill 2017 (Cth).
[72] Harrison, P, Gray, CT, and Consumer Action Law Centre, *Profiling for Profit: A Report on Target Marketing and Profiling Practices in the Credit Industry*, 2012, pp 5-6, available at: http://dro.deakin.edu.au/eserv/DU:30064922/harrison-profilingfor-2012.pdf.
[73] Office of Australian Information Commissioner, *Privacy fact sheet 39: Direct marketing and your credit report*, May 2014.
[74] ASIC, *Report 256: Consumer credit insurance: A review of sales practices by authorised deposit-taking institutions*, October 2011, para 9, available at: http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-256-consumer-credit-insurance-a-review-of-sales-practices-by-authorised-deposit-taking-institutions/.

- disablement cover, which excludes pre-existing conditions, sold to people with pre-existing conditions; and
- death cover (life insurance) sold to people who are very young and/or do not have dependents.

3.19. Funeral insurance is also a low-value product which is sold to people for whom it is unsuitable. Some of the major concerns with funeral insurance are:
- a cancellation rate of 80 percent, and 55 percent in the first year, which suggests problems with the cost, design, marketing and sale of funeral insurance policies;
- increasing premiums, whether stepped premiums or 'inflation protected' level premiums, which become unaffordable over time, risking cancellation and non-coverage;
- negative value policies, with the potential for people to pay far more in premiums than the policy benefit; and
- sales to younger people, particularly Indigenous people, with 50 percent of Indigenous consumers sold funeral insurance under 20 years of age.[75]

3.20. According to ASIC, as at 30 June 2014, there were a total of 473,274 active funeral insurance policies covering 743,421 individual lives.[76] These figures are likely to have increased since that time.

3.21. Marketing of funeral insurance is a particular concern, which can be highly emotive, invoking a sense of fear in potential customers about the need to provide for the costs of funerals. Some types of products, for example 'expenses only' funeral insurance can be sold door-to-door, which allows for pressure selling.[77] This sort of marketing and behavioural biases leads to people over-insuring for this small cost while being comparatively exposed for larger risks.

Case study 13: Tamika's story

Tamika (name changed) was 39 years old and receiving Centrelink payments. She saw an advertisement on television for funeral insurance and called the insurer. Tamika instructs that the insurer said the premiums were $17 per fortnight and would stay the same until she was 44 years old. Tamika took out the funeral insurance.

Tamika's premiums increased from the second year onwards, and after almost ten years she was paying $30 per fortnight. By the time Tamika was 48, she had already paid $5,000 for a $20,000 benefit. She was over-insured for her needs and struggling to pay her premiums. A financial counsellor assisted Tamika to resolve this matter on a confidential basis.

3.22. *Excessive fees*

3.23. Australians paid nearly $13 billion in bank fees in 2016.[78] Many bank fees have fallen below community standards and expectations, particularly late fees for credit cards and loans, and fees charged for dishonouring or over-drawing a bank account (collectively, 'penalty fees'). The RBA states that, in 2016,

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[75] ASIC, *Report 454: Funeral insurance: A snapshot*, October 2015, page 6, available at: http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-454-funeral-insurance-a-snapshot/.
[76] ASIC, above n 75.
[77] Section 765A(1(y), *Corporations Act 2001* (Cth); regulation 7.1.07D, Corporations Regulations 2001 (Cth); section 11(3)(e)(ii), *Life Insurance Act 1995* (Cth).
[78] RBA, *Bulletin, Banking fees in Australia*, June 2017, available at: https://rba.gov.au/publications/bulletin/2017/jun/pdf/bu-0617-4-banking-fees-in-australia.pdf.

banks increased income from account dishonour fees and increased the unit fee payable for late payments on credit cards.[79] Penalty fees (some as high as $40) bear no resemblance to the direct costs incurred by the bank from the event which triggers the fee.[80]

3.24. Bank income from penalty fees actually decreased in the years from 2009 to 2012 from $1.5 billion to $653 million.[81] There was a sustained consumer movement campaign about these fees over this time, resulting in banks reducing or abolishing these fees. A number of class actions were also initiated against major banks.

3.25. In 2016, the High Court upheld the lawfulness of these fees, finding that they did not amount to unfair contract terms prohibited by the ASIC Act nor were they unlawful penalties.[82] The majority of the court held that ANZ was entitled to charge late payment fees of up to $35, even though this amount did not represent a genuine pre-estimate of the ANZ's losses, or the costs actually incurred by ANZ. The court said that these fees protected ANZ's 'legitimate interests', which means penalty fees can include charges for indirect costs such as collection costs (even if no collections actually occur).

3.26. Since this decision, the unit costs of penalty fees of various banks have increased. For example, the credit card late payment fee charged by NAB has increased by over 200 percent (from $5 to $15). A total of $724 million in penalty fees were paid by households and businesses over 2016, a $70 million increase on 2012 levels.[83]

3.27. Bank fees tend to have a harsh and disproportionate impact on lower income Australians. For people who are already struggling with debt, late fees only make the task of repayment more difficult. The increased incidence of direct debits to pay for essential or other services means that the risk of over-drawing an account is increased. A $40 penalty fee for a person earning a basic Newstart income of $13,993 equates to almost 15 percent of their weekly income. For families budgeting week to week, an errant penalty fee can risk payment for essential services like housing or energy.

3.28. *Poor customer service and complaints handling*

3.29. As banking and financial services involve long-term relationships with customers, the quality of customer service is fundamental. Substantial stress and harm can be incurred where complaints or disputes are not dealt with satisfactorily. Our experience is that the quality of customer service, insurance claims handling and complaint management is variable among the industry and, in some cases, very poor.

3.30. Common problems in bank internal dispute resolution (**IDR**) include:

- delays in providing or not providing documents that are sought by the complainant, even where these are required to be provided under the law within strict time limits;
- automatically-generated or standardised correspondence that does not make sense or causes confusion;

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[79] RBA, above n 78.
[80] Rich, N, *Unfair Fees: A report into penalty fees charged by Australian Banks*, 2004.
[81] ABA, *Bank Fee Income – 2014*, available at: https://www.bankers.asn.au/images/uploads/ArticleDocuments/163/ABA-120725-v1-Website_-_Bank_Fees_2014.pdf
[82] *Paciocco v Australian and New Zealand Banking Group Ltd* [2016] HCA 28.
[83] ABA, *Fees for banking services*, 2017 report, available at: https://www.bankers.asn.au/images/uploads/ArticleDocuments/134/Report__Fees_for_Banking_Services_2017.pdf.

- failure to empower frontline staff to resolve complaints, with customers needing to escalate their complaint;
- the lack of a responsible person assigned to deal with a matter, such that complaints must be repeated;
- complaints not being dealt with appropriately, for example, complaints about irresponsible lending are dealt with as hardship complaints or dissatisfaction not being correctly identified as a complaint by frontline staff;
- problems with accepting authorities for a representative to act in relation to the complaint; and
- failure to effectively inform customers about the relevant EDR body.

Case study 14: Cameron's story

We assisted Cameron (name changed), a disability support pensioner, to request basic documentation from ANZ, such as loan contracts and account statements, on 30 August 2016 as part of a dispute about his Esanda car loan. ANZ failed to provide a complete set of documents until 3 November 2016, well past the 14- and 30-day time limits required by the National Credit Code (**NCC**). After the documents were provided, ANZ then appeared to close his complaint, despite Consumer Action's detailed letter of complaint alleging irresponsible lending, unjust transaction and unconscionable conduct. Consumer Action had to contact ANZ to reopen the complaint, delaying resolution of Cameron's dispute. The dispute has now settled.

3.31. Banks can also take entrenched positions, irrespective of evidence provided, and not undertake detailed investigations or consider whether issues raised are systemic. This necessitates matters to be escalated to EDR. The effect of this can be additional stress and hassle in escalating complaints, or simply giving up, even where complaints are valid.

3.32. Insurance claims handling and IDR is another area where industry practices are out of step with community expectations. In 2016/17, FOS reported an increase in general insurance disputes of 28 percent, with most cases relating to an insurer's decision to decline a claim or a claim amount. The most recent statistics on general insurance claims (from 2015/16) show that declined claims are increasing (28 percent for travel insurance, and 17 percent for personal and domestic property insurance), as are withdrawn claims (by 205 percent for personal and domestic property insurance, and motor vehicle claims).[84]

3.33. Customers can be discouraged from making a claim, for example, where they are told that making a claim affects future premiums or a benefit like a no-claims benefit. However, withdrawing a claim means that customers can be denied notification of their rights to the reasons for a decline, or the availability of internal and external complaints and disputes resolution procedures.

3.34. Unlike other financial service providers, general insurers insist on requiring a 'two-stage' IDR process. Under this process, a complaint about, for example, a declined claim is initially reviewed by the same representative that declined the claim. It is only after an initial complaint process can a matter be escalated to an independent reviewer. The lack of independence in the initial complaint process denies the complainant natural justice, and can cause confusion. At its worst, this two-stage process can deter

[84] General Insurance Code Governance Committee, *General Insurance Code of Practice Industry Data Report 2015-16*, April 2017, available at: http://codeofpractice.com.au/assets/documents/March%202017%20General%20Insurance%20Code%20Governance%20Committee%20-%202015-16%20Industry%20Data%20Report%20FINAL.pdf.

people from pursuing legitimate complaints as the process is seen as laborious. It can also damage consumer trust in insurance companies.

3.35. Complaint handling for group life insurance (commonly sold with superannuation) can also be confusing and time-consuming. This may be caused by the fact that there are multiple financial entities involved: the superannuation trustee which purchases the insurance on their members' behalf and the insurance provider. ASIC reports situations where trustees are not as involved as they should be in the claims process, with fund members instead corresponding directly with the insurer.[85] Further, the law requires that superannuation trustees have 90 days to complete its internal dispute resolution, while other financial entities are typically provided only 45 days.[86]

Case study 15: Bob's story

We were instructed by a financial counsellor who was assisting Bob (name changed). She advised that Bob had ceased work in March 2015 due to disability.

In September 2015, Bob's financial counsellor made a claim on his behalf to his superannuation fund under his salary continuance insurance policy for the period March 2015 onwards. She says she provided all requested information including a medical report, his tax file number and authorities.

Between November 2015 and March 2016, Bob's financial counsellor contacted the Fund several times for status updates. In March 2016, she was told that the insurer had accepted the claim.

In April 2016, the Fund wrote advising that the claim had been accepted for the period October 2014 to March 2015, totalling approximately $2,200 only. In fact, Bob was not claiming for this period, which was clear from his claim form. The Fund then requested further information, which Bob's financial counsellor provided.

In May 2016, the Fund advised Bob's financial counsellor by email that he would have to have his employment formally terminated because a clause in the policy provided that insureds who had been off work for more than 12 months must have their employment terminated for benefits to continue. However, Bob had not been paid 12 months of benefits.

In early June 2016, Bob's financial counsellor wrote a formal complaint letter. The Fund advised that the claim had been accepted, but only for the period July 2015 to March 2016. Bob's financial counsellor responded that benefits should be paid until at least July 2016 (i.e. 12 months) and that, in any event, the insurer could not rely on the termination requirement in these circumstances.

In late September 2016, 115 days after the complaint letter, the Fund finally responded to the complaint but failed to properly address the issues raised in the June complaint letter, including:

- the fact that he has not received 12 months' of benefits;
- the application of the clause requiring termination.

Bob was eventually paid his full entitlements. It took over a year to obtain that outcome.

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[85] ASIC, *Report 498, Life insurance claims: and industry review*, October 2016, para 339, available at: http://download.asic.gov.au/media/4042220/rep498-published-12-october-2016a.pdf.

[86] ASIC, *Regulatory Guide 165: Licensing: internal and external dispute resolution*, available at: http://download.asic.gov.au/media/3285121/rg165-published-2-july-2015.pdf.

3.36. *Debt management firms*

3.37. A final area of both misconduct and conduct falling below community standards involves the so-called 'debt management' industry. These firms are a type of intermediary that acts between consumers and financial service providers. Rather than assisting people obtain products, however, they purport to assist people deal with unmanageable debt by negotiating arrangements with lenders, improving creditworthiness or assisting with personal insolvency. Due to long-standing concerns about predatory behaviour and consumer harm caused by these largely unregulated intermediaries, consumer advocates refer to them as 'debt vultures'.

3.38. These firms effectively and aggressively target highly vulnerable people in financial difficulty or who are concerned about their creditworthiness to spruik a range of interconnected services, including: debt negotiation; 'repairing' or 'washing away' default and adverse listings on credit reports; developing personal budgets and managing money; brokering or arranging debt agreements under Part IX of the *Bankruptcy Act 1966 (*Cth) (**Debt Agreements**).

3.39. Our casework experience, ASIC Report 465[87] and academic research[88] reveals many problems, including:

- poor quality or conflicted quasi-legal or quasi-financial advice that can leave consumers worse off—where firms recommend a debt option that results in a financial benefit to the firm but is not the consumer's best interests;
- mis-selling services based on misleading representations about its nature and effectiveness of the service;
- engaging in unfair, predatory and unconscionable conduct;[89]
- high, hidden, upfront and non-refundable fees for services of little value, even where there is a free service available to the consumer; and
- lack of access to justice for aggrieved consumers, with no requirements for IDR or EDR and few practical remedies.

Case study 16: Chris's story

Chris called a credit repair company after seeing an ad on TV promising to wash his credit history clean. Chris had some debt from running a dairy farm in Gippsland, and was concerned about his creditworthiness. The salesperson called back with good news—they would be able to fix his credit history! They promised to send him a booklet and forms to return and to assign him a case manager to help fix his credit history. The salesperson said that he needed to pay over $1,000 immediately, otherwise they'd have to start the process all over again.

But as Chris discovered, "they were more than happy to take the money, but they did not provide the service". In fact, Chris didn't have any defaults or incorrect listings to "fix". The credit repairer

[87] ASIC, *Report 465: Paying to get out of debt or clear your record: The promise of debt management firms*, January 2016, available at: http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-465-paying-to-get-out-of-debt-or-clear-your-record-the-promise-of-debt-management-firms/.

[88] Chen, O'Brien and Ramsay, 'An Evaluation of Debt Agreements in Australia' (2018) 44(1) *Monash University Law Review* (forthcoming); Ali, O'Brien and Ramsay, 'A Quick Fix? Credit Repair in Australia (2015) 43(3) Australian Business Law.

[89] See e.g. ASIC, *17-226MR ASIC commences proceedings against credit repair business*, 6 July 2017, available at: https://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-226mr-asic-commences-proceedings-against-credit-repair-business/.

hadn't bothered to check his credit report. Chris's repeated requests for a refund were ignored until Consumer Action became involved. Chris described the credit repair industry as "vultures" that are "preying on people in the community that can least afford to be parting with money."

3.40. Our casework experience and research reveals that even registered debt agreement administrators, lightly regulated by the Australian Financial Security Authority (**AFSA**) through bankruptcy legislation, engage in both misconduct and conduct falling below community standards.[90] Common problems include:

- unsuitable or unsustainable debt agreements that prolong rather than resolve financial difficulty;
- inappropriate entry thresholds which see people on the disability support or aged pension making repayments to creditors that they can't afford and would not have to make if properly advised of more appropriate solutions, such as hardship, debt waiver or bankruptcy;
- misleading advertising, where firms overstate the benefits and understate the significant consequences;[91]
- excessive and unwarranted fees—administrators can take upwards of 25 percent of every repayment and set-up fees run into the thousands. One analysis of debt agreements found that, after fees and charges were included, 64 percent of debtors were repaying more than 100 percent of their original debt, and 13 percent were repaying more than 120 percent of their original debt. In 2016, administration fees alone accounted for 22.9 percent of funds administered under debt agreements.[92]
- Lack of access to redress—people have no practical remedies when their administrator breaches legal obligations under the ASIC Act, Australian Consumer Law or Bankruptcy Act. There is no requirement to provide IDR or EDR to resolve client's complaints. Court action is generally futile if the person bankrupts after a failed debt agreement.[93]

Case study 17: Noelene's story[94]

Approaching retirement and worried about nearly $31,000 of debt, Noelene called a debt management firm for help after seeing its ad on TV promising to stop all interest and make it easier to pay. Noelene was supporting her adult kids and earning about $700 per week working in aged care.

Hours later, a salesperson was knocking on the door of her caravan in Moolap, her home for the past 20 years. He said that for $1800, the company would negotiate with her two creditors to stop the interest and the debt collectors' calls. The company started deducting $300 per fortnight towards its fees, putting her budget into deficit before she even made any repayments on the debt. But even after she'd paid $900, "they had done absolutely nothing." The calls didn't stop and the interest kept accruing.

[90] Chen, O'Brien and Ramsay, above n 88, 39-41.
[91] Consumer Action Law Centre, *Fresh Start or False Hope? A look at the website advertising claims of Debt Agreement Administrators,* April 2013, available at: https://consumeraction.org.au/wp-content/uploads/2013/05/Fresh-start-or-false-hope-April-2013.pdf; see also http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-130mr-asic-crackdown-on-misleading-advertising-by-debt-management-firms/.
[92] Chen, O'Brien and Ramsay, above n 88, 18.
[93] Once bankrupt, private court action against the broker or administrator is difficult or futile as consent from their Trustee in Bankruptcy is required to initiate legal proceedings, and the person may not receive any court award for a refund of fees (which may be distributed among creditors). In this context, few people pursue costly and stressful litigation.
[94] Noelene's experience was also featured on ABC's 730: http://www.abc.net.au/news/2017-04-05/debt-management-agencies-accused-of-preying-on-the/8419798.

When the debt agreement proposal finally arrived, she saw nearly $8000 extra in administration fees. "Shocked" and "angry," Noelene refused to sign. If Noelene had proceeded, she would have paid more under the proposed debt agreement than her total debt. Instead, she saw her local Financial Counsellor, who helped Noelene to arrange an affordable repayment plan.

3.41. Complaints about debt management firms to Consumer Action are common. In 2017, our legal advice line received over 65 requests for assistance relating to debt management firms, with many more calls received by the National Debt Helpline. Consumer Action made complaints to regulators about breaches of the law and systemic malpractice by debt management firms on behalf of 10 represented clients in 2017 alone.

3.42. A key area of concern is sales conduct which mean that debt agreements are not well-targeted. The main benefit of a debt agreement is protecting the family home (where the home would otherwise be seized in bankruptcy), however between 2011-16, between 58 and 67 percent of debtors had seizeable assets of less than $5,000.[95] Over the same period, 1-2 percent of debtors stated after-tax incomes of $0-$9,999, raising serious concerns about their capacity to afford repayments.[96]

3.43. Debt agreements are at an all-time high, with 13,597 new debt agreements in 2016-17. The number of new debt agreements has increased each year between 1998 and 2016, despite bankruptcies and total personal insolvencies falling. Information about the exact size and make-up of other types of debt management firms is more limited due to the absence of licensing requirements and any form of public reporting.

3.44. Misconduct and conduct falling below community standards in the debt management industry can cause serious financial, legal and health effects for consumers. There may be legal consequences, for example, when debt negotiators recommend high risk strategies that put their clients at risk of default or legal proceedings, or by submitting a debt agreement proposal, which is itself an 'act of bankruptcy'. Although these firms may promise a 'life free from debt' or a 'clean' credit report, mis-sold high cost services of dubious value leave people who were already struggling to make ends meet with even less money for essentials like putting food on the table. This leads to the perverse outcome where a debt management firm can further entrench the financial difficulty that it promised to solve, with the consequential impacts of over-indebtedness (discussed above at 2.28).

4. Conclusion

4.1. Many financial products and services are essential to social participation and wellbeing.

4.2. Access to credit can assist people build assets, purchase vehicles and own their own home. Access to a vehicle is particularly important for many people who require it to get to work, ferry the kids to school or get to necessary appointments. However, unfordable finance that absorbs a large proportion of a consumer's income promotes financial exclusion and can exacerbate financial difficulty.

4.3. Access to many kinds of insurance is also essential—insurance can provide a valuable safety net against loss. This is particularly the case for lower-income people. While the financial and emotional loss generated by a sudden loss of assets is devastating for anyone affected, it can be more acute for

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[95] Chen, O'Brien and Ramsay, above n 88.
[96] Chen, O'Brien and Ramsay, above n 88, 23-5.

those on lower incomes. These people usually have limited opportunity to build savings or other liquid assets to access in an emergency and use to replace their possessions.

4.4. This is why the conduct of financial entities that provide these products and services is so important. Not only should the products be suitable for the consumer's need, but any advice or representations relating to them need to be in the best interests of the consumer. Persistent failures in the finance sector not only harms individuals, but negatively impacts trust and confidence in the finance sector thereby costing the community more.

4.5. Part 2 of this submission will provide further detail on some of the drivers for misconduct and conduct that has fallen below community expectations in the finance sector. It will also consider the effectiveness of redress mechanisms available to those that suffer detriment as a result of conduct in the finance sector.