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Committee Secretariat
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

Submission: Senate Economics References Committee Inquiry into credit and financial services targeted at Australians at risk of financial hardship

Thank you for the opportunity to comment on the Committee's Inquiry into credit and financial services targeted at Australians at risk of financial hardship (**the Inquiry**).

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

Executive Summary

This Inquiry is a crucial opportunity to close the regulatory loopholes exploited by fringe lenders and 'debt help' companies. These companies can entrench disadvantage for some of the most vulnerable members of our community but are not required to play by the same rules as other financial institutions.

We welcome the Inquiry's broad terms of reference. With historically high household debt and the shocking behavior of our large lenders under the microscope of the Royal Commission into Misconduct in the Banking, Insurance and Financial Services Industry (**the Banking Royal Commission**), it is essential that we don't forget other harmful products and services targeting people who are struggling to make ends meet.

Debt advice, debt management and credit repair

Debt management firms target people concerned about bills, home repossession or the confusing credit reporting system with aggressive advertising promising a 'life free from debt' or a 'clean' credit report. After a 'free' consultation, firms peddle quasi-legal and quasi-financial advice on debt options, and services including debt negotiation, credit repair, debt agreements, managing money, and everything in between.

While the promise of a quick fix is appealing at first, the reality is that all too often these unqualified, unregulated firms charge exorbitant fees, can't deliver on many of their promises, and leave financially struggling families with even less money to repay existing debts. While the industry paints itself as the "friend" of struggling Australians, in reality they often do more harm.

All Australians looking to get their finances back on track should be able to trust the advice they receive. Scandals in financial advice, examined by the Banking Royal Commission, have parallels in the debt advice industry. The difference? There is even *less* scrutiny and regulation of debt advice. Currently, debt management firms operate in a regulatory black hole—they are not required to hold a licence, meet basic competency and ethical standards, or join the new Australian Financial Complaints Authority (**AFCA**).

There is broad support for reform, with creditors and ombudsman schemes incurring unnecessary costs in dealing with these firms. A joint communique calling for action is available at **Appendix A**.

We need a robust regulatory framework for all debt management firms urgently, including:

- licensing or authorisation by ASIC and robust entry standards;
- a ban on upfront fees to stop the fees-for-no-service rip-offs, incentivise timely services that actually help, and prevent additional financial stress;
- mandatory membership of the Australian Financial Complaints Authority (**AFCA**) to resolve customer complaints, as recommended by the Ramsay EDR Review and accepted by the then Treasurer Hon Scott Morrison MP;
- a duty to act in their client's best interests;
- a ban on unsolicited selling to overcome high pressure sales tactics;
- client money obligations; and
- requiring firms to inform people of free options that can assist, such as hardship programs offered by creditors and utility providers, ombudsman schemes and the National Debt Helpline which provides free, independent and professional financial counselling.

Financial counselling

In stark contrast to the debt management firms that often seek to earn a quick buck from people in financial difficulty, Australia's financial counsellors are genuinely free, independent and expert. Working in community organisations and operating the National Debt Helpline, financial counsellors help and empower people to deal with immediate money and debt problems.

Misconduct in the credit and financial services sector has resulted in significant demand for community legal and financial counselling assistance. There is considerable unmet legal need, caused by misconduct, including irresponsible lending, unlawful debt collection, inappropriate advice and other problems. Lenders and other financial service providers routinely refer customers in financial hardship to

community-based services. Too often, without this assistance, the consumer will not have the means or the will to 'take on the battle'.[1]

We strongly support the submission made by Financial Counselling Australia and the National Association of Community Legal Centres that substantial additional investment in community services is required.

Payday lending and consumer leases

It has been a staggering 1190 days since the Federal Government announced the review of payday lending and consumer leases, and nearly two years since it accepted the recommendations of that review (**the SACC Review**). Industry lobbyists have fought to water-down and derail these crucial reforms, despite the comprehensive consultation process undertaken by the SACC Review Panel as well as Treasury consultation on exposure draft legislation.[2] Since the Government released the SACC Review report in April 2016, Digital Finance Analytics estimates that three million additional payday loans, worth an estimated $1.85 billion, have been taken out. This has generated a net profit of about $250 million for lenders. Around one fifth (about 332,000 households) were new payday borrowers.[3] Just yesterday, the Australian Securities and Investments Commission (**ASIC**) announced further enforcement action against a consumer lease provider for contraventions of its responsible lending obligations.[4] The harm continues, and we cannot afford to wait for the SACC Reforms. These reforms must be legislated urgently.

Buy now, pay later and other unlicensed credit providers

There are many companies that claim to fall outside our national credit laws. Clever arguments about technical legal definitions of 'credit' aside, the simple point is this: companies fronting money to people who can't afford to pay at the time of purchase *are* providing credit, as credit is understood by the community.

There is no principled reason why providers like AfterPay, ZipPay, Certegy, Cigno, pawnbrokers and others should get a carve out from consumer credit regulation, which include basic but important obligations like:

- assessing the suitability of loans including affordability of repayments so that people (particularly younger people) are not set up to fail;
- providing hardship assistance; and
- compulsory membership of AFCA to resolve customer complaints.

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[1] Banking Royal Commission, Interim Report, Vol 1, 293.
[2] Treasury, Exposure Draft National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017, available at: https://treasury.gov.au/consultation/c2017-t229374/.
[3] Consumer Action Law Centre, *Are We There Yet? The Mysterious Case of the Vanishing SACC Bill* (19 June 2018) https://policy.consumeraction.org.au/2018/06/19/are-we-there-yet-the-mysterious-case-of-the-vanishing-sacc-bill.
[4] ASIC, Media Release, *18-337MR Local Appliance Rentals to remediate customers and pays $257,500*, 8 November 2018, available at: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-337mr-local-appliance-rentals-to-remediate-customers-and-pays-257-500/.

A recurring theme throughout this submission is gaps and loopholes in our laws and regulations that can be exploited to cause harm. Recognising that some providers will always look for canny ways to avoid regulatory oversight, our credit laws clearly need a broad anti-avoidance provision.

A summary of recommendations is available below.

Companies that claim to treat people fairly and act responsibly have nothing to fear from these simple recommendations.

Consumer Action would be happy to provide further information or casework examples to assist the Committee's Inquiry.

SUMMARY OF RECOMMENDATIONS

Recommendation 1: Pass the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2018* (Cth) as a matter of urgency.

Recommendation 2: Prevent consumer lease providers from accessing Centrepay.

Recommendation 3: Legislate a comprehensive cost cap of 48% for all forms of consumer credit.

Recommendation 4: Extend the *National Consumer Credit Protection Act 2009* (Cth) (**National Credit Act**) to cover Buy Now Pay Later (**BNPL**) providers, short-term credit providers, and pawnbrokers.

Recommendation 5: Extend the Product Intervention Powers (**PIPs**) and Design and Distribution Obligations (**DADOs**) regime to cover BNPL providers, short-term credit providers, and pawnbrokers.

Recommendation 6: Future-proof reforms to capture new products and services, and prevent harmful practices from emerging.

Recommendation 7: Enact a broad and robust anti-avoidance provision as part of the National Credit Act.

Recommendation 8: Urgently introduce a robust regulatory framework for all debt management and credit repair firms, whether by extending the National Credit Act or stand-alone legislation.

Recommendation 9: Extend the PIPs and DADO regime to cover debt advice, debt management and credit repair.

Recommendation 10: Increasing funding for financial counselling and community legal services as proposed in the joint submission by Financial Counselling Australia and the National Association of Community Legal Centres.

PAYDAY LENDERS AND CONSUMER LEASE PROVIDERS

Payday loans (also known as small amount credit contracts or **SACCs**) are loans of up to $2,000 for a period of 16 days to 12 months. There are legislated caps on the fees that can be charged by payday lenders, being an establishment fee of 20% of the amount borrowed and a monthly fee of 4% of the amount borrowed.[5] There is often confusion about how these caps operate, and it is sometimes said that the caps limits payday lenders to charging 24% or 48%. This is incorrect. Due to the generous fee caps, these loans typically attract comparison annual interest rates of between 112.1% and 407.6%.[6] The vast majority of payday lenders charge the maximum amount permitted by legislation, as competition is generally ineffective in bringing down prices in this market.[7]

A consumer lease is a contract that lets someone rent an item, usually with fortnightly repayments over a fixed term (typically between 12 and 48 months). Unlike other credit providers, there is absolutely no cap on the amount consumer lease providers can charge. An ASIC report on the cost of consumer leases for household goods found a clothes dryer cost a Centrelink recipient the equivalent of an 884% interest rate.[8] Industry advertising usually expresses the cost of a lease as a low 'per week' amount, without disclosing the full cost of making many years of payments. On top of this, the consumer has no contractual right to own the goods at the end of the lease term, despite many people thinking they are 'renting to buy'.

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[5] It should be noted that these caps were enacted in 2012, and were watered down from the initial proposal due to strong industry lobbying. A 2011 senate inquiry on the draft amendments "urged the Government to work with industry" to re-evaluate the caps due to concerns about "industry viability". The chair of that committee, the Hon. Bernie Ripoll, went on to become a prominent advocate on behalf of the payday lending industry. See Senate Economics Committee, *Inquiry into Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*, December 2011, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Completed_inquiries/2010-13/Consumer_Credit_Corporations_2011/report/index.

[6] Comparison rate calculations completed using RiCalc software assuming maximum permitted fees and charges, and fortnightly repayments. 407.6% comparison rate calculated using a 30 day loan of $200 with total repayments of $248. 112.1% comparison rate calculated using a 12 month loan of $1,000 with total repayments of $1,680.

[7] These findings are consistent with findings of the Competition and Markets Authority (**CMA**) in the United Kingdom, which found that customer demand responded weakly to prices and that competition between payday lenders on prices was largely ineffective: Financial Conduct Authority, *High-cost credit including review of the high-cost short-term credit price cap*, July 2017, p. 23, available at: https://www.fca.org.uk/publication/feedback/fs17-02.pdf.

[8] ASIC, Media Release 15-249MR, 11 September 2015, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-249mr-asic-finds-the-cost-of-consumer-leases-can-be-as-high-as-884/.

Impact on individuals, communities and the broader financial system

We have written at length about the consumer harm being caused across Australia by consumer leases and payday loans. Most recently, we contributed extensively to the SACC Review, which included consideration of consumer leases.[9]

Our caseworkers witness the ongoing financial harm caused by this fringe finance industry, which targets the most vulnerable in our community. Data released from the Credit and Investments Ombudsman (**CIO**) suggests systemic problems in the consumer lease and payday loan sectors, including high rates of complaints (second only to debt collectors) with more than half of these related to inappropriate finance and irresponsible lending.[10]

It is not uncommon for borrowers to take out multiple payday loans and leases alongside existing debts and household expenses. Products offered by consumer lease and payday loan providers can have a devastating impact on their target market. These are people who are financially stressed or distressed. They are persuaded to take out high interest loans to meet an immediate need, yet the result of this decision is often to worsen their situation. This can lead to financial exclusion and a serious debt spiral.

The financial harm caused to individuals targeted by these providers has flow on social and economic costs. These products are aggressively marketed, which can drive people away from other services that may be more suitable, such financial counselling or no/low interest loan schemes.[11] Payday lenders have attempted to normalise predatory lending practices under the guise of assisting financial excluded people, when in reality these practices entrench disadvantage. Access to finance, irrespective of the cost, does not mean that a consumer is 'financially included'.[12]

According to Digital Finance Analytics research, over a 5-year period around 15% of payday borrowers get into a debt spiral which can lead to events such as bankruptcy. On that basis, an additional 249,000

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[9] Consumer Action Law Centre, *Submission: Review of the Small Amount Credit Contract Laws* (15 October 2015) <https://consumeraction.org.au/review-of-the-small-amount-credit-contract-laws-submission/>; https://policy.consumeraction.org.au/2016/01/22/submission-sacc-review-interim-report/; https://consumeraction.org.au/review-small-amount-credit-contract-laws-final-report/; https://policy.consumeraction.org.au/2017/11/06/submission-small-amount-credit-contract-and-consumer-lease-reforms/

[10] Credit and Investments Ombudsman, Annual Report on Operations 2016/17, October 2017, available at: https://www.cio.org.au/assets/4130557/CIO%202017%20Annual%20Report%20on%20Operations.pdf, p 35.

[11] For example, Good Shepherd Microfinance's No Interest Loans Scheme and StepUp Loans: https://nils.com.au/ and https://stepuploan.org.au/.

[12] The Australian Government the Treasury, *Review of the small amount credit contract laws – Final report*, March 2016, available at: https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf p. 3

households have been allowed to enter a debt path which leads to this unfortunate end since the release of the SACC Review report.[13]

Regular enforcement action by ASIC is also indicative of broader problems in the industry.[14] Between 2013 and 2017, ASIC action has resulted in lessors being fined or making community benefit payments of $1.4 million, and also being required to remediate consumers (comprising refunds and debt write-offs) almost $8 million. Between 2010 and 2017, ASIC enforcement action has resulted in payday lenders being required to refund more than $14.2 million to consumers. Payday lenders have also been fined close to $21 million.[15] Since 2017, ASIC has also wound up a payday lender for unpaid fines,[16] secured millions in customer refunds from consumer lease providers Radio Rentals[17] and this week entered into an enforceable undertaking with Local Appliance Rentals to remediate customers for irresponsible lending.[18] Despite this extensive enforcement action, poor practices continue. Perhaps due to lack of reputational capital, many of these businesses do not fear the opprobrium associated with regulator action. An alternative explanation is that the penalties lack sufficient deterrent effect. This was a finding of the Banking Royal Commission, that "entities treat regulatory compliance as a cost of doing business rather than a foundation that informs and underpins how the business must be conducted".[19]

International research

Research from overseas jurisdictions also indicates continuing consumer harm from payday lending. Recent research from the United Kingdom[20] has found that people who receive a payday loan subsequently apply for and take out more credit and debt, including non-payday loans. The researchers found a 64.7% increase in non-payday balances at 6-12 months after receiving a first payday loan, and 80.1% additional deterioration in an individual's credit score. While a payday loan causes a small, short-

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[13] Digital Finance Analytics, *The Cost of Inaction in Payday Lending*, June 2018, available at: https://policy.consumeraction.org.au/2018/06/19/are-we-there-yet-the-mysterious-case-of-the-vanishing-sacc-bill/.

[14] Consumer Action, *Small Amount Credit Contract and Consumer Lease Reforms submission*, 3 November 2017, available at: https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/11/171103-FINAL-submission-exposure-draft-SACC-legislation.pdf, p 2-3.

[15] ASIC, *Exposure Draft of the National Consumer Credit Protection Amendment (Small Amount Credit Contracts and Consumer Leases Reforms) Bill 2017*, November 2017, available at: https://download.asic.gov.au/media/4536984/asic-submission_exposure-draft-of-the-small-amount-credit-contracts-and-consumer-leases-bill-2017.pdf.

[16] ASIC, *Media Release 18-064MR*, 6 March 2018, available at: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-064mr-asic-winds-up-payday-lending-companies-for-unpaid-fines/.

[17] ASIC, *Media Release 18-017MR*, 23 January 2018, available at: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-017mr-asic-acts-against-thorns-radio-rentals-and-secures-multi-million-customer-refunds-for-poor-appliance-rental-outcomes.

[18] ASIC, *Media Release 18-337MR*, 8 November 2018, available at: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-337mr-local-appliance-rentals-to-remediate-customers-and-pays-257-500/.

[19] Banking Royal Commission, Interim Report, vol 1, p 67.

[20] John Gathergood et. al., *How do payday loans affect borrowers? Evidence from the UK Market,* The Review of Financial Studies, 13 August 2018, available at: https://doi.org/10.1093/rfs/hhy090.

lived decrease in the likelihood of a borrower defaulting on other bills, this pattern was reversed in subsequent months with a 'sharp worsening' in outcomes. The researchers noted that their results were 'in line with studies that suggest that payday loans exacerbate financial hardship'.

Demand for payday loans is driven by easy access, aggressive marketing and irresponsible lending. This has been reflected in research by the Financial Conduct Authority (**FCA**) into the payday lending industry, which found that 27% of payday loan borrowers had been attracted by the firm's advertising, and only 9-12% chose firms on the basis that they are the cheapest, had good interest rates or were the best offer on a price comparison website.[21]

This research showed that there was *no* evidence that people who were unable to get payday loan products have generally had negative consequences as a result. In fact, the majority (63%) of consumers turned down for payday loans believe that they are better off as a result.[22] Further, while 20% of declined individuals reported that they needed the loan to pay a bill, only 1% state that they missed a bill payment as a result of not receiving credit. Importantly, the FCA did *not* see evidence of a rise in illegal money lending because of the price cap, or that declined or former users of payday loans were increasingly turning to illegal money lenders.

Payday lending and consumer leases at the Banking Royal Commission

The industry also featured during the Banking Royal Commission earlier this year. Rowena Orr QC noted in her opening address for Round 4 that the Commission had been told about problems with a range of consumer credit products including payday loans and consumer leases, 'particularly those taken out to obtain essential household items, such as furniture and white goods'.[23]

Nathan Boyle from ASIC gave evidence to the Banking Royal Commission that ASIC saw Aboriginal and Torres Strait Islander people being 'specifically targeted' by payday lenders and consumer lease providers, which ASIC did not see regularly in other areas.[24] ASIC said it receives a 'significant amount of reports of misconduct in relation to both consumer lease providers and small amount credit contract providers and sees behaviours that are 'less than ethical'.[25] This included reports of trusted and respected Elders being provided with incentives to introduce the company to other members of their

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[21] Financial Conduct Authority, *FS17/2 Feedback Statement: High-cost credit including review of the high-cost short-term credit price cap,* July 2017, available at: https://www.fca.org.uk/publications/feedback-statements/fs17-2-high-cost-credit.
[22] Ibid.
[23] Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 35* (2018), 3695.
[24] Witness Statement of Mr Nathan Boyle, ASIC.0800.00007.0001, [60].
[25] Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 36* (2018), 3746-37.

communities.[26] Lynda Edwards from Financial Counselling Australia also provided evidence that payday loans and consumer leases cause 'enormous harm' to Aboriginal people.[27] Ms Edwards described these lending practices as 'predatory', 'unfair' and expensive, and also highlighted problems with continued access to Centrepay by consumer lease providers.[28]

Consumer leases and Centrepay

Consumer Action's casework shows that allowing consumer lease providers priority access to individuals' Centrelink payments via Centrepay often results in financial harm to our clients.[29] Centrepay is a Government bill paying service for Centrelink recipients. As noted by the 2013 Independent Review of Centrepay, access to Centrepay 'should be treated as a privilege' due to the welfare safeguarding attributes that customers and stakeholders assume Centrepay to be associated with.[30] Payments made through Centrepay essentially means that the providers (in this case, high-cost consumer lease providers) are paid before the Centrelink recipient is able to allocate their benefits to other essential expenses, such as housing, utilities or food.

This is a privilege that should be revoked for consumer lease providers for the following reasons:

- access to Centrepay encourages irresponsible lending by providing priority access to people's welfare payments;
- consumer leases are excessively expensive, and are targeted at those who can least afford it through Centrepay;
- consumer leases are essentially credit contracts, and consumer lease providers are engaging in regulatory arbitrage in order to access Centrepay;
- consumer lease providers have a proven history of non-compliance with the law and charging welfare recipients higher prices; and
- we have seen Centrepay forms misused by consumer lease providers to give the impression that their products are government endorsed, or are otherwise generally more legitimate.

We have also seen consumer lease providers restart Centrepay deductions after consumers have cancelled payments without obtaining the consumer's consent. We have seen subsequent Centrepay forms with different customer signatures. We have also assisted consumers who have suffered

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[26] Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 36* (2018), 3747.
[27] Witness Statement of Ms Lynda Edwards, WIT.0001.0067.0001, [48].
[28] Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 39* (2018), 3746.
[29] Ibid; Consumer Action Law Centre, *Submission- Independent Review of the Centrepay System,* 28 February 2013 <https://www.humanservices.gov.au/sites/default/files/documents/submission-17-consumer-action-law-centre.pdf>; Consumer Action Law Centre, *Submission - Review of Centrepay Policy and Terms,* 21 March 2017.
[30] https://www.humanservices.gov.au/organisations/about-us/publications-and-resources/independent-review-centrepay.

harassment as a result of cancelling deductions, or have had consumer lease providers continue to deduct payments through Centrepay after the relevant contracts had finished.[31]

Allowing unscrupulous providers access to welfare payments via Centrepay arguably contravenes Centrepay's own Policy and Terms, which state that an objective of Centrepay is to 'assist customers in managing expenses … consistent with the purposes of their welfare payments, and reducing financial risk…'[32] Additionally, our casework finds that consumer leases contravene several criteria in Centrepay's Policy and Terms which specify other grounds that warrant exclusion from access to Centrepay. This is because consumer leases:

- goods that impose high costs for low value;
- contain unfavourable clauses; and
- expose customers to unacceptable risk of financial stress or exploitation.[33]

Case Study 1: Anne's story

Anne (name changed) is a single parent who has survived family violence. She cares for her two children. The carer payment and family tax benefit are her only source of income.

Anne had four consumer lease contracts with Radio Rentals between 2012 and 2017. Anne's leases were for household goods and were paid using Centrepay. Anne found all of the leases to be unaffordable and repaying them caused her financial hardship.

The cost of the goods under the leases was excessive. According to Radio Rentals, the goods had a recommended retail price of over $9,000. The total amount to be repaid under the leases was over $17,000, almost $8,000 more than what Radio Rentals said the goods were worth.

In total, Radio Rentals took an additional $4,000 from her via Centrepay over the course of the leases, which was refunded in instalments. It is not clear why these additional amounts were taken or the process governing the way the additional amounts were refunded.

Case Study 2: Jim's story

Jim (name changed) is a single parent to 3 children, one of which has a disability. He contacted the National Debt Helpline as he was struggling to keep up with his utility bills. Jim tells us he has mental health issues.

[31] For example, see Radio Rentals: https://www.smh.com.au/business/banking-and-finance/radio-rentals-forced-to-repay-1m-and-update-customer-checks-20150914-gjm1ge.html.
[32] Department of Human Services, Centrepay Policy and Terms v 2.0 as at 01/07/15, section 2.1, p 6.
[33] Ibid, section 4.1, Table 2.

Jim tells us that living in an old house with poor insulation meant that his gas and electricity bills were quite high. When Jim first called the National Debt Helpline he said he owed thousands of dollars to utility companies and was on payment plans with both his electricity and gas companies.

On top of this, Jim had obtained 5 unaffordable consumer leases from Radio Rentals over a number of years. Jim wasn't working when the leases were taken out and his only source of income was through Centrelink. Each of the leases involved the rental of household goods and were paid using Centrepay. All of the leases were unaffordable and repaying them caused Jim financial hardship.

Consumer Action has contacted the Department of Human Services on behalf of Jim with concerns around Radio Rentals misuse of Centrepay.

Centrepay access is not needed by people to obtain household goods through consumer leases, as there are other payment options available that enable people to make regular payments. If consumer leases were removed from Centrepay, people would still have the option of paying for their goods by direct debit, credit card, bank transfer, POLI or other payment services. Centrelink recipients have the option to sign up for fee-free basic bank accounts that do not charge default or overdraft fees. There are at least 11 banks currently offering these accounts.[34]

Current regulation and reform needed

Current regulation of consumer lease and payday loan providers is grossly inadequate and results in widespread financial harm that falls short of community standards and expectations.

Polling data in 2015 showed that the vast majority of Australians are opposed to the lending practices of payday lenders. According to the poll, less than 1 in 5 (17%) Australians view the payday lending industry favourably. Only 1 in 10 (10%) of Australians think that the interest and fees charged by payday lenders are reasonable, and almost 4 in 5 (77%) of Australians would support the Government restricting the interest and fees that payday lenders can charge customers.[35]

Reform is urgently needed to ensure individuals and communities are protected from exploitation and harmful debt spirals caused by these predatory lenders and lease providers. Consumer Action strongly

[34] See: https://www.betterbanking.net.au/better-products/affordable-banking/.
[35] The study was conducted online by Lonergan Research among 1,030 Australians aged 18 years and over. Surveys were distributed throughout Australia including both capital city and non-capital city areas between Tuesday, 24th March and Friday 27th March 2015.

supports the reforms to SACCs and consumer lease providers that were proposed in 2016 by the SACC Review Panel.[36]

The Government accepted the majority of recommendations of the SACC Review in November 2016.[37] These recommendations included:

- extending the SACC protected earnings amount requirement to all consumers and lowering it to 10 per cent of the consumer's net income;
- introducing a cap on total payments on a consumer lease equal to the base price of the good plus 4 per cent of that price per month; and
- introducing a protected earnings amount requirement for consumer lease providers of 10 per cent of net income for all consumers, equivalent but separate to the requirement for SACCs.

The proposed cap on costs for consumer leases, and the 10% protected earnings amount for consumer leases and payday loans (20% combined) are critical reforms that would provide much needed protections for borrowers.[38] We have strongly opposed more lenient caps, which would fail to address the harm caused by these products. The costs of payday loans and consumer leases is excessive, but the proportion of people's income that these loans can take up is also highly problematic. Research by the Pew Trust in the United States found that in order to fit the budgets of typical payday loan borrowers, payments should not exceed 5% of monthly income,[39] making the 10% cap proposed by the SACC Review a very generous compromise.

The current regulatory regime for payday lenders and lease providers is out of sync with other non-bank credit providers[40] who must abide by a 48% cost cap on the loan. The result is that payday lenders are able to charge interest rates nearly 10 times this figure while lease providers are subject to no price caps whatsoever.[41] We strongly recommend that all consumer credit, including consumer leases and payday loans, be subject to a comprehensive 48% cost cap, inclusive of fees, charges and interest.

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[36] *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017* (Cth).

[37] The Hon Kelly O'Dwyer MP, 'Government response to the final report of the review of the small amount credit contract laws' (Media Release, 28 November 2016) available at: http://kmo.ministers.treasury.gov.au/media-release/105-2016/.

[38] Consumer Action Law Centre, *Small Amount Credit Contract and Consumer Lease Reforms submission*, 3 November 2017, available at: https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/11/171103-FINAL-submission-exposure-draft-SACC-legislation.pdf

[39] Pew Trusts, *From Payday to Small Installment Loans,* August 2016, available at: https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/08/from-payday-to-small-installment-loans.

[40] ADIs are not subject to the 48% cost cap.

[41] The Government accepted recommendations by the SACC Review Panel to limit consumer lease repayments to the base price of the good plus 4%, with an overall cost cap of 10% of net income: http://kmo.ministers.treasury.gov.au/media-release/105-2016/.

Research in the United States indicates that a state's limit on interest rates is the key factor driving loan pricing. The four largest payday lenders in the United States charge similar prices within a given state, with rates set at or near the maximum allowed by law. In states with higher or no interest rate limits, the same companies charge comparable borrowers far more, for essentially the same small-loan product.[42] In short, Government intervention is required if exorbitant costs to consumers in this market are to be lowered.

Recommendation 1: Pass the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2018* (Cth) as a matter of urgency.

Recommendation 2: Prevent consumer lease providers from accessing Centrepay.

Recommendation 3: Legislate a comprehensive cost cap of 48% for all forms of consumer credit.

[42] The Pew Charitable Trusts, *How state rate limits affect payday loan prices*, April 2014, available at: http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs/content-level_pages/fact_sheets/stateratelimitsfactsheetpdf.pdf.

UNLICENSED FINANCIAL SERVICES PROVIDERS INCLUDING 'BUY NOW, PAY LATER' PROVIDERS AND SHORT-TERM CREDIT PROVIDERS

BNPL arrangements allow consumers to enter into a deferred payment arrangement to pay for purchases from eligible merchants. Similar to a layby facility, consumers purchase goods and pay for it over a period of time. However, the consumer is able to take immediate possession of the goods.[43]

Short-term credit providers meet the definition of credit but claim exemption from regulatory oversight under s6(1) of the National Credit Code. This provision exempts providers if the loan term does not exceed 62 days and fees and charges not exceed 5% of the amount of credit. However, as explained below, complex broker models have been used to circumvent the spirit of this exemption.

There is no principled reason why BNPL and short-term credit providers should be exempt from the National Credit Act, which requires compliance with basic obligations like:

- assessing the suitability of loans including affordability of repayments, so that people—particularly young people—are not set up to fail;
- providing hardship assistance to people experiencing financial difficulty; and
- being a member of AFCA so that customers have a fair, free and accessible way to resolve complaints.

Impact on individuals, communities and the broader financial system

Buy now, pay later

The explosion of BNPL services such as Certegy, Afterpay, ZipPay comes at a time when Australians hold record levels of household debt. As the popularity of these products have grown, so too have calls to the National Debt Helpline from individuals with debts owed to BNPL providers.

Case Study 3: Jeremy's story

Jeremy (name changed) is a young man with an intellectual disability and he receives income from Centrelink. He is subject to an administration order, meaning that someone else has power to make decisions about his financial affairs. He has debts with ZipPay of around $1,000 which he tells us was used for online shopping for a speaker and alcohol. He also owes almost $350 to OpenPay for a

[43] ASIC, *Design and distribution obligations and product intervention power: Revised exposure draft legislation*, August 2018, available at: https://download.asic.gov.au/media/4849144/design-and-distribution-obligations-and-product-intervention-power-revised-exposure-draft-legislation-submission-by-asic.pdf.

purchase at a sportswear store. Jeremy also owes about $6,500 to Optus and over $2,600 to Vodafone. We have just begun acting for Jeremy.

Most BNPL services are not required to abide by the same rules as other credit providers because their products are designed to avoid being captured by the National Credit Act, despite some funding high cost purchases (up to $30,000) over long repayment periods.[44] This means that providers are not required to carry out affordability checks before individuals can use their services, which can lead to some people falling into unaffordable debt. Studies of consumer behaviour show that we are often overly optimistic about our ability to pay off a debt or service a loan.[45] These biases can result in individuals spending more than they can realistically repay, and companies take advantage of this.

Our casework shows that people who find themselves with BNPL debts are often juggling other debts such as credit cards, overdue utility bills or payday loans. Access to further unaffordable credit can have flow on effects such as financial hardship, debt collection and even push people towards bankruptcy or debt agreements.[46]

There is scant independent data on the BNPL industry, as most information is provided by the industry itself. However, some recent surveys and annual reports have indicated some worrying trends. For example, a recent Mozo survey[47] on Afterpay usage found that 65% of respondents had 1-2 Afterpay payments on the go each month, while 29.3% had as many as 3-5 at once. Forty-four per cent of respondents were using Afterpay to buy necessities like food and furniture and 30% admitted to having concealed their Afterpay spending from a partner or parent. Thirty per cent of respondents had missed at least one payment. We note that Afterpay's revenue from late fees surged 365 per cent last financial year, now at $28.4 million. This accounts for over 24% of Afterpay's total revenue.[48]

While Afterpay and ZipPay are big industry players, other BNPL providers are also cause for concern.

Certegy and 'no interest' finance

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[44] Ibid.

[45] Ali, McRae & Ramsay, *Consumer Credit Reform and Behavioural Economics: Regulating Australia's Credit Card Industry*, 6 May 2012, Australian Business Law Review, Vol. 40, No. 2, pp. 126-133, available at: http://ssrn.com/abstract=2052615.

[46] See Debt Rescue, *Is Afterpay another debt trap?,* accessed 8 November 2018 at: https://debtrescue.com.au/research/afterpay-another-debt-trap/.

[47] Mozo Pty Ltd, '*Australia's Afterpay Obsession*', undated, available at: https://mozo.com.au/credit-cards/guides/australia-s-afterpay-obsession-a-report-into-the-features-buying-habits-and-traps-of-the-modern-day-layby.

[48] See: https://www.smh.com.au/business/companies/the-4bn-buy-now-pay-later-startup-built-on-a-legal-loophole-20180829-p500j4.html; https://www.abc.net.au/news/2018-08-24/afterpay-late-fees-24pc-income-asic-loophole-credit/10156902.

Certegy, owned by ASX-listed FlexiGroup, is a company that offers “no interest” finance to consumers who buy goods at specific Certegy-partnered retailers. Certegy does not hold an Australian Credit Licence and it claims that the finance it provides falls outside the remit of the National Credit Act. Consequently, Certegy claims that it does not need to comply with responsible lending laws and not required to provide their customers with financial hardship arrangements if they struggle to meet their payments.

At Consumer Action, we see a significant number of vulnerable consumers with a Certegy “no interest” finance, who would have otherwise been denied credit regulated under the National Credit Act due to the operation of the responsible lending laws. Certegy also finances “door-to-door” sales where vulnerable and low-income consumers are sold products like solar panels under pressure and can be misled during the sales process. The problems caused by door-to-door sales are detailed in our recent report, *Knock it Off*,[49] including a number of video case studies.[50]

Certegy appears to claim it is exempt from the requirement to have a licence under the National Credit Act because its contracts appear as a continuing credit contract with periodic or fixed charges that do not exceed the modest caps set under that Act. We are concerned that Certegy may not disclose the true cost of its finance to consumers, including any arrangements it has with the Certegy-partnered retailers. This means that people may be paying more than they realise and are being unfairly denied rights under the National Credit Act.

Deferit

Consumer Action has concerns about the emergence of deferred bill payment business models, such as ‘Deferit’. As we understand it, consumers provide Deferit with copies of their bills which are then paid by the company. Users of the service are then required to pay back the money in four installments. There is a minimum monthly charge of $5.

Similar to other BNPL providers, Deferit does not charge interest and is thus exempt from Australia’s national credit laws. This means that the business is not obligated to follow responsible lending requirements and carry out suitability checks before signing people up to the service, despite arguably providing credit. Additionally, there are no obligations for membership with AFCA or to ensure access to hardship measures if a customer is having difficulty with meeting payment obligations. We also note that Deferit’s terms purport to exempt it from liability for any late fees incurred by a customer.[51]

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[49] Consumer Action Law Centre, *Knock It Off: Door-to-door sales and consumer harm in Victoria*, 20 November 2017, available at: https://policy.consumeraction.org.au/2017/11/20/knock-it-off/.
[50] These can be accessed at: https://consumeraction.org.au/knockitoffvideos/.
[51] Deferit Pty Ltd, *Website Use Terms and Conditions*, accessed 7 November 2018, available at: https://deferit.com.au/terms/.

The regulatory gap presents risks to consumers and the community more broadly. Essential service providers already have hardship obligations[52] and specialist teams that can assist individuals struggling to keep up with payment obligations. They are also a highly regulated industry. In Victoria, consumers can contact the Energy and Water Ombudsman if they encounter problems with their energy, gas or water provider. Engaging Deferit to make payments on a customer's behalf also presents complications over liability. Deferring the payment of a bill may also indicate underlying financial hardship which might go unresolved or be exacerbated by engaging services such as Deferit.

Cigno

Consumer Action continues to see clients accessing "short-term loans" or "emergency cash" from businesses that are structured to fall within the short-term credit exemption. Cigno and Gold-Silver Standard Finance Pty Ltd are one such group, using a complex broker model to avoid regulation and target individuals who are extremely vulnerable with low incomes. There are minimal responsible lending checks, fees charged are excessive, and the lending practices often leave people in severe financial hardship. Extending the Design and Distribution Obligations (**DADOs**) and Product Intervention Powers (**PIPs**) regime, plus the National Credit Act, to short-term credit would assist to close this harmful loophole.

Case Study 4: Zac's story

Zac (name changed) is a 33-year-old man from country Victoria. Zac had recently had a child and was trying to establish a home (private rental) for his new family. Zac applied for a loan with a small amount credit provider but was declined and he tells us they referred his application to Cigno. Cigno approved his application. At the time of applying Zac believes he was earning approximately $500 per week and paying $250 per week in rent. Zac says that he has had three loans through Cigno. Zac says that when he applied for the third loan, he already had a $1,500 payday loan with Sunshine Loans. Zac was overcommitted financially and had trouble making repayments to Cigno. We are continuing to assist Zac.

[52] For example, see Essential Services Commission (Vic), *Energy Retail Code*, available at: https://www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-codes-guidelines-policies-and-manuals/energy-retail-code/energy-retail-code-review-2016-customers-facing-payment-difficulties and Telecommunications Consumer Protections (TCP) Code, available at: https://www.acma.gov.au/-/media/Networks/Regulation/pdf/TCP_code_C628_2015_incorp_Variation_No1_2018-pdf.pdf. Also see: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2460376.

Case Study 5: Sarah's story

Sarah (name changed) separated from her abusive ex-partner in November 2017 taking her two children with her. Her ex-partner smashed two of her mobile phones leaving her socially isolated and in debt with Optus. Sarah was working part time at McDonalds earning $200 per week and receiving some support from Centrelink. In December 2017 Sarah applied for a loan through Cigno because she was trying to re-establish herself—she had no savings, limited income and debts to Sunshine Loans, Optus and the Bank of Melbourne. Despite this Cigno lent to her $250. Earlier this year Cigno advised that $943.55 was still owing. We are continuing to assist Sarah with this matter.

Pawnbroking

Pawnbrokers enjoy another unjustified loophole in the law, despite targeting people some of the most marginalised and disadvantaged members of our community. Pawnbrokers are subject to state-based legislation and are exempt from most obligations in the National Credit Act, including obligations to lend responsibly and maintain membership of AFCA. That means that even where there are breaches of the limited legal protections, the consumer must take the dispute to Court, which is far too complex, costly and intimidating for most people.

In Victoria, there are no caps on the fees that a pawnbroker can charge. When a person pawns an item in exchange for a cash loan, they may end up paying more interest than the total value of the item. We have seen examples of pawn agreements carrying an effective interest rate of between 360% and 420% per annum.[53] These exorbitant fees are particularly unfair given that the person will lose their pawned item if they miss an interest repayment or cannot repay the loan in full. Items pawned are often low in monetary value but high in sentimental value, such as jewellery and family heirlooms. This keeps people making high interest repayments month after month and extending loans.

This unjustifiable loophole in the National Credit Act must be closed. This could be achieved by a referral of powers from the States, and removing the exemption in section 6 of the National Credit Code.

Case Study 6: Rose's story

Rose (named changed) is a single, elderly woman who relies on the aged pension as her only source of income. Rose tells us she was a victim of a scam and needed money. Rose said that she took her jewellery to a local pawnbroker and pawned 19 items for $2000 agreeing to repay the total back plus $600 of interest for one month. Rose says she paid back about $1500 and then negotiated a longer 'lay-buy' agreement as she was struggling to keep up with the payments. One day, Rose said she went

[53] See ABC Radio Melbourne, 'Pawnbrokers charging 420 per cent interest in unregulated industry, 'profiting from misery' say low income earners', 16 July 2015: https://www.abc.net.au/news/2015-07-16/pawnbrokers-profiting-from-desperation/6622310.

to make a payment and was told that all her jewellery had been sold. She estimates the items were worth approximately $10,000. Rose's matter is unresolved.

Current regulation and reforms needed

The boom of BNPL and other unregulated products is, in part, results from inadequate regulatory powers to oversee new products and the rapidly evolving ways Australian's are accessing financial products such as online and through mobile apps. BNPL providers escape regulation under the National Credit Act. However, BNPL products generally fall within the definition of 'credit facility' under ASIC Act[54], and the definition of 'credit' under the credit reporting provisions of the *Privacy Act 1988* (Cth).[55]

Consumer Action strongly supports increasing the scope of the proposed DADOs and PIPs so that BNPL providers are captured. Regulators must be empowered to encourage a more consumer-centred approach to product design and distribution, and ensure that consumers receive fair and appropriate treatment from providers of financial products. The recent examples of misconduct revealed by the Banking Royal Commission have provided even further evidence of the need to improve product design and distribution, and enhance the enforcement powers of regulators.

Additionally, it is imperative that BNPL providers are subject to the National Credit Act. This would require them to undertake responsible lending checks like other credit providers, including assessment of an individual's capacity to repay. This would also ensure that financial hardship arrangements and proper dispute resolution processes were available to consumers.

Equally, these obligations should apply to the other products discussed above: 'no interest' finance, short-term credit, deferred bill paying services and pawnbroking. There is no principled reason why these providers should be exempt from these basic consumer protections that apply to other consumer credit products.

There has also been a long and consistent history of attempted avoidance of credit legislation, particularly in relation to cost caps. Many of these are under the guise of "innovation", and historically required specific amendments to credit laws to capture the scheme, only to be replaced by the next "innovative" scheme. Many of the business models described above may be characterised as avoidance strategies, particularly the Cigno model. This entity and its associates has clearly structured its business arrangements with clear intent to avoid the law, both the cap on costs and the general and SACC-specific responsible lending obligations. If the reforms mentioned above (i.e. cap on the costs of consumer leases

[54] *Australian Securities and Investments Commission Act 2001 (*Cth), section 12BAA(7)(k); *Australian Securities and Investments Commission Regulations 2001 (*Cth) reg 2B.
[55] *Privacy Act 1988* (Cth), section 6M.

and the proposed protected earnings requirements) were implemented, we anticipate an increase in avoidance as businesses find new ways to lend irresponsibly.

Recognising this concern, the SACC Review Final Report recommended a broad anti-avoidance provision to be included in the National Credit Law.[56] The reviewers recognised that in addition to causing harm to vulnerable people, avoidance strategies can have a significant adverse impact on compliant industry participants. In particular, providers engaging in avoidance activity can obtain competitive advantages by being able to provide their products more quickly by not having to meet the responsible lending and other conduct obligations and by having reduced compliance costs.

When the Federal Government responded to the recommendations from the SACC Review Final Report, it supported the anti-avoidance provision.[57] The exposure draft legislation included an anti-avoidance provision, which we welcomed. Our submission to that legislation pointed to gaps with the proposed provision, and we repeat those submissions.[58]

Recommendation 4: Extend the National Credit Act to cover BNPL providers, short-term credit providers, and pawnbrokers.

Recommendation 5: Extend the PIPs and DADO regime to cover BNPL providers, short-term credit providers, and pawnbrokers.

Recommendation 6: Future-proof reforms to capture new products and services, and prevent harmful practices from emerging.

Recommendation 7: Enact a broad and robust anti-avoidance provision as part of the National Credit Act.

[56] Review Panel, SACC Review Final Report, recommendation 24.
[57] Treasury, Exposure Draft National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reform) Bill 2017, section 323A.
[58] Consumer Action, *Submission to Exposure Draft National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reform) Bill 2017,* November 2017, available at: https://policy.consumeraction.org.au/2017/11/06/submission-small-amount-credit-contract-and-consumer-lease-reforms/.

DEBT ADVICE, DEBT MANAGEMENT AND CREDIT REPAIR

Impact on individuals, communities and the broader financial system

So-called 'debt management' and 'credit repair' firms provide a form of unregulated financial advice. These firms target people concerned about bills, debts, home repossession or their credit report. The United Kingdom's FCA, which regulates its debt management industry, considers that debt management is one of the highest risk activities in consumer credit.[59]

These unregulated firms offer quasi-legal and quasi-financial advice on debt options via a 'free' consultation and then mis-sell services including:

- negotiating with creditors,
- repairing credit reports,
- arranging formal or informal debt agreements or bankruptcy,
- managing money and budgets, and
- everything in between.

While the promise of a quick fix is appealing at first, the reality is that these unqualified, unregulated firms charge exorbitant fees, can't deliver on many of their promises, and can leave families with even less money for putting food on the table. Yet in Australia, our debt management providers continue to exploit a regulatory gap with little oversight and often no redress for victims of misconduct. A history of the extensive delay in reform of debt management is available in our submission to the Banking Royal Commission.[60]

Given the lack of regulation and oversight, it is difficult to maintain comprehensive information about this industry, with new practices and business models constantly emerging. This submission focuses on the harm to individuals with examples from our casework.

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[59] Financial Conduct Authority, *Thematic Review TR15/8: Quality of Debt Management Advice*, June 2015, available at: https://www.fca.org.uk/publication/thematic-reviews/tr15-08.pdf.

[60] Consumer Action Law Centre, *Submission to Banking Royal Commission Part 2*, 5 February 2018, 10, available at: https://policy.consumeraction.org.au/2018/02/05/royal-commission-into-misconduct-in-the-banking-superannuation-and-finance-sector-consumer-action-submission-part-2/

Common problems across the industry

Our casework, ASIC Report 465[61] and academic research[62] reveal many problems that appear to be common across debt management services, including:

- conflicted remuneration;
- bad advice that can leave people worse off when firms recommend a debt option that results in a financial benefit to the firm but is not in the person's best interests, or fails to take a holistic approach to the debt problems;
- unfair, predatory and unconscionable conduct;
- mis-selling services based on misleading representations about the nature and effectiveness of the service;
- clever, aggressive and sometimes misleading advertising, which overstates the benefits and understates the consequences of certain debt options;[63]
- no barriers to entry or professional requirements, meaning these firms can employ unqualified and unsuitable staff to provide quasi-legal and quasi-financial advice;
- high, hidden, upfront and non-refundable fees for services of little value;
- failure to advise clients of the free options that can assist, such as hardship, ombudsman schemes and the National Debt Helpline; and
- lack of access to justice for aggrieved clients, with no requirements for internal or external dispute resolution and few practical remedies.

Problems with particular services are discussed below. Further information on these services and case studies are available on our website.[64]

Case Study 7: Haruki's story

Haruki (name changed) works part-time. When considering a new mobile phone plan in April 2018, Haruki found out that there was a problem with his credit rating, impacting his ability to get a phone plan. Haruki told us that he searched Google for a contact point to obtain a copy of his credit report and called a phone number that he (mistakenly) thought was the credit reporting bureau, Equifax. Haruki reached a voicemail machine directing him to leave contact details.

[61] 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/.

[62] 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*.

[63] 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: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-148mr-fox-symes-pays-37-800-for-misleading-advertising/.

[64] See https://consumeraction.org.au/debtvultures/.

The next morning, he received a call from a person who—he later found out—worked for Credit Repair Australia. After asking about his financial situation, the sales representative told Haruki they could make him 'debt free' and attempted to upsell him a Part IX debt agreement (a form of insolvency that would be added to his credit report, typically for 5 years). As the call progressed, Haruki became concerned that he was dealing with a private company, not a government agency. He said that he didn't want to be involved with any debt agreement proposal by Credit Repair Australia.

Credit Repair Australia contacted Haruki again by email (requesting he return signed documents) and phone. Haruki never signed any documents, and repeated that he did not want to be involved with any debt agreement proposal by Credit Repair Australia. Haruki told us that he then received an email stating that his dispute would be treated as a cancellation request, with a cancellation fee of $1,100 applying. Credit Repair Australia started demanding payment.

Haruki's dispute with Credit Repair Australia has resolved without an admission of liability from Credit Repair Australia.

Debt advice and 'free' consultations

At the heart of the for-profit debt management industry is a central conflict of interest: firms stand to earn high fees from recommending options that are not necessarily in their client's best interests.

Scandals in financial advice, examined by the Banking Royal Commission, have parallels in the debt advice industry. The main difference is that there is even *less* scrutiny of debt advice than financial advice.

People struggling with money and debt problems have a number of options that may be available depending on their individual circumstances. These can include hardship and repayment arrangements, debt waivers, 'do not contact' letters and judgment proof options, and insolvency options such as bankruptcy and debt agreements, or legal claims relating to the underlying debt where the lender has breached the responsible lending laws. Financial counsellors and community lawyers can provide impartial, competent advice on these options, and assist and empower people to choose the best option.

However, when it comes to for-profit firms, we see ongoing problems with the quality of advice. Many people who call a debt management firm, usually in response to a television, radio or social media advertisement, receive imbalanced advice. This is a chronic problem in sale of Part IX debt agreements, as discussed below. Some people contact debt management firms looking for one service—such as a debt consolidation loan, or 'credit repair'—only to be mis-sold an entirely different service. Some consequences of this conflicted or bad advice cannot be undone, for example, where the person ends up bankrupt or in an unsuitable debt agreement.

It is essential that people in financial difficulty can trust their advisors. People are often at their most desperate when they seek advice from a debt management firm—they may be facing home repossession proceedings, bankruptcy, or other enforcement action by creditors, or have been refused credit due to listings on their credit report. The FCA found that people are unlikely to shop around for debt

management services and once the firm offers the prospect of help, people are susceptible to influence or make choices that are not in their best interest.[65]

Case Study 8: Sidhu's story

Sidhu (name changed) is a survivor of family violence. Sidhu entered into a Part IX debt agreement on the recommendation of a for-profit debt agreement administrator. At the time of the debt agreement proposal, Sidhu had no assets that could be seized in bankruptcy and only casual employment income, supplemented by Centrelink payments. In our view, debt agreements are unsuitable in these circumstances, and bankruptcy may have been a more appropriate option for Sidhu.

The Debt Agreement Proposal prepared by the administrator requires Sidhu to pay over $20,000. Her debts include:

- a debt of approximately $600 to Afterpay – we are instructed that although the debt is in her name, it was a purchase by the perpetrator of family violence;
- a $3,000 debt to Certegy – we are instructed that she did not sigh the signature on the contract documents. The perpetrator of family violence bought jewellery with the money; and
- a debt of almost $3,000 to Needy Money.

Sidhu tells us that the administrator was relying on her abusive ex-partner making repayments towards joint debts for her to meet the payment obligations under the debt agreement proposal, raising concerns about her safety and the suitability of the debt option recommended by the administrator.

During a phone call with the administrator, the administrator failed to discuss Sidhu's other hardship options and immediately took steps to sign her up to the debt agreement proposal. The income and expenses statement in the debt agreement proposal omits housing costs that would likely lead to a deficit at the time it was proposed. She struggled making these repayments on a minimal income from casual work and Centrelink until she experienced health problems that stopped her from working. The unaffordable repayments contributed to Sidhu going back to live with her mother as she could no longer to afford her rental accommodation. She is currently in the process of applying for a Disability Support Pension.

The administrator failed to discuss Sidhu's other hardship options and immediately took steps to sign her up to the debt agreement proposal. Her financial position at the time showed a shortfall in her capacity to service the repayments. She struggled making these repayments on a minimal income from casual work and Centrelink until she experienced health problems that now mean she is unlikely to return to work. The unaffordable repayments contributed to Sidhu going back to live with her mother as she could no longer to afford her rental accommodation. She is currently in the process of applying for a Disability Support Pension.

[65] Financial Conduct Authority, *Quality of debt management advice*, June 2015, available at: https://www.fca.org.uk/publication/thematic-reviews/tr15-08.pdf.

Debt Agreements

Debt management firms spruik what appears to be an attractive alternative to resolve financial hardship: "one easy payment" that freezes interest on all unsecured debts and stops the debt collectors' calls, an "alternative to bankruptcy" that is "government backed". The product behind this clever marketing is usually a debt agreement under Part IX of the *Bankruptcy Act 1966* (Cth)—a form of insolvency with serious consequences that is only appropriate in very limited circumstances.

Concerningly, debt agreements have reached record levels for six consecutive years, with 14,834 new debt agreements in 2017-18.[66] This is likely due to a combination of high levels of financial difficulty, heavy and effective marketing, and the conflicted advice of brokers and administrators, who stand to earn substantial fees from recommending a debt agreement, rather than a temporary hardship variation or bankruptcy, from which they earn no fees.

Overwhelmingly, people who contact Consumer Action about their debt agreement report one or more of the following:

- they thought it was a debt consolidation loan, not a type of insolvency—this is supported by the findings of a recent survey commissioned by the insolvency regulator, the Australian Financial Security Authority (**AFSA**), which found that the vast majority of debtors were initially looking for a debt consolidation (42%) or way to manage debts (42%), not the personal insolvency product that they ended up with;[67]
- the broker or administrator did not discuss their other available options, such as hardship, informal negotiations, debt waiver or bankruptcy;
- the broker or administrator led them to believe that a debt agreement was their best or only option;
- they didn't understand one or more of the consequences of the debt agreement; or
- they didn't understand the total cost of the agreement or the fees involved.

For more information on the significant consumer harm caused by unsuitable debt agreements and misconduct by brokers, please see our recent submission on debt agreement reform.[68]

While recent reforms in the *Bankruptcy Amendment (Debt Agreement Reform) Act 2018* (Cth) are positive, there are many outstanding issues. Our main areas of concern are:

- conflicted and poor-quality advice on debt options, even by registered debt agreement administrators, as above;
- role of unregulated brokers and paid referrers;
- affordability and verification of the debtor's actual financial position;

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[66] See https://www.afsa.gov.au/about-us/newsroom/media-release-personal-insolvencies-rise-56-2017-18.

[67] Where To, *Assessing the experiences of debtors and creditors with practitioner during the personal insolvency process – a market research report for the Australian Financial Security Authority*, 25 May 2017.

[68] Joint submission to Senate Legal & Constitutional Affairs Committee Inquiry into the *Bankruptcy Amendment (Debt Agreement Reform) Bill* 2018, available at: https://policy.consumeraction.org.au/2018/03/07/submission-debt-agreement-reform/.

- excessive and unwarranted fees—with firms taking upwards of 28% of every repayment and $2000 or more in set-up fees;
- inadequate remedies when Administrators or brokers engage in misconduct; and
- gaming of the system by Administrators and loopholes.

For a full list of outstanding issues, please see our submission to the Legislative Instruments Consultation for the *Bankruptcy Amendment (Debt Agreement Reform) Act 2018* (Cth) (**Appendix B**).

Case Study 9: Jo's story

Jo (named changed) was referred to our service after experiencing problems with debt collectors and a debt agreement proposal that was arranged by Fox Symes & Associates (**Fox Symes**).

Jo works part-time but was having trouble keeping up with a personal loan she took out about 10 years ago to assist a family member. The loan was for around $20,000. Jo fell into arrears with the loan and the debt was subsequently sold to a debt collector. The debt collector then took legal action against her and Jo tells us this caused her considerable stress. Jo contacted Fox Symes for help with her debts.

A debt agreement proposal arranged by Fox Symes and put forward to AFSA in mid-2018 shows that Jo's only assets were a car worth $1,500 and some personal effects. We consider that bankruptcy would have been a more suitable option.

The debt agreement proposal prepared by Fox Symes was not accepted by the debt collector. Despite this, Jo still had to pay Fox Symes' fees of $2,200 to put together the proposal. Although Jo went to Fox Symes for help with her debts, she just ended up with another bill to pay.

Jo is now considering bankruptcy. Jo's matter is unresolved.

Debt negotiation

Many debt management firms offer to negotiate with creditors, claiming to improve people's financial situation by persuading their creditors to write off all or part of their debts, or by making hardship arrangements. Debt negotiators hold themselves out as experienced professionals, however there are no educational or professional requirements in Australia.

In practice, debt negotiators often suggest high risk strategies to improve a person's bargaining position that can have serious consequences. For example, people may be advised to stop paying their original creditor for the purposes of giving the debt negotiator even greater leverage in negotiations. Some ask their clients to get their hands on a lump sum (for example, borrowing from family) and offer this amount during negotiations. People may become subject to legal proceedings due to this advice, or have their credit report impaired.

The nature and level of fees charged by some debt negotiation firms is such that they can also affect people's ability to make significant repayments towards their debts, leaving them in even worse financial distress. This is further exacerbated by a lack of strategic advice about the person's overall financial

position. Firms often undertake ad hoc negotiations which reduce individual debts and entitle them to claim fees under their contract without regard to whether there is a net benefit to the person.

Budgeting and money management

Unregulated firms offering money management, personal budgeting or debt payment services offer to manage people's income, bills and debts, while providing them with an allowance for daily expenses. Some also claim to negotiate future repayment arrangements with creditors. They charge periodic maintenance or management fees, usually in addition to an up-front establishment fee. Some firms also hold client money without regulatory oversight.

Financial counsellors and consumer advocates have raised concern about the significant problems with budgeting services, including:

- if the person does not have enough income to meet their financial obligations, paying a firm to manage their money may make their financial situation worse;
- many people misunderstand the level to which the budget management service will actually "manage" their debts. This can leave them open to legal action and an impaired credit report if bills go unpaid. In the worst case, missed payments can lead to lenders commencing enforcement action or home repossession proceedings;[69]
- people complain that they are left without enough money to live on from the allowance;
- firms generally do not take any responsibility for any defaults or missed payments reported on the person's credit file if bills go unpaid; and
- firms hold client money without any oversight.

Case Study 10: Claire's story

In September 2018, Claire (name changed) was under financial stress. She had two credit cards, one with a balance of approximately $6,000 and one with a balance of $7,800 and she was struggling to pay everything off. Claire tells us she was in a cycle of debt where she felt out of control with her money—she would pay down her credit card and then use it up to the limit again.

Claire saw an ad for MyBudget on television and, wanting to get her debt under control, she called and was an appointment at their office was arranged. At the appointment, the MyBudget representative put together a budget for Claire. It was only at the end of the meeting that MyBudget told her that there would be additional monthly costs.

At the meeting, MyBudget asked about Claire's goals. She said that she would like to pay off her credit cards in a few years and that she also wanted to go to Cairns in Christmas to visit her family, which would cost around $1,000. MyBudget said they would be able to get those savings. Claire wasn't sure how that was possible, because it was only 3 months away. Claire signed up on 10 September 2018.

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[69] See http://www.abc.net.au/news/2013-12-09/financial-counsellors-urge-caution-over-new-industry-offering-h/5145550.

Claire ran into problems with the budget set up by MyBudget. The MyBudget representative had estimated her credit card repayments to be 2% of her balance. When Claire questioned the representative about this figure, they told her that they had been doing this a long time and they knew. However, her credit card minimum payments were $65 higher than MyBudget had budgeted for. Claire said when she realised this, MyBudget said, the extra money will need to come from somewhere else but MyBudget did not specify which part of the budget it would come from. Claire says she had to pay this amount from her personal allowance, which she needed for groceries, which was only $100 each week. MyBudget had not accounted for other essential expenses, like her car insurance. After this, Claire did not trust MyBudget to manage her finances.

After a few weeks, Claire also realised that she would not be able to reduce her debt or save money if she continued to pay the monthly fees to MyBudget and requested MyBudget to cancel the contract. MyBudget told her she needed to go to a website link to cancel the agreement, which took them several days to send. When she received the link and tried to cancel the contract, MyBudget told her that she was required to give a notice period of 28 days. Claire tells us she still had to pay $790 for the establishment fee.

Since then, Claire has consolidated her credit card balance into a single personal loan with a low interest rate. Claire says that when MyBudget controlled her money, she felt like a child and did not feel in control of her finances.

Credit repair

Firms offering credit repair claim they can “fix” or “clean” a person’s credit report and “improve” a credit score by pressuring creditors to have default listings removed. Australians are increasingly concerned about their credit report, and many people respond to effective marketing by credit repairers after being refused a car loan or other credit.

Credit repairers exploit the complexity of, and confusion about, our credit reporting system to mis-sell high cost services that often don't help, and can further entrench financial hardship. Firms charge very high up-front fees, often thousands of dollars, for services that can be accessed free of charge through an industry ombudsman, credit reporting body, financial counselling service or community legal centre. Firms may also mislead people about the likely impact of amendments to their credit report, selling false hope to people desperate to get a loan. Some types of credit listings cannot be removed if accurately listed, and there may be other factors than a person’s credit report affecting their ability to obtain a loan, such as insecure work. Where listings can be removed, fees may be payable “per listing removed” resulting in some people (with multiple negative listings) incurring considerable fees without any effective improvement in their ability to obtain credit.

Firms may use aggressive tactics to get creditors and credit reporting bodies to remove legitimate default listings, which undermines the integrity of the credit reporting system. Often, this involves threatening to take the creditor to an external dispute resolution scheme, where the creditor must pay for each dispute lodged. The CIO estimates that a third of complaints about incorrect credit reports originate with credit repair firms, and Energy and Water Ombudsman NSW attributes 25% of its cases to credit repair

firms.[70] These concerns have prompted both the CIO and Financial Ombudsman Service to adopt strict new policies regarding these firms.

These problems will worsen under proposed mandatory comprehensive credit reporting regime, which will add further complexity and information to credit reports.[71]

The Federal Court recently found that prominent credit repair firm Malouf Group made false and misleading representations and engaged in unconscionable conduct.[72] Despite this, our Centre continues to receive complaints about credit repair providers. Enforcement action alone cannot fix this problem.

A comprehensive evaluation of the credit repair industry by Melbourne Law School provides further evidence of the harm and proposals for reform.[73]

Case Study 11: Camilla's story

Camilla (name changed) has an ongoing dispute with Malouf Group Enterprises Pty Ltd (**Malouf Group**) trading as Credit Clean Australia ('**Credit Clean'**).

Camilla claims that Credit Clean's consultants misled her by stating that its service would clean her credit report and remove credit listings from her credit file. In fact, the listings on her credit report were accurately made and nothing could be done (legitimately) to have them removed.

Camilla paid $660 to Credit Clean. To seek a refund, Camilla had to start legal action in the Victorian Civil Administrative and Tribunal (**VCAT**) because Credit Clean is not required to offer external dispute resolution through the Australian Financial Complaints Authority. The VCAT claim alleges that:

- Camilla contacted Credit Clean saying she wanted to get a car loan but was concerned about having bad credit;
- Credit Clean claimed it would clean the woman's credit report within 30 days;
- Credit Clean claimed that its services would save the woman thousands of dollars in interest on any loan; and
- Credit Clean did not cause the removal of any bad credit listings from the woman's credit file.

[70] Ali, O'Brien and Ramsay, 'A Quick Fix? Credit Repair in Australia (2015) 43(3) *Australian Business Law* 179, 188.
[71] Joint consumer submission to the Attorney-General's Department Review of Financial Hardship Arrangements, 22 June 2018, available at: https://policy.consumeraction.org.au/2018/06/28/21495/.
[72] See https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-114mr-credit-repair-business-malouf-group-enterprises-and-its-director-pay-17-million-for-misleading-and-unconscionable-conduct/.
[73] Ali et al, above n 71.

This case is not the first of its kind. In July 2017, ASIC launched legal action against Malouf Group.[74] The Federal Court of Australia found that between 1 January 2014 to 31 December 2015 Malouf Group Enterprises Pty Ltd made false and misleading representations and engaged in unconscionable conduct, and ordered it to pay a penalty of $400,000.[75]

Camilla's dealings with Credit Clean occurred in late 2017 and early 2018—after the period covered by the Federal Court action.

The VCAT complaint is ongoing.

'Buy more time' to arrange refinance

Some firms claim to help people stop home repossession or bankruptcy proceedings by 'buying more time' to arrange refinance.

Case Study 12: Steven and Martha's story

In August 2018, Consumer Action Law Centre issued proceedings in the Federal Circuit Court of Australia on behalf of a Narre Warren family who were charged $12,000 in fees and had a caveat lodged over their home by J Daniels & Associates.

Steven and Martha alleged that in 2013, shortly after their lender commenced repossession proceedings in the Supreme Court of Victoria, Steven and Martha received personalised letters from Home Loan Help, one of the business names of AREG, warning that their lender was 'one step away' from obtaining a court judgment and taking their home.

Steven and Martha alleged that J Daniels & Associates, who presented as solicitors, together with AREG, suggested that they sign a 'buy more time' agreement to refinance their home loan and stop the repossession, and to perform debt negotiation and credit repair services.

In a claim filed in the Federal Circuit Court against J Daniels & Associates and Nationwide Debt Collection, Steve and Martha alleged multiples breaches of the law including unconscionable conduct, misleading and deceptive conduct, failure to provide services with due care and skill and unlicensed credit activities. The claim alleged that J Daniels & Associates:

- did not stop the repossession of their family home;
- did not perform any debt negotiation or credit repair services;

[74] ASIC, *Media Release 17-226MR*, 6 July 2017, available at: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2017-releases/17-226mr-asic-commences-proceedings-against-credit-repair-business/.
[75] ASIC, *Media Release 18-114MR*, 26 April 2018, available at: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-114mr-credit-repair-business-malouf-group-enterprises-and-its-director-pay-17-million-for-misleading-and-unconscionable-conduct/.

- failed to advise on their options to avoid repossession, and put them at risk of a default judgment in the Supreme Court repossession proceedings;
- only made a complaint to the Financial Ombudsman Service (**FOS**), which Steve and Martha could have done themselves, without representation and free of charge;
- did not respond to FOS's communications, which led to the closure of the FOS complaint. This in turn led to the Sheriff attempting to evict the family from their home.

Steven and Martha alleged that, despite this, in 2016 Nationwide Debt Collection Pty Ltd demanded over $12,000 for services J Daniels & Associates allegedly provided. The dispute has resolved on confidential terms and without an admission of liability.

Current regulation

In contrast to the United Kingdom and USA, there is no specific laws or regulation of debt advice, debt management or credit repair in Australia and, other than the general consumer law, no specific legal obligations. Unlike lenders or financial advisers, there are no licensing requirements, minimum professional, educational or ethical standards, requirements to provide internal or external dispute resolution, or suitability/affordability requirements.

Some firms hold a relevant licence for other activities, such as an Australian Credit Licence or registration as a debt agreement administrator, but does not address the harm caused by these businesses' core activities. Indeed, in some cases, it simply reveals a further conflict, such as where firms offer both debt options and further credit.

The proposed DADOs would not extend to debt management firms. While under the current exposure draft legislation the ASIC PIP could be extended by regulation, at this stage the Government is not intending to use its regulation-making power to capture debt management firms.[76] We see this as a missed opportunity.

As discussed above, the recent reforms to the debt agreement regime do not fix:

- The problems of unregulated firms that broker debt agreements, as the Australian Financial Security Authority has no regulatory remit over these firms; or
- The problem of conflicted remuneration and poor-quality advice about whether to enter a debt agreement and on what terms.

[76] See https://treasury.gov.au/consultation/c2018-t312297/.

Reforms needed

The conduct of the debt management sector falls well below community expectations. Our community expects that when people in financial difficulty reach out for help, they will receive help. It is not expected they will find a company looking to make a quick buck and leave the debtor (and their creditors) with even less money.

There is a simple fix: a robust regulatory framework for debt management firms. This would close the loophole exploited by debt management firms and bring them into line with other financial services. At its last two meetings, the Consumer Affairs Forum (the annual meeting for Ministers with responsible for consumer affairs) recognised the need to better regulate debt management, but no reform has been forthcoming.[77]

We recommend the following features for a robust, seamless regulatory framework.

1. **Licensing or authorisation by ASIC** with suitable standards for entry. Licensing would allow ASIC to have much more insight into the size and activities of this sector, in line with other companies that provide fee-based financial services to the market. The licensing framework should provide ASIC with compulsory information-gathering powers and enable risk-based audits for compliance.
2. **Membership of the Australian Financial Complaints Authority** to resolve customer complaints, as recommended by the Ramsay EDR Review.[78] This recommendation was accepted by the then Treasurer Hon Scott Morrison MP but has not been implemented, despite the commencement of AFCA on 1 November 2018.[79]
3. **Ban upfront fees and charges** to stop the fees-for-no-service rip-offs, incentivise timely services that actually help, and prevent additional financial stress on people already struggling to make ends meet. Banning firms from demanding upfront payment would fundamentally improve the relationship between the firm and their customers, incentivising the firm to fulfil the promised service in a timely manner. This is consistent with the Advance Fee Ban for telemarketers of for-profit debt relief services introduced in the United States in 2010.[80]
4. **Duty to act in client's best interests,** not in the interests of the sales representative or company's bottom line.

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[77] Consumer Affairs Forum, communiques, meeting 31 August 2017 and 26 October 2018.

[78] The Treasury, Review of the Financial System External Dispute Resolution and Complaints Framework: Final Report (April 2017), Recommendation 10, available at: https://treasury.gov.au/publication/edr-review-final-report/.

[79] The Hon Scott Morrison MP, *Media release: Building an accountable and competitive banking system – Appendix B: Government Response to the Ramsay Review*, 9 May 2017, available at: http://sjm.ministers.treasury.gov.au/media-release/044-2017/.

[80] United States' Federal Trade Commission, Media release, 'FTC Issues Final Rule to Protect Consumers in Credit Card Debt,' 29 July 2010, available at: https://www.ftc.gov/news-events/press-releases/2010/07/ftc-issues-final-rule-protect-consumers-credit-card-debt.

4. **Robust professional standards** to ensure high quality advice from qualified and suitable staff, including requirements to pass a 'fit and proper person' test, minimum educational requirements, and compliance processes.
5. **Ban unsolicited selling** to overcome high pressure sales tactics and conflicted advice - no-one should be cold-called and sold into insolvency. A ban on unsolicited selling is preferable to cooling-off requirements, as new research shows that cooling off periods are ineffective.[81]
6. **Client money obligations** to ensure that firms can't retain interest on their client's (limited) money and ensure protections in the event of the firm's insolvency. Firms offering money management should be subject to the same client money obligations as other financial service providers.
7. **Require firms to inform people of free options** that can assist, such as hardship programs offered by creditors and utilities, ombudsman schemes and the National Debt Helpline for free, independent and professional financial counselling.

There is broad support for these reforms. Consumer and industry groups, regulators, ombudsman schemes and credit reporting bodies all agree: action on credit repair and debt management firms is long overdue. In February 2016, a joint Communique calling for regulatory reform was released following an experts' roundtable attended by 40 representatives, available at **Appendix A**.

Similar reforms have already been implemented in the United Kingdom to resolve the problems caused by unscrupulous credit repair and debt managements firms.

In addition to the above licensing and conduct standards, we recommend active compliance and enforcement work by regulators, including on:

- point of sale conduct and quality of advice;
- whether services are fit for purpose and delivered with due care and skill, as required by the *Australian Consumer Law*;
- misleading and deceptive advertising, particularly targeted ads on social media; and
- unfair contract terms in debt management contracts.

Recommendation 8: Urgently introduce a robust regulatory framework for all debt management and credit repair firms, whether by extending the National Credit Act or introducing stand-alone legislation.

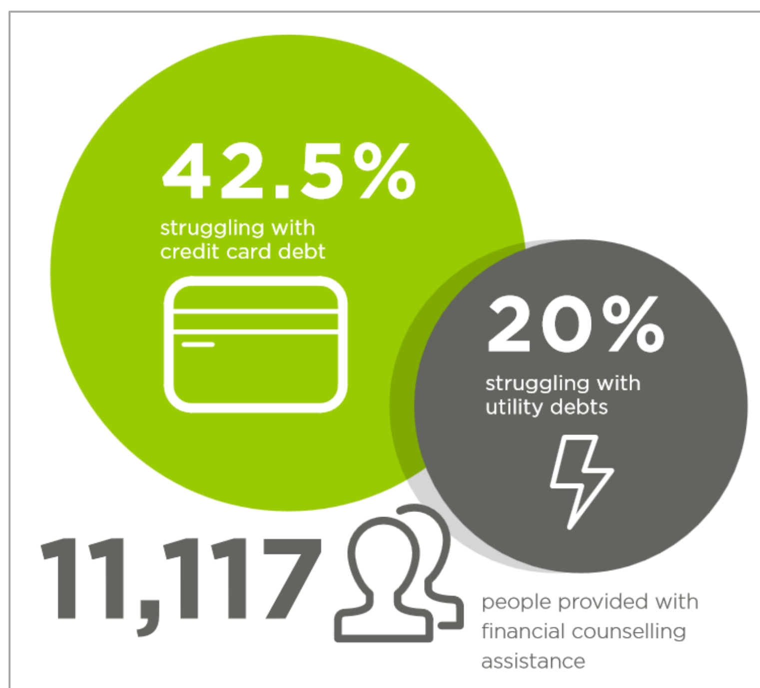
Recommendation 9: Extend the PIPs and DADO regime to cover debt advice, debt management and credit repair.

[81] Consumer Action Law Centre, *Knock It Off*, above n 49, 18.

CAPACITY AND CAPABILITY OF THE FINANCIAL COUNSELLING SECTOR

Impact of financial counselling

Financial counsellors provide information, support and advocacy to help those in need to deal with their immediate financial situation, regain financial stability and minimise the risk of future financial problems. Unlike debt management firms, financial counsellors are genuinely free, independent and professional.



In 2017-18, Consumer Action provided 11,117 people with financial counselling assistance. Operating the National Debt Helpline in Victoria, our financial counsellors provide telephone, email and some face-to-face financial counselling through an integrated practice with our legal team.

Since 2014, Consumer Action has also provided on-site financial counselling to self-represented debtors appearing in the Bankruptcy List at the Melbourne Registry of the Federal Circuit Court. The Registrars at the Court can refer debtors for immediate financial counselling assistance, without the need for an adjournment of the bankruptcy proceedings.

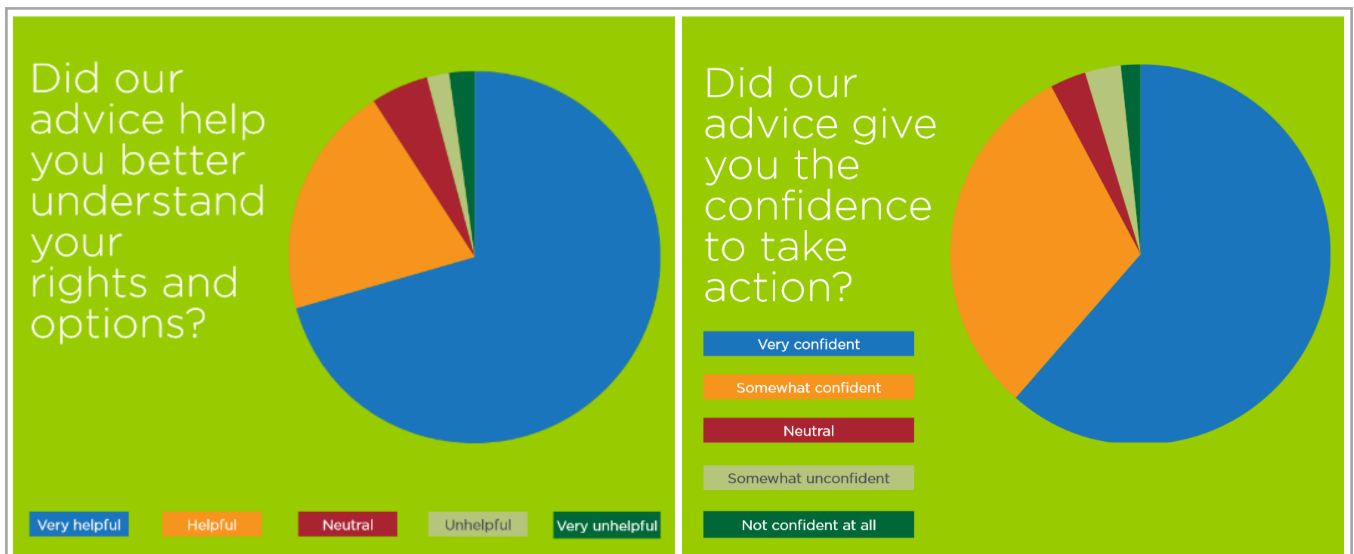
An evaluation by The University of Melbourne found that the project was 'highly successful':

> *[Financial] counsellors have helped several debtors to demonstrate solvency and thus avoid bankruptcy, by drawing up detailed statements of their financial circumstances, negotiating payment arrangements and identifying assets that can be sold or offered as security.*
>
> *In other cases, where debtors have had little prospect of avoiding bankruptcy, the counsellors have played an equally important role. Explaining the consequences of a sequestration order, they have sought to dispel some of the negative stereotypes associated with bankruptcy and presented it as a viable, constructive solution to unmanageable debt. They have also provided much-needed emotional support to debtors in acute distress, enabling them to focus on the relevant issues and engage meaningfully with the court process. While this might not have led to a different outcome in every case, it has helped many debtors to take decisive action and resolve their matters more quickly, without the*

need for multiple adjournments. In this respect, the project has reduced stress and anxiety for many debtors, while also reducing unnecessary delay and wastage of Court resources.[82]

The evaluators recommended, among other things, that the project continue and be expanded to other registries. Concerningly, debt management firms without skills or qualifications are now acting and advising on bankruptcy proceedings.

In May 2018, we introduced an online satisfaction survey for callers to whom we have provided financial counselling advice. As at 30 June 2018, 65 people had responded to the survey, with 85% taking the time to provide a comment.



[82] University of Melbourne, *Federal Circuit Court Financial Counselling Project Evaluation,* August 2015, page 7, available at: https://law.unimelb.edu.au/__data/assets/pdf_file/0003/1767531/Federal-Circuit-Court-financial-counselling-project-evaluation-August-2015.pdf.

Proposal for an expanded network

There is substantial demand for financial counselling, and significant unmet need. We have reviewed and endorse the proposal for an industry levy to increasing funding for community financial counselling and consumer legal services in the joint submission by Financial Counselling Australia and the National Association of Community Legal Centres to the Banking Royal Commission (**FCA-NACLC Submission**).[83]

The FCA-NACLC Submission calls for funding of $157 million per annum, through an increase to the Major Bank Levy or ASIC Industry levy, to create a properly funded network of community financial counselling and community legal services. This is composed of $1 million for the National Debt Helpline, $130 million for 1,000 financial counsellors, and $26 million for an additional 200 community financial service lawyers located across Australia.

The FCA-NACLC Submission estimate that this expanded network will triple the number of people—increasing from around 250,000 to 800,000 people a year—who are able to access information, self-help resources, phone financial counselling services, face-to-face financial counsellors, legal advice, or other legal support to help them resolve disputes, structure their debts, and negotiate with financial services.

Your service is amazing and helped a lot.
Very understanding and never judgmental of my situation.
Went above and beyond to give me specific direction in a warm, caring and knowledgeable manner.
Professional, friendly and compassionate.
Thorough, informative and took time to research further to provide comprehensive information.
You gave me more hope for the future than most of my counsellors and psychologists – thanks a million.

Image above*: Feedback from individuals after contacting the National Debt Helpline and speaking with a financial counsellor*

For more information on the benefits to individuals, communities and the broader financial services industry, and funding models, please refer to the FCA-NACLC Submission.

Recommendation 10: Increasing funding for financial counselling and community legal services as proposed in the joint submission by Financial Counselling Australia and the National Association of Community Legal Centres.

[83] Available at:
http://www.naclc.org.au/resources/20181026%20NACLC%20and%20FCA%20Banking%20RC%20Submission.pdf.

Contact details

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Yours sincerely,
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