



# CONSUMER ISSUES in Victorian Aboriginal Communities

Integrated Project Final Report 2020

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

**Warning:** Aboriginal and Torres Strait Islander people are advised that this document may contain the names or images of people who have since passed away.

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### Our Artwork

Creator: **Dixon Patten**

Dixon is a proud Yorta Yorta and Gunnai man and has family bloodlines from Gunditjmara, Dhudhuroa, Wiradjuri, Yuin, Wemba Wemba, Barapa Barapa and Monaro.

# 01

## ABOUT US

We acknowledge that we work on the unceded Country of the peoples of the Kulin Nation. During this Project, we have also worked on the unceded Country of a number of other Victorian Aboriginal Communities. We pay our respect to Elders past, present and emerging.

We would like to acknowledge the Victorian Aboriginal communities that have demonstrated courage in sharing their stories with us. Their stories form the basis of this report. In sharing your stories, you have contributed to making some laws and systems fairer for your communities.

We would also like to acknowledge the Aboriginal Community Controlled Organisations (ACCOs) who work tirelessly for their communities and have supported our work.

This report was funded through the Victorian Department of Justice and Community Services Integrated Services Fund 2019, administered by the Federation of Community Legal Centres.



Consumer Action Law Centre (**Consumer Action**) is an independent, not-for-profit consumer, credit and debt advocacy organisation, which aims to make life easier for people experiencing vulnerability and disadvantage in Australia. Our services include: telephone financial counselling and legal advice including a Koori Helpline; legal representation; and capacity building through sector training and community legal education.



**Victorian  
Aboriginal  
Legal Service**

The Victorian Aboriginal Legal Service Co-operative Limited (**VALS**) was established as a community controlled Co-operative Society in 1973. VALS plays an important role in providing referrals, advice, information, duty work or case work assistance to Aboriginal and Torres Strait Islander peoples in Victoria. Solicitors at VALS specialise in one of three areas: criminal law; family law; or civil law. VALS maintains a strong client service focus which is achieved through the role of Client Service Officers, who act as a bridge between the legal system and the Aboriginal and Torres Strait Islander community.

# 02

## About the INTEGRATED PRACTICE PROJECT

In March 2019, Consumer Action and VALS embarked on an Integrated Practice Project (**the IP Project or the Project**) as one way of addressing some of the unmet consumer, credit and debt legal needs of Victorian Aboriginal communities.

The genesis of the IP Project can be traced back to the 2013 *Civil and Family Law Needs of Indigenous People in Victoria*<sup>1</sup> report (**the 2013 Indigenous Legal Needs Report**), published by James Cook University's Indigenous Legal Needs Project. In early 2018, Consumer Action's Koori Engagement Manager convened the Koori Justice Action Group,<sup>2</sup> which identified that the priority issues detailed in the 2013 Indigenous Legal Needs Report were still current. The IP Project was one way Consumer Action and VALS sought to address some of the unmet civil law needs and service delivery priorities identified in the 2013 Report.

As part of the Project, VALS and Consumer Action work together to participate in regular community engagement sessions with

Victorian Aboriginal communities.<sup>3</sup> Community engagement sessions operate in partnership with local ACCOs and other key service providers.

Since commencement in March 2019, the IP Project has participated in community engagement sessions across Victoria, including in Abbotsford, Echuca, Shepparton, Wodonga/Albury, Laverton, Hoppers Crossing, Mildura, Robinvale, Bairnsdale, Morwell, Wulgunggo Ngalu Learning Place (culturally appropriate learning place for Aboriginal men completing Community Corrections Orders), Portland, Yarra Glen, Swan Hill and at the Dame Phyllis Frost Centre, which is a maximum-security women's prison.

The sessions have served to connect these communities with legal advice services, financial counselling, policy work and legal education relating to consumer, credit and debt issues. They also provide a forum for the cross-promotion of services that can support the civil legal needs of Victorian Aboriginal communities.

<sup>1</sup> Schwartz, M., Allison, F. and Cunneen, C., 'The Civil and Family Law Needs of Indigenous People in Victoria', . Cairns: James Cook University, 2013, [https://www.jcu.edu.au/\\_data/assets/pdf\\_file/0011/121889/jcu\\_131180.pdf](https://www.jcu.edu.au/_data/assets/pdf_file/0011/121889/jcu_131180.pdf).

<sup>2</sup> . The action group members include: Victoria Legal Aid; the Australian Securities and Investments Commission (ASIC); VALS; the Telecommunication Industry Ombudsman (TIO); the Energy and Water Ombudsman (Victoria) (EWOV); the Department of Environment, Land, Water and Planning (DELWP); Djirra (the Aboriginal women's family violence legal service); Aboriginal Housing Victoria; Financial Counselling Australia; the Thriving Communities Partnership; Yarra Valley Water; Consumer Affairs Victoria (CAV); the Victorian Civil and Administrative Tribunal (VCAT); the Australian Financial Complaints Authority (AFCA); the Australian Competition and Consumer Commission (ACCC) and the National Aboriginal and Torres Strait Islander Women's Alliance.

<sup>3</sup> In referring to Victorian Aboriginal communities, we acknowledge and include all Aboriginal and Torres Strait Islander peoples living within Victoria.



Through integration, the IP Project has significantly improved the ways both VALS and Consumer Action engage with hard to reach Victorian Aboriginal communities in relation to consumer, credit and debt issues.<sup>4</sup>

The Project was funded for a period of 12 months through the Victorian Department of Justice and Community Services' Integrated Services Fund 2019, administered by the Federation of Community Legal Centres. Funding for this project has recently been renewed for a second year to continue this important work.

<sup>4</sup> Further information about these organisational improvements can be found in the IP Project's mid-year report: Consumer Action Law Centre, 'Integrated Practice Project: Mid Year Report 2019' [online report, 2019, <https://consumeraction.org.au/20191010-ip-project-midyear-report/>] (accessed 17 January 2020).



# 03

## REPORT SUMMARY

### Purpose and scope

This report collates data, information and case studies to answer the following questions:

1. **Six years on from the 2013 Indigenous Legal Needs Report, what consumer, credit and debt issues are we hearing about that are impacting Victorian Aboriginal communities<sup>5</sup>?**
2. **How are these issues impacting Victorian Aboriginal communities?**

The data, information and case studies in this report have been drawn from the IP Project and from VALS and Consumer Action's casework between 1 July 2017 and 31 December 2019. This report will refer to Koori and Victorian Aboriginal communities, however, in doing so we include all Aboriginal and/or Torres Strait Islander people living in Victoria.

### Key findings

The most common or concerning issues we have identified during the IP Project include:

1. **Funeral insurance**
2. **Utilities issues**
3. **Irresponsible lending**
4. **Payday loans**
5. **Junk insurance**
6. **Unsolicited selling**
7. **Telecommunication products and services**
8. **Correlations between financial hardship and crime**
9. **The interrelationship between consumer, credit and debt issues and other social determinants**
10. **Accessibility of consumer, credit and debt information and services**

The issues we have identified are strikingly similar to those detailed the 2013 Indigenous Legal Needs Report. This suggests that, seven years on from publication of that report, there are still significant unmet consumer, credit and debt needs of Victorian Aboriginal communities. As such, we are calling on relevant regulators

<sup>5</sup> In referring to Victorian Aboriginal communities, we acknowledge and include all Aboriginal and/or Torres Strait Islander peoples living in those communities.

and the Victorian and Federal Governments to do more to address this unmet need and improve access to civil justice for Victorian Aboriginal communities.

## About the data

Data for this report has been drawn from our community engagement sessions and our organisations' casework from July 2017 to 31 December 2019. Specifically:

1. Community engagement sessions including:
  - ▶ enquiries, intakes and referrals taken and recorded during all community engagement sessions between March 2019 and December 2019 (**the Community Engagement Enquiry Data**); and
  - ▶ Survey data from one community engagement session conducted in Portland in December 2019 (**the Community Engagement Survey Data**);
2. Consumer Action casework data for Aboriginal and/or Torres Strait Islander clients, comprising of:
  - ▶ Legal advice line and representation records opened between 1 July 2017 and 31 December 2019;
  - ▶ Financial counselling advice line records opened between 1 July 2017 and 30 June 2019;
3. VALS casework and legal advice data between 1 July 2017 and 30 June 2019; and
4. Other community engagement and stakeholder information.

Enquiries are often made relating to matters outside of the consumer, credit or debt practice areas. These enquiries or referrals have been removed from the data presented in this report.

The data for this report has been drawn from different sources using different information systems, meaning the categorisation of cases differs slightly in some figures in the report. To avoid inconsistencies, this report will discuss, where relevant, each data set separately rather than combining into a single data set. This has resulted in potential minor overlaps between data sets. For example, a client who made an

enquiry during a community engagement session might also be represented in Consumer Action legal advice data if they subsequently sought assistance by calling our legal advice line.

The case studies presented in this report have been drawn from our casework. The case studies provided are based on real VALS or Consumer Action cases. Client names have been changed for privacy reasons.

This data represents the tip of the iceberg when it comes to the consumer, credit and debt issues affecting Victorian Aboriginal communities. Each data set in isolation comprises of a relatively small sample size, and we often suspect that casework data fails to capture the extent of legal and debt issues impacting people experiencing the most severe forms of marginalisation. This is because, while significant and important work has been done in this area, Consumer Action and VALS are still in the process of raising awareness of our services in the consumer, credit and debt areas of practice. We have observed that some people do not recognise their experiences as raising legal issues, which would result in further underreporting of those issues.

Furthermore, while we have exceeded the number of community engagement sessions required for the IP Project, there are many Victorian Aboriginal communities that we have not visited. It is likely, therefore, that any localised issues being experienced in those communities are not reflected in this report. For example, St Vincent de Paul Society and Alviss Consulting have reported that the rates of electricity disconnection in the Nowa Nowa postcode, which includes Lake Tyers, are significantly higher than the rest of Victoria, with about 30% of occupied dwellings in that postcode being disconnected each year.<sup>6</sup>

It is likely that these communities are being underserved as, in our experience, many people are not informed about their rights in relation to utilities issues and are unlikely to contact our organisations which, while theoretically available to all Victorians, are based primarily in Melbourne.

<sup>6</sup> St Vincent de Paul Society & Alviss Consulting, 'Households in the Dark II: Mapping electricity disconnections in South Australia, Victoria, New South Wales and South East Queensland', by Sophie Labaste, August 2019, pp. 5 and 50, [https://www.vinnies.org.au/icms\\_docs/310289\\_Households\\_in\\_the\\_Dark\\_II\\_2019.pdf](https://www.vinnies.org.au/icms_docs/310289_Households_in_the_Dark_II_2019.pdf) (accessed 17 January 2019).

# 04

## FINDINGS

### 1. Funeral insurance

In this report, 'funeral insurance' refers to the term as commonly understood, not as legally defined.<sup>7</sup> That is, funeral insurance as a kind of financial product or service that involves a person making regular payments to a company that will, in return, assist in some way with the cost of their funeral when the person passes away.

We have identified funeral insurance issues as a major systemic issue impacting Victorian Aboriginal communities. There are three key reasons why funeral insurance appears to have such a significant impact on communities. Firstly, 'Sorry Business' (funerals and related cultural activities) is a culturally significant time for Victorian Aboriginal families and communities. We have seen some companies take advantage of this time, and people's desire to spare their families the financial burden of their funeral, by offering them unsuitable or poor-quality funeral insurance.

Secondly, Aboriginal communities have been targeted with specific kinds of funeral insurance products, purportedly designed for Aboriginal communities. The company called the Aboriginal Community Benefit Fund (ACBF), now trading as Youpla, is an example of a company targeting the sale of their funeral insurance products to Aboriginal and Torres Strait Islander communities, including Victorian Aboriginal communities. Despite what the

company's name might suggest, between 1992 and November 2018, this for-profit company did not have any Aboriginal or Torres Strait Islander directors or shareholders. This changed in late 2018 when a Worimi man was reported as having purchased a 50 per cent stake in the company.<sup>8</sup>

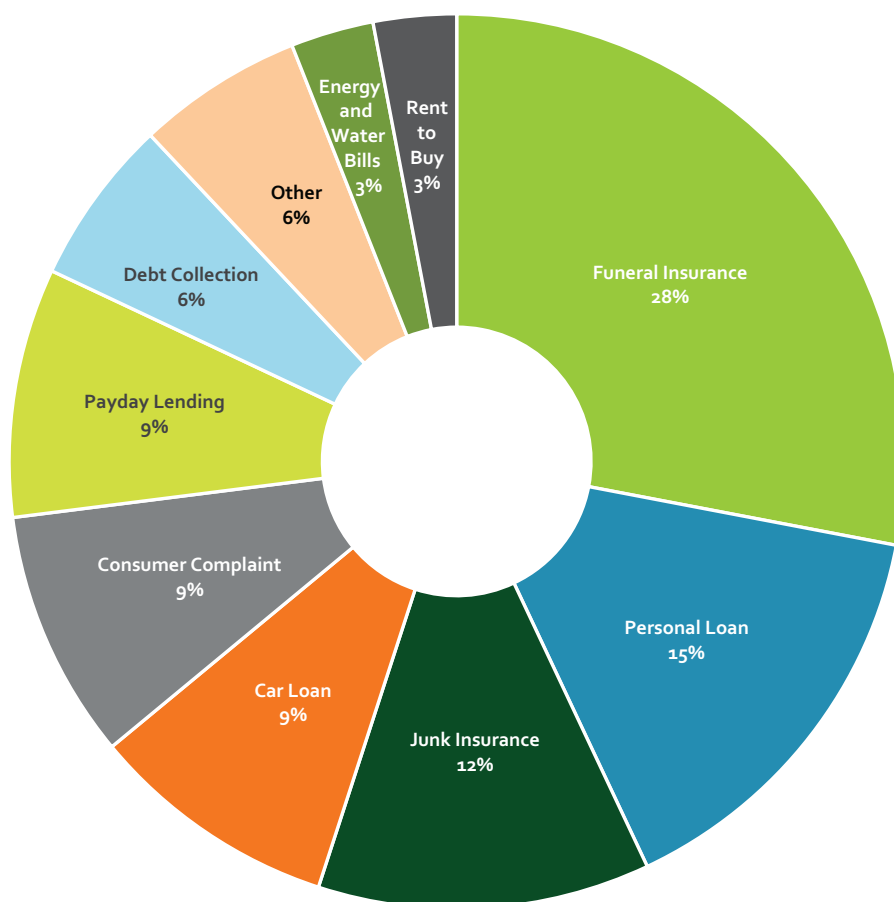
Thirdly, funeral insurance issues appear as a common issue across our data sets. VALS casework data suggests from 1 July 2017 and 30 June 2019 funeral insurance was one of the most enquired about consumer, credit or debt issues during that period. This data is represented in Figure 1 below.

<sup>7</sup> There are some types of products that are specifically excluded from the definitions of 'insurance' and/or 'financial products' in the Insurance Contract Act 1984 (Cth), Life Insurance Act 1995 (Cth) and the Corporations Act 2001 (Cth). Some of the funeral expenses only products offered by ACBF (now trading as Youpla) are examples of products that are excluded from these definitions.

<sup>8</sup> <https://www.sbs.com.au/nitv/article/2019/04/02/aboriginal-funeral-insurance-ACBF-youpla>

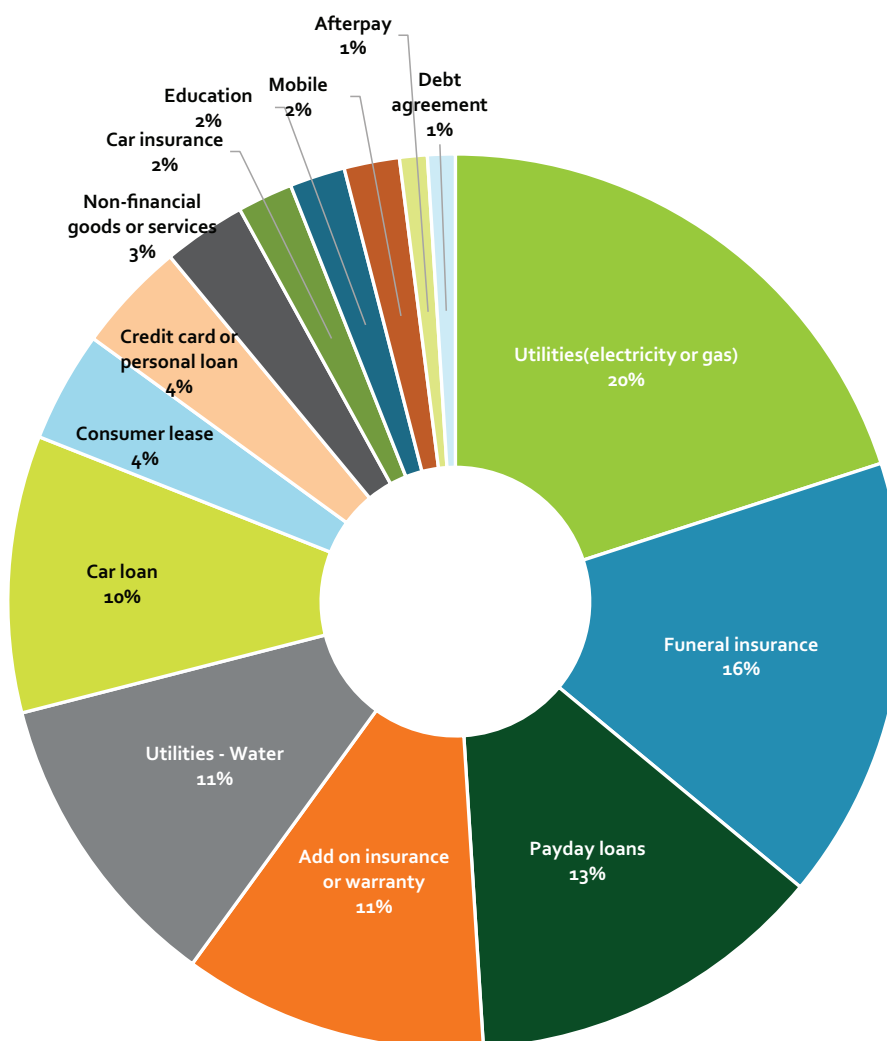


**Figure 1: VALS casework data by product or service type**



The Community Engagement Enquiry Data also suggests that funeral insurance was one of most common issues experienced by those who spoke to us during community engagement sessions. This data, represented in Figure 2, shows that funeral insurance was one of the most enquired about issues, making up about 16% of the issues recorded.

**Figure 2: Community Engagement Enquiry Data by product or service type – March 2019 to December 2019**



Most enquiries regarding funeral insurance involved people being misled or deceived about the nature of the product offered, with some believing they were signing up for a savings plan. Others felt misled about the nature of the company, with some believing that the company was an Aboriginal Community Controlled Organisation. In fact, of the funeral insurance enquiries from our community engagement sessions, 53% of enquiries involved clients with potential misleading or deceptive conduct claims.

We have also heard cases of:

- ▶ funeral insurance products being unsuitably (and possibly unconscionably) sold to children including babies;

- ▶ funeral insurance products that are unaffordable and therefore unsuitable for those who have purchased them;
- ▶ people unfairly having their benefits cancelled after years of paying premiums;
- ▶ people who have unknowingly had their benefits cancelled due to Centrelink no longer allowing premiums to be paid through Centrepay; and
- ▶ the unsolicited selling of funeral insurance.

Case studies 1 and 2 are illustrative of some of the misconduct we have seen in relation to funeral insurance products.

## CASE STUDY 1

### Faith's plan to save for her funeral

Faith (name changed) is a 73-year-old Aboriginal Elder living in regional Victoria.

Faith recalls that some time ago, she thinks around 2000, a company offering products to help pay funeral expenses (the Funeral Company), attended one of Faith's Elders' meeting. Wanting to pay her funeral costs herself so that she didn't have to burden her children with them, Faith signed up for what she thought was something like a savings plan. When Faith recently requested documents from the Funeral Company about the plan, however, they only provided documents showing that she signed up to a plan in 2010 (the 2010 plan).

Under the 2010 plan, the required payments were \$24 a fortnight. The documents from the Funeral Company show that she recently reached \$6,000 in payments, but she said that the payments are still being debited from her account. Faith thought that once she had

paid a total of \$6,000, she would stop paying, and then when she passed away her family would be paid the \$6,000 to pay for her funeral expenses. However, this particular Funeral Company does not, and has never, offered savings plans.

The documents provided about the 2010 plan say that if Faith misses more than four fortnightly payments, her plan will be cancelled. The documents say if her plan is cancelled, Faith will not receive any payments or refunds. Essentially this means that Faith would lose all the money she contributed towards her funeral if she misses more than four payments.

Faith thinks that, while she originally signed up in or about 2000, at some point, she might have stopped paying because of financial hardship. She wonders whether, during such a period of non-payment, the Funeral Company cancelled her original policy, meaning all her payments

were lost, and started a new policy for her, the 2010 plan. Faith thinks the Funeral Company may not have provided all of the documents relevant to her full history and dealings with the Funeral Company.

Faith is concerned that the Funeral Company has misled her by telling her that what she was signing up to was like a savings plan. Faith thinks that the Funeral Company may have unfairly cancelled an earlier plan due to terms in the contract she did not understand and her belief it was a savings plan. However, Faith is finding it difficult to get advice about her legal rights because the Funeral Company did not provide her with the documents in a timely fashion, and she is not sure that they provided all the documents. This is despite making multiple requests, including with the help of lawyers. Through the IP Project, Faith's lawyers are assisting her to request documents about any earlier plan as well.

Case study provided by Consumer Action.

## CASE STUDY 2

### Linda's attempts to save up for both her and her children

Linda (name changed) is a 56-year-old Aboriginal woman and mother of 7 children who lives in a small rural Victorian town.

In 1999, a salesperson from the Aboriginal Community Benefit Fund (ACBF) knocked on Linda's door selling their funeral fund product. As a mother of young children, Linda was concerned about the future and how she would pay for her funeral.

Money was always tight, and she did not have any savings. Linda did not want to burden her family, who were also earning low incomes, with the cost of a funeral. When Linda signed up to ACBF she also signed up her 5 children, the youngest being 4 months old at the time. Linda later signed up her other two children.

Linda thought ACBF was an Aboriginal company that offered a

type of savings plan so people could pay for their funerals. Linda now knows that is not the case.

Linda's sole source of income is Centrelink. She pays all the premiums on her and her children's policies which amounts to over \$60 per fortnight. Linda has paid over \$26,000 in premiums to ACBF. In another 10 years' time, if the ACBF premiums stayed at their current rate, Linda would have paid over \$40,000.

Case study provided by VALS.

We have seen particularly problematic conduct in relation to funeral expenses policies, which are sometimes colloquially referred to as 'funeral insurance' but are subject to far less regulation than actual funeral insurance products. Funeral expenses policies are almost exclusively sold by ACBF (now trading as Youpla). Funeral expenses policies pay funeral costs up to a nominated limit. Payments under the policy will only cover the costs of the funeral, meaning the amount paid can be less than nominated amount.<sup>9</sup> People can pay far more in premiums than would ever be paid out in a claim, or the claim payment won't cover everything they are led to believe it would.

Funeral expenses policies have escaped proper regulation because of several poorly-drafted legislative exemptions. For example, funeral expenses policies have avoided regulation under the *Corporations Act 2001* (Cth) (**Corporations Act**) and *Corporations Regulations 2001* (Cth) (**Corporations Regulations**). The effect of this carve out is that providers of funeral expenses policies are not required to hold a financial services licence, and are not bound by the general conduct obligations and anti-hawking protections contained in the Corporations Act.

Misconduct relating to the sale and administration of funeral expenses products was highlighted during the 2018 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Financial Services Royal Commission** or **FSRC**). The FSRC specifically examined a case study involving ACBF. The FSRC found, in relation to that case study that:<sup>10</sup>

- ▶ ACBF may have breached several of its obligations under the *Australian Securities and Investments Commission Act 2001* (Cth);
- ▶ ACBF business practices encouraged ACBF employees to aggressively target vulnerable persons and sign up children;

- ▶ many of ACBF's staff members lacked cultural understanding and therefore did not communicate to Aboriginal and Torres Strait Islander people in a respectful way;
- ▶ ACBF's conduct fell below community standards and expectations in several ways; and
- ▶ no good reason exists for law makers to treat ACBF's funeral expenses product differently from other funeral insurance products by exempting them from the regulatory ambit of insurance laws.

Following the FSRC, the Federal Government committed<sup>11</sup> to removing the funeral expenses exemption from the Corporations Act and Corporations Regulations. The removal of these exemptions is due to come into effect in early 2020, which we strongly support.<sup>12</sup>

Issues relating to funeral policies and ACBF are not new. They have been on the public record in a number of forums prior to the FSRC. For example, funeral funds were one consumer-related problem identified by the 2013 Indigenous Legal Needs Report.<sup>13</sup> Not only this, governments and regulators have been on notice of ACBF's concerning conduct through other avenues for some time. In 1992, an injunction obtained by the NSW Office of Fair Trading resulted in the cessation of one of ACBF's funds. ACBF subsequently created a new funeral expenses only product that avoided regulation. In 1999 and again in 2004, the Australian Securities and Investments Commission (**ASIC**) took enforcement action against ACBF.<sup>14</sup> Further, in 2009 the Financial Ombudsman Service (**FOS**) made a negative determination against ACBF. FOS found that the Aboriginal complainant was vulnerable and ACBF "exploited this situation by using sales practices and high-pressure sales tactics."<sup>15</sup> In 2015, a decision was made by the Commonwealth Department of Human Services to disallow the use of Centrelink's bill paying service, Centrepay, for making payments towards funeral policies because of 'the particular risks funeral insurance raises for vulnerable

9 Regulation 7.1.07D of the *Corporations Regulations 2001* (Cth) a funeral expenses policy is defined as a scheme or arrangement for the provision of a benefit consisting of the payment of money, payable only on the death of a person, for the sole purpose of meeting the whole or part of the expenses of, and incidental to the person's: (a) funeral; and (b) burial or cremation. Under the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Bill 2019, the term 'funeral expenses facility' is similarly defined to mean a scheme or arrangement for the provision of benefits consisting of the payment of money, on the death of a person, for the purpose of meeting the whole or a part of the expenses of and incidental to the funeral, burial or cremation of the person.

10 Commonwealth of Australia, 'Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Interim Report: Volume 2: Case Studies', 2018, pp. 454-457, <https://financialservices.royalcommission.gov.au/Documents/interim-report/interim-report-volume-2.pdf>, (accessed 17 January 2019).

11 Commonwealth of Australia, 'Restoring trust in Australia's financial system: The Government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry', February 2019, <https://treasury.gov.au/sites/default/files/2019-03/FSRC-Government-Response-1.pdf>.

12 For details of the exemption see s 765A of the *Corporations Act 2001* (Cth) and regulation 7.1.07D of the *Corporations Regulations 2001* (Cth).

13 Schwartz, Allison & Cunneen, 'The Indigenous Legal Needs Report', 2013, pp. 134, 137, 140 and 251.

14 FSRC, 'Interim Report', 2018, pp. 444 and 447.

15 Financial Ombudsman Service, 'Adjudication 20293: Community Benefit Fund – Right of rescission', 2009, <https://service02.afca.org.au/CaseFiles/ILIS/20293.pdf> (last accessed 17 January 2019)

customers.<sup>16</sup> This prompted a Federal Court appeal against the decision by ACBF, which was later successfully appealed to the Full Federal Court by the Department.<sup>17</sup>

And yet, our data suggests that the sale of funeral insurance to Victorian Aboriginal communities is still a current and problematic issue for many families. More needs to be done to ensure proper regulation of these products to make them fairer and culturally appropriate for Victorian Aboriginal communities. At a minimum, regulatory loopholes should be removed. Victorian Aboriginal communities should be included in discussions about funeral insurance regulation, as funeral insurance is clearly a priority for Victorian Aboriginal communities. Further resources are also required to improve community awareness about the dangers of funeral policies offered by companies like ACBF. Alternative products ought to be co-designed in a way to meet the needs of those communities in a fair and accessible way.

Furthermore, much more work needs to be done to secure redress for people impacted by ACBF's misconduct. Many current and former policyholders have been impacted by ACBF's misconduct. It is critical that they are appropriately remediated for the losses they have suffered. We strongly recommend that ASIC undertake enforcement action against ACBF to require it to commence a comprehensive remediation scheme that addresses past wrongdoing. This scheme should be administered by the Australian Financial Complaints Authority (AFCA), and designed by ASIC. There is a risk that ACBF might become insolvent in the future. If this happens, approximately 13,000 people with ACBF policies could lose their past contributions and future coverage for funeral expenses.<sup>18</sup> This figure relates only to one of ACBF's three products, meaning there are likely thousands more people who would be affected by ACBF's collapse if it eventuated. In addition, any existing legal claims would be jeopardised. The Government should commit to a comprehensive remediation scheme that is Government-backed in the event that ACBF becomes insolvent.

It is also critical that people have access to free, fair and independent legal advice and financial counselling services to assist them to understand their options and navigate the remediation process.

In addition to the problems with ACBF, the Project revealed ongoing concerns with regulated funeral insurance. This product, offered by brands like InsuranceLine and Real Insurance, has been the subject of criticism by ASIC<sup>19</sup> and the Financial Services Royal Commission<sup>20</sup> for being a low value product accompanied by unfair sales tactics.

<sup>16</sup> Chief Executive Centrelink v ACBF Pty Ltd [2016] FCAFC 153, [31].

<sup>17</sup> Chief Executive Centrelink v ACBF Pty Ltd [2016] FCAFC 153, [31].

<sup>18</sup> Bryn Jones statement, Financial Services Royal Commission, p 3807, <https://financialservices.royalcommission.gov.au/public-hearings/Documents/transcripts-2018/transcript-3-july-2018.pdf>.

<sup>19</sup> ASIC REP 454, Funeral Insurance: A snapshot, October 2015, p 6: <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-454-funeral-insurance-a-snapshot/>. ASIC found that, at p 6: 'While over half (51.2%) of consumers with funeral insurance were aged 50–74, funeral insurance sold to Indigenous consumers had a much younger age profile (50% were aged under 20). A higher proportion of Indigenous consumers also had their policies cancelled for non-payment of premiums.'

<sup>20</sup> Financial Services Royal Commission, Final Report: Volume 1, p 285-6: <https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.pdf>. The Commission found evidence that: 'Aboriginal and Torres Strait Islander people, especially those living regionally or remotely, may have been particularly likely to be sold funeral insurance policies in circumstances where those policies held little value for them.'

## 2. Utilities issues

Several of our data sets indicate that utilities issues relating to the supply of water, gas and electricity are common for Victorian Aboriginal communities. First, our Community Engagement Enquiry Data (as illustrated in Figure 2 above) indicates that utilities were one of the most enquired about issues during the community engagement sessions, with 18% of issues relating to electricity or gas and 11% relating to water.

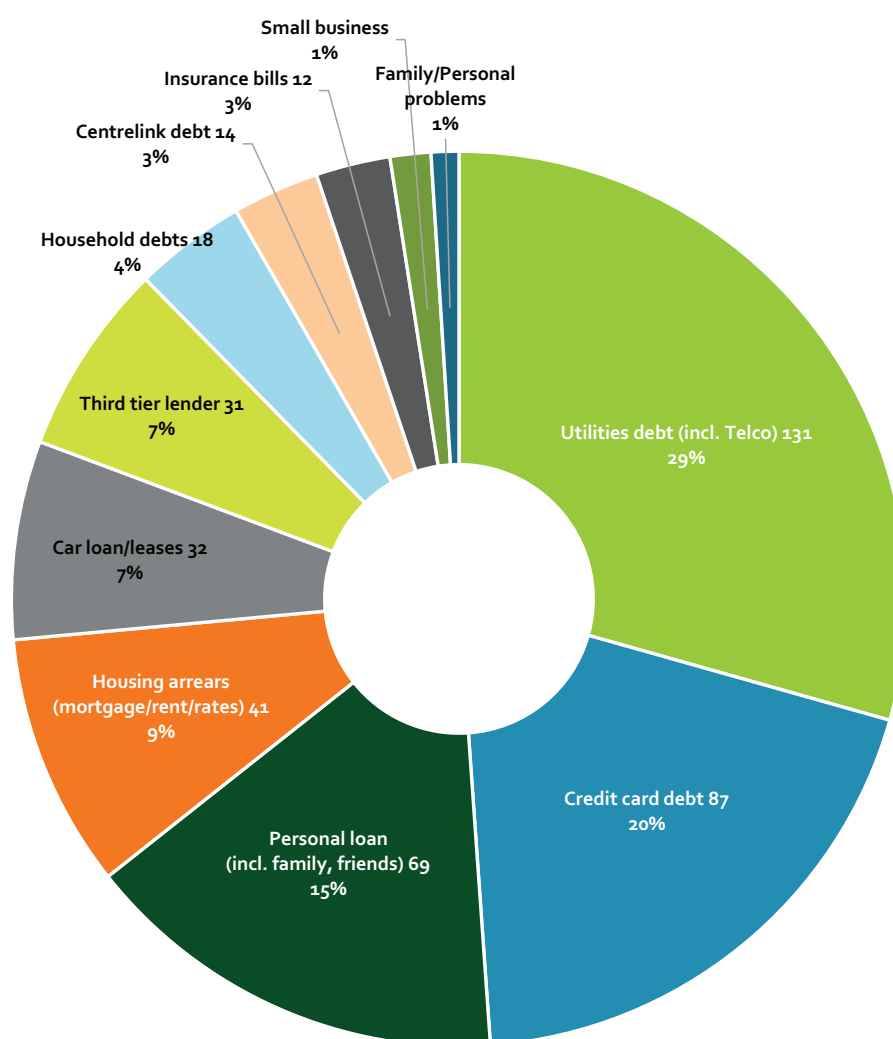
The types of utilities issues reported or observed during community engagement sessions were diverse but included:

- ▶ confusing bills and charges;
- ▶ high and unaffordable utilities debts;

- ▶ experiences of disconnections or threats of imminent disconnection;
- ▶ water restrictions;
- ▶ confusing, high pressure and unsolicited telephone sales; and
- ▶ a failure by retailers to explain people's legal rights in relation to payment difficulty or their right to make a complaint to the Energy and Water Ombudsman (Victoria) (**EWOV**).

Data from Consumer Action's telephone financial counselling service, the National Debt Helpline (**NDH**), also suggests that between 1 July 2017 and 30 June 2019, utilities debt<sup>21</sup> was the most common cause of debt for Victorian Aboriginal callers to the NDH service. The most common types of debts are illustrated in Figure 3.

**Figure 3: National Debt Helpline calls by financial difficulty type - July 2017 to June 2019.**



<sup>21</sup> NDH data includes telecommunications in 'utility debt'.



Looking at our data narrowly to focus on specific communities or cohorts, we also see alarming trends. For example, over half of the women we spoke at the Dame Phyllis Frost Centre sought assistance with utilities debts or reported other issues relating to utilities provision. Second, the Community Engagement Survey Data from surveys completed at a community engagement session in Portland indicated that:

- ▶ Over 25% of survey participants had experienced utility (electricity, water or gas) disconnection in the last six years (an additional 9% indicated they had experienced disconnection more than 6 years ago); and
- ▶ 30% of participants indicated they were in debt to their utility companies.

Lastly, during a community session in Wodonga, many participants were asking questions about water companies' rights to restrict water. A news article in 2014 on this topic suggests that this may have been an issue in the region in the past.<sup>22</sup>

Utilities bills were one of the major causes of debt problems identified in the 2013 Indigenous Legal Needs Report.<sup>23</sup> It was also identified as a service that was often problematically marketed through unsolicited sales<sup>24</sup> and was identified as a high cost but low value service by research participants.<sup>25</sup> While unsolicited selling of energy contracts will soon be banned in Victoria,<sup>26</sup> our data suggests that unsolicited selling generally is still common and having a significant detrimental impact on Victorian Aboriginal communities. The lack of improvement in this area is of great concern given the nature of utilities as an essential service. Case study 3 illustrates the kinds of impact and hardship that utilities issues and disconnection can have on people's lives.

### CASE STUDY 3

#### Paul's disconnection and bitter winter

Paul (name changed) is an Aboriginal man aged in his late fifties. Paul lives in rural Victoria. He is on Centrelink payments and lives in Aboriginal housing. Early in 2018, Paul's electricity and gas bills increased. He subsequently found it difficult to maintain the payments and he fell behind in his bills. The utilities company sent Paul bills and overdue notices, but did not offer Paul any hardship arrangement.

Paul did not know how he was going to get on top of these and did not know he could apply for financial hardship or a utility relief grant.

During the winter of 2018, Paul's utilities company cut off his gas. This impacted Paul greatly. Paul has a gas heater and, so, he couldn't use the heater during winter.

Towards the end of 2018, Consumer Action ran a community engagement session. It was then that Paul sought assistance from Consumer Action to get his utilities re-connected.

Consumer Action is helping Paul investigate whether the utilities company wrongfully disconnected his gas in breach of the relevant laws. This is proving difficult, however, because the utilities company has not provided the relevant documentation.

Case study provided by Consumer Action.

<sup>22</sup> N. Fogarty, '\$1M unpaid bills force Albury water restrictions', ABC, 11 August 2014, <http://www.abc.net.au/local/stories/2014/08/11/4064935.htm> (last accessed 17 January 2020).

<sup>23</sup> Schwartz, Allison & Cunneen, 'Indigenous Legal Needs Report', 2013, p. 131.

<sup>24</sup> Schwartz, Allison & Cunneen, 'Indigenous Legal Needs Report', 2013, p. 136-137.

<sup>25</sup> Schwartz, Allison & Cunneen, 'Indigenous Legal Needs Report', 2013, p. 145.

<sup>26</sup> <https://www.danandrews.com.au/policies/time-is-up-for-energy-retailers-ripping-off-victorian>

### 3. Irresponsible lending

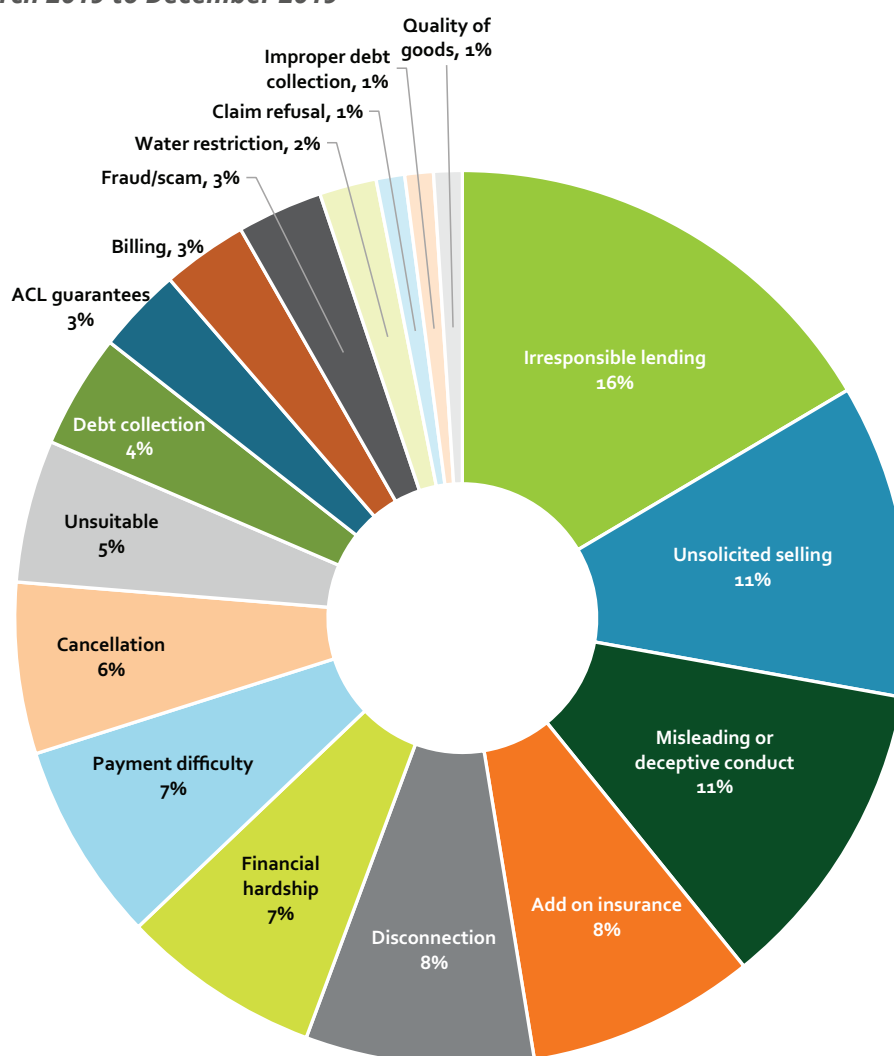
The responsible lending laws prohibit lenders and consumer lease providers from offering credit or consumer leases unless they have verified that people can afford to make repayments without suffering substantial financial hardship. Many of our cases or enquiries have been categorised as irresponsible lending cases where the responsible lending laws appear to have been contravened. Our data suggests that irresponsible lending is a common issue experienced within some Victorian Aboriginal communities. For example, when our Community Engagement Enquiry Data is categorised by potential legal claim or avenue,<sup>27</sup> irresponsible lending appears as the most common issue. This is illustrated in Figure 4. Of the community engagement enquiries categorised as irresponsible lending:

40% related to car loans; 20% related to payday loans; approximately 13% related to credit cards and personal loans respectively; and 6% related to consumer leases and debt agreements respectively.

The Community Engagement Enquiry Data is largely consistent with Consumer Action's legal casework data which shows that, since July 2019, irresponsible lending (most often in relation to credit cards and consumer leases) was the most enquired about issue by Victorian Aboriginal people contacting our lawyers for advice.<sup>28</sup>

Case study 4 is an example of suspected irresponsible lending in relation to car loans and also illustrates the ways add on insurance products are often sold alongside car loans.

**Figure 4: Community Engagement Enquiry Data by potential legal claim or avenue – March 2019 to December 2019**



<sup>27</sup> NB: some enquiries could not be categorised by the author as potential legal claim as work was still being done to identify the issues

<sup>28</sup> There is potential for a minor overlap of data between the Community Engagement Enquiry Data and Consumer Action's casework data.

The Community Engagement Enquiry Data suggests that consumer leases are less common than other types of credit such as car loans and personal loans. However, we suspect that the data does not reflect the prevalence of these kinds of products and that consumer leases are under reported to our organisations. While we have had Aboriginal clients complain about the kinds of low value contracts and poor sales practices we often see around consumer leases, in our recent practices both inside and outside the IP Project, there appears to be a diversity of views and varying degrees of understanding about these products.

Firstly, consumer leases can be complex arrangements and can be sold in misleading ways. We have observed cases where people are led to believe that their consumer leases are pay by instalment type arrangements when, in fact, under consumer leases the consumer does not own the goods at the end of the lease term.

Secondly, we have observed arrangements where payments for consumer leases are taken directly out of a person's Centrelink payment through Centrepay. This makes it more difficult for people to track the repayments and less likely that they will be alerted to the problematic nature of the product or the way it has been sold to them.

Thirdly, several Aboriginal clients with consumer leases sought Consumer Action's assistance not because of the excessive costs associated with the lease but because the clients were concerned about the quality of the products leased or the poor customer service of the lease providers. Furthermore, some community engagement participants told us that they had consumer leases but they did not want any advice about them.

In these cases, the clients' sole source of income was from Centrelink and they were reluctant to pursue potential irresponsible lending claims because they did not want to undermine their ability to take out further consumer leases in the future. One of Consumer Action's past clients explained that while she understood that these consumer leases were a bad deal, she felt that there were no alternatives to acquire basic household goods for someone in her financial position. The fact that people feel obliged, because of their circumstances and the lack of affordable and fair options open to them, to accept a bad deal illustrates the need for financial product regulation that ensures safer and more suitable options are available. Alternative product design should also be done in consultation with Victorian Aboriginal communities. The needs of Victorian Aboriginal communities should be considered, while ensuring current or new finance options are accessible, affordable and fair.

## CASE STUDY 4

### Allan's unaffordable car loan and junk add-on insurance

Allan (name changed), a single father of two, sought assistance from VALS after struggling for around six years to repay a car loan. Allan had purchased a car from a car yard in 2012 using linked credit of over \$36,000. From enquiries that VALS assisted Allan to make, it appears that the finance provider failed to conduct an accurate and robust financial suitability assessment before giving the loan to Allan. Furthermore, it appeared that two types of unnecessary car insurance had been sold to Allan (thereby increasing the loan amount) without his knowledge or understanding and in arguable breach of the insurance laws.

The financial strain placed on Allan became far greater when he lost his job about a year after obtaining the loan. Allan would sometimes go without food just so he could meet the car repayments. The car was finally voluntarily repossessed in 2018. Because the sale of the car was not enough to cover the outstanding loan repayments, Allan remained in debt to the bank and he continued to struggle under the weight of the alleged debt until VALS was able to provide some relief in the form of legal advice and representation. With the assistance of Consumer Action, VALS helped Allan obtain the documents he needed to understand what happened, negotiated on Allan's behalf before making a complaint to the Australian Financial Complaints Authority (AFCA) claiming responsible lending and other legal breaches. The complaint settled when the bank offered to waive Allan's alleged debt and pay Allan compensation for the fees and charges he had paid. The insurance company also agreed to refund the premiums paid along with penalty interest. In total, Allan was repaid approximately \$27,000. This outcome has allowed Allan to support his family financially and has improved Allan's feelings of financial security as he had previously been struggling on Centrelink payments.

Case study provided by VALS.

## 4. Payday loans

Payday loans or small amount credit contracts (SACCs) are loans of up to up to \$2,000 paid back over a period of 16 days to 12 months.<sup>29</sup> While these loans are not exempt from the responsible lending laws, irresponsible lending continues to be rife and we have long held the belief that the current laws are inadequate to prevent the kinds of harm so often caused by payday lending.

As illustrated in Figure 2, payday loans were the third most enquired about issue (by product or service type) during our community engagement sessions, making up about 13% of all enquiries. During the IP Project, we found that two thirds of the women we spoke to at the Dame Phyllis Frost Centre reported issues with payday loans.

Payday loans are high cost because borrowers are charged significant fees on top of the original loan. Equivalent annual interest rates for these loans can vary anywhere from 112.1% up to as high as 407.6%.<sup>30</sup> Because these loans are for short periods with unaffordable high repayments, many people take out additional payday loans to stay afloat, subsequently

finding themselves in a debt trap.<sup>31</sup> While these loans may be small, their negative impact can be far from small. These impacts are exemplified by case studies 5 and 6.

Payday lending was identified as a key concern in the Indigenous Civil Needs Report back in 2013.<sup>32</sup> It is still clearly a concern for many Victorian Aboriginal communities.

It has been over 1,000 days since the Government accepted the recommendations of its own review into these harmful products. The recommendations to improve regulation of payday loans and consumer leases remain unactioned. Now is the time for the Government to pass the findings of this review into law.

Payday lending often masks insufficient income and the reality is that a credit product is not suitable for people who cannot afford the repayments. More needs to be done to address the adequacy of income support levels, particularly for social security payments like Newstart.

Further, in developing alternative fair and affordable products, there should be consultation and consideration of the needs and preferences of Victorian Aboriginal communities.

### CASE STUDY 5

#### Chloe's payday loan

Chloe (name changed) is an Aboriginal woman from regional Victoria. She is around 40 years old and is currently incarcerated in prison.

Around 6 years ago, Chloe took out a small payday loan of around \$55 for everyday living expenses and bills. At the time, Chloe had family commitments and was behind in her bills. Chloe describes this as a hectic time.

Chloe told us she was having particular difficulty paying an electricity bill. At the time, she was living in public housing in her

partner's name. The electricity bill was in her partner's name but her partner was incarcerated. Chloe wanted to help pay off the electricity bill but was unable to because she did not have her partner's ID or the account details. The electricity had been cut off so Chloe was living without electricity. Sometimes, Chloe was able to use a neighbour's electricity by running a long extension cord between the apartments. It was around this time that Chloe took out the payday loan.

Shortly after obtaining the loan, Chloe was incarcerated. Chloe has

been in and out of prison since and unable to pay off her debts. The payday loan continued to increase over time. Chloe told us that the lender was asking for around \$1,000, although we were unable to obtain documents to confirm this figure before the issue was resolved.

It was not until Chloe sought the assistance of Consumer Action that Chloe was able to deal with the debt. With the help of Consumer Action, Chloe was able to have the debt waived due to her compelling personal circumstances.

Case study provided by Consumer Action.

<sup>29</sup> See s 5, meaning of 'small amount credit contract', *National Consumer Credit Protection Act 2009* (Cth).

<sup>30</sup> 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.

<sup>31</sup> For more information see: Stop the Debt Trap Alliance. (2019). THE DEBT TRAP How payday lending is costing Australians, p. 5. Available: [https://consumeraction.org.au/wp-content/uploads/2019/11/Payday-Lending-Report\\_FINAL\\_UPDATED\\_WEB-1.pdf](https://consumeraction.org.au/wp-content/uploads/2019/11/Payday-Lending-Report_FINAL_UPDATED_WEB-1.pdf)

<sup>32</sup> Schwartz, Allison & Cunneen, 'Indigenous Legal Needs Report', 2013, pp. 131 and 141.

## CASE STUDY 6

### Charlie's payday loan

Charlie (named changed) is an Aboriginal woman in her early to mid-20s who usually lives in regional Victoria. Approximately 5 years ago, when she was under 20-years old, Charlie started a business traineeship earning a little over \$450 per week. Around this time, Charlie was also going through a really hard time. Charlie's father had passed away shortly before Charlie had tragically given birth to a baby who was stillborn. Charlie needed money to pay for the cremation services for her baby. Charlie therefore took out a payday loan for a little under \$650.

With all of this anguish and stress, however, Charlie became mentally unwell and was no longer able to work, sending Charlie into significant financial difficulty. Charlie's only source of income became the Centrelink pension which she

was using to pay rent, groceries and things for her young child. Charlie fell behind on her payday loan repayments. The payday loan contract was originally for a principal amount of a little under \$650. However, Charlie was also charged an up-front establishment fee of a little under \$130, ongoing monthly fees and dishonour fees if she didn't have enough money in her bank account to pay back the loan. This meant that every time she missed a payment because it was dishonoured, Charlie was charged a dishonour fee of approximately \$35.

To this day, Charlie has been unable to pay back this payday loan and now owes much more than she originally borrowed. Charlie experienced money trouble for several years and she turned to other forms of fringe finance to help her meet general

living expenses. These included getting another payday loan and also using buy now pay later services. For the buy now pay later debt, Charlie was only able to make one payment before she fell into arrears and started being contacted by debt collectors. In addition to her baby and her father, Charlie's mother also passed away in the last couple of years. Charlie was the next of kin for both her father and mother and her main financial priority since their passing was paying for the funerals of her loved ones. Any spare money that Charlie had was going towards paying for these funerals and then paying off funeral directors. Charlie was sent to prison in 2019, leaving her with no income at all, no way to pay off her debts and no repayment options to get out of the debt trap.

Case study provided by Consumer Action.

## 5. Junk insurance

Often, people buy goods or services using a loan and have insurance added to their purchases without understanding the nature of those insurance products and in possible breach of both the credit and insurance laws. Commonly, this occurs without the person's knowledge. Examples of add-on insurance includes guaranteed asset protection (**GAP**), comprehensive credit insurance (**CCI**) and some extended warranties. Usually these products are sold alongside the sale of used cars. Case study 4 above is an example of this kind of poor conduct.

Throughout the IP Project, we have frequently seen these low-quality insurance products being sold to people in problematic ways. In fact, our Community Engagement Enquiry Data indicates that when the various types of add on insurance (such as CCI, GAP and extended warranties) were grouped together, they were the fourth most common issue experienced by those we spoke to. Figure 2 and case study 4 above are illustrative of these issues.

## 6. Unsolicited selling

This report uses the term 'unsolicited selling' as a situation where a person, without invitation, is sold a product or service outside of the usual retail context. The technical legal definition may differ. The most common types of unsolicited selling occurs by way of door-knocking or telephone marketing. Because this type of selling has so often been associated with exploitative business practices, specific laws exist in the Australian Consumer Law and the *Corporations Act* to regulate door-knocking and telemarketing. However, Consumer Action has been arguing for some time that these laws are inadequate to prevent the harms so often caused during unsolicited selling.

Our Community Engagement Enquiry Data indicates that 11% of enquiries had potential issues relating to unsolicited selling. While this data alone is not necessarily conclusive of breaches of the laws relating to unsolicited selling, it is nevertheless of concern because of the poor business practices associated

with unsolicited selling. For example, door knocking has been associated with: high-pressure sales techniques; the sale of poor-quality products; the sale of unregulated finance; and misleading or deceptive conduct.<sup>33</sup> And indeed all of the cases from our community engagement sessions involving unsolicited selling also involve complaints of either misconduct, such as misleading or deceptive conduct, or the unsuitability of the products sold. In our Community Engagement Enquiry Data, unsolicited selling most often occurred during the sale of funeral insurance. These cases did not necessarily involve door-knocking of people's home but also funeral insurance providers attending places outside of the retail environment such as workplaces and Elders' meetings. Case studies 1 and 2 above are examples of this.

Information shared with us by one of our partnering ACCOs indicated that the unsolicited sale of education courses may have been a particular issue in Mildura, Robinvale, other communities along the Murray River and in Bairnsdale. However, specific clients are yet to approach us about this particular issue. It was reported that people had been sold vocational educational courses by way of door-knocking 'up and down the river' and that, while people had received tablets, laptop computers and large vocational education loan debts, no vocational education services were ever provided. This information is consistent with reports of debt accumulating out of the Commonwealth Government's now defunct vocational education loan scheme, VET FEE-HELP.<sup>34</sup>

During our community engagement session in Robinvale, we handed out "Do Not Knock" stickers for people to place on their front doors. People willingly accepted these stickers and took some for their families, which suggested that door knocking sales in the area were common.

Door-to-door selling and telephone sales was again amongst the most common consumer problems identified by the 2013 Indigenous Legal Needs Report.<sup>35</sup> The circumstances in which unsolicited selling occurs also appear similar. For example, in one of our community engagement sessions, a person complained about being signed up to additional

utilities contracts over the phone without her knowledge. A strikingly similar complaint was reported to the authors of the Indigenous Legal Needs Report back in 2013.<sup>36</sup> It is disappointing that these issues are still being experienced by Victorian Aboriginal communities seven years after the publication of the Indigenous Legal Needs Report and after so many other publications reporting on the harms associated with unsolicited selling and door knocking.

## 7. Telecommunication products and services

While telecommunications issues were not a common enquiry type in our Community Engagement Enquiry Data (making up only 2% of enquiries), this was a common issue coming through our Community Engagement Survey Data conducted in Portland in December 2019. In fact, 42% of those survey participants indicated that they had been sold extra mobile phones, tablets or phone accessories that they did not need.

This data is not synonymous with legal breaches, as we are unsure of the circumstances surrounding the survey participants' responses, however, in Consumer Action's experience, the selling of mobile products can be accompanied by poor sales practices. Case study 7 highlights the type of conduct of concern. While the IP Project has not observed practices that appear to particularly target Victorian Aboriginal communities, it is worth noting the troubling reports of other Aboriginal communities in Australia having been targeted by telecommunications retailers.<sup>37</sup>

Telephone debt is also a common type of debt recorded by Consumer Action's National Debt Helpline for Aboriginal callers and was reported as one of the most common causes of debt in the 2013 Indigenous Legal Needs Report.<sup>38</sup>

33 See, for example: Consumer Action Law Centre, Loddon Campaspe Community Legal Centre & WEstjustice, 'Knock it Off', November 2017, <https://consumeraction.org.au/knock-it-off/> (last accessed 17 January 2020); and Consumer Action Law Centre, 'Sunny Side Up: Strengthening the consumer protection regime for solar panels in Victoria', April 2019, <https://consumeraction.org.au/20190404-sunny-side-up-report/>.

34 See, for example: F. Tomazin, 'Morrison government wipes \$500 million in dodgy debt from students', *Sydney Morning Herald*, 1 December 2019, <https://www.smh.com.au/education/morrison-government-wipes-500-million-in-dodgy-debt-from-students-20191130-p53fnk.html> (last accessed 17 January 2020).

35 Schwartz, Allison & Cunneen, 'The Indigenous Legal Needs Report', 2013, pp. 51, 135, 137, 138.

36 Schwartz, Allison & Cunneen, 'The Indigenous Legal Needs Report', 2013, [https://www.jcu.edu.au/\\_data/assets/pdf\\_file/0011/121889/jcu\\_131180.pdf](https://www.jcu.edu.au/_data/assets/pdf_file/0011/121889/jcu_131180.pdf), p. 138.

37 See, for example: L. Roberts, 'Telstra says 'sorry' for sales practices in Indigenous communities', ABC News, 7 November 2019, <https://www.abc.net.au/news/2019-11-07/telstra-apologises-at-aboriginal-economic-development-forum/11681306> (last accessed 17 January 2020); Telecommunications Industry Ombudsman, 'Sales practices towards vulnerable Indigenous customers', no date, <https://www.tio.com.au/help/sales-practices-towards-vulnerable-indigenous-customers> (last accessed 17 January 2020).

38 Schwartz, Allison & Cunneen, 'The Indigenous Legal Needs Report', 2013, p. 131.



## CASE STUDY 7

### Sharee's 'unlimited' mobile contracts

In 2016, Sharee went shopping with her partner for her daughter's birthday in the outer suburbs of Melbourne. Sharee went into an Optus store thinking she might buy her daughter a cheap pre-paid mobile so Sharee would be able to easily contact her daughter. Sharee was not an existing Optus customer; she had always had pre-paid mobile contracts.

Sharee found the sales representatives in the Optus store very pushy. They asked Sharee if she was working. Sharee told them she had been recently released from prison but was working. Sharee provided payslips and two referees. Sharee also had caring responsibilities and was paying rent, bills and living expenses but the sales representatives did not ask her about these.

Sharee says the salespeople told her that if she was working, she could get a \$60 unlimited mobile contract. They also told Sharee they had plans they could sell her had she been on Centrelink. The salespeople made the \$60 unlimited plan sound, in Sharee's words, 'awesome'. They even told Sharee she could get headphones included. When Sharee was looking at the headphone options, the sales representative advised that she might as well get the best, and most expensive, headphones since it was all included.

During her interaction with the salespeople, they repeatedly referred to the fact that the mobile plan they were selling Sharee was

unlimited and pointed to posters around the store that said \$60 unlimited. Sharee's understanding from her conversations in the Optus store was that the contract was \$60 unlimited text, calls and data over 24 months and that the headphones were included in the cost.

The sales representatives made the deal sound so good, that Sharee agreed to sign up both herself and her partner. This meant that Sharee, who went into Optus uncertain whether she would buy her daughter a cheap pre-paid phone, walked away with two unnecessary smart phones, two 24-month lock in contracts and top of the range accessories.

Based on her discussions with the Optus representatives, Sharee understood she would be paying a total cost of \$120 a month for both phones. However, Sharee started receiving bills that exceeded the expected cost for the phones. Sharee called Optus to enquire about these unexpected costs but they made her feel stupid for thinking that the contract was all inclusive.

Initially, the additional costs were not that much more than expected so Sharee just accepted the additional costs and started paying them. However, the bills kept getting bigger. For example, one of Sharee's bills was \$500. Sharee kept falling more and more behind in her other bills. Sharee felt stressed and started arguing with her partner over these excessive phone bills.

Because Sharee could not afford to keep the phones, she returned one of the phones to the Optus store. The salespeople tried to persuade Sharee to keep her phone, saying they could give her discounts. However, Sharee persisted in returning the phone. She was charged a cancellation fee of \$150. Sharee continued to pay for her partner's phone.

Sometime later, Sharee was again sent to prison. By this time, Sharee had accumulated a debt of around \$1,900, now owed to a debt collector. Sharee had no way of paying the bill from prison, so the costs kept accruing. As at December 2019, the debt was just under \$2,000.

While she has been in prison, debt collectors have been contacting Sharee's mum regularly in relation to the Optus debt. They have done so both by phone and by attending Sharee's mum's home. Sharee's mum is unwell, regularly attends hospital and is looking after Sharee's daughter. The debt collection activity is causing the family unnecessary stress.

In August 2019, Consumer Action and VALS attended an event organised by Djirra, the legal service for Aboriginal women experiencing family violence. Sharee was able to seek assistance from VALS in relation to her debts. VALS have negotiated on Sharee's behalf to get the debt collectors to agree to take no further action in relation to the Optus debt.

Case study provided by Consumer Action.

## 8. Correlations between financial hardship and crime

Our work with Aboriginal women in the prison system further links financial difficulty and crime which is not always as obvious in our general casework. Case studies 8 and 9 illustrate this link.

Other than engaging in criminal activity to pay debts unrelated to those crimes, there are other ways civil law matters can turn criminal. We have also seen people face actual or threatened criminal charges if they damage or sell property subject to a consumer lease or security. In Consumer Action's experience generally, people are often unaware of the existence of securities or the laws prohibiting the sale of property under securities.

It is suggested that the most significant contributing factor to the over-representation of the Indigenous population in the criminal justice system is their social and economic impoverishment. For example, the Sentencing Council in New South Wales reported that 49 percent of people who committed crime said they did so in order to do so pay off debts.<sup>39</sup> In the 2013 Indigenous Legal Needs Report, the authors argue that when civil law matters are left unaddressed they can escalate and worsen into criminal matters.<sup>40</sup>

### CASE STUDY 8

#### Thelma's struggle to keep the electricity on

Thelma (name changed) is an Aboriginal woman in her early 40's. She has two teenage children. Thelma is a survivor of family violence perpetrated by the father of her children.

Thelma's money trouble first started around 8 years ago when she left her then partner with her two children. They were fleeing family violence. Her children were then around 12 and 8 years old.

Thelma was not receiving child support and had to go through Family Court proceedings. Although Thelma had a job, it was not enough to keep Thelma and her children's head above water financially. Thelma's bills started piling up. Thelma says she needed the money from her crimes to live.

In 2017, Thelma was remanded in custody. Before she went to prison, Thelma was living in a private rental, still caring for her two children. Thelma's son had serious mental health concerns.

Thelma's son, now around 19 years old, has been unable to keep up the payments for the water, electricity and gas bills. Because of his ill-health and because the utilities accounts were not in his name, Thelma's son was also unable to respond to the default notices sent by the utilities companies. Meanwhile, Thelma was stressed with worry for her children, had no way of paying the utilities bills and was practically unable to contact the utilities companies from prison. In any case, Thelma was not aware of her right to apply for financial hardship arrangements with the utilities companies.

With the help of a financial counsellor from Consumer Action, Thelma was recently able to come to an agreement with the energy retailer not to cut off the electricity supply to her house until her children were able to move out of the private rental and into a house with other family. Thelma plans to see a financial counsellor to help her negotiate her remaining debts.

Case study provided by Consumer Action.

<sup>39</sup> [http://www.sentencingcouncil.justice.nsw.gov.au/Documents/Projects\\_Complete/Fines/interim\\_report\\_on\\_fines.pdf](http://www.sentencingcouncil.justice.nsw.gov.au/Documents/Projects_Complete/Fines/interim_report_on_fines.pdf), p.35.

<sup>40</sup> [https://www.jcu.edu.au/\\_data/assets/pdf\\_file/0011/121889/jcu\\_131180.pdf](https://www.jcu.edu.au/_data/assets/pdf_file/0011/121889/jcu_131180.pdf), p.14.

## CASE STUDY 9

### Jade's payday loans and trying to stay financially afloat

Jade (name changed) is an Aboriginal woman from regional Victoria. Jade is around 28 years old and is a mother of two young children.

Jade's money troubles first started around 2 years ago, when her partner was incarcerated in prison. Jade was the sole carer for her two children, was trying to pay the bills for both her and her partner's house and was trying to stay on top of their car loans. Eventually, Jade moved into her partner's house, which was located in a different regional town to her own.

To try to stay on top of her bills, Jade started taking out short term, payday loans. Her first loan was around \$500 through Money3. Jade reflects that the interest rate was "ok" on this loan but when she took out a second loan through Money3, the term was longer and therefore the fees and charges were higher. Jade provided Money3 a copy of her bank statements, showing that her only income at that time was from Centrelink.

Jade then took out two more payday loans from two different lenders.

Jade recalls that both payday loan applications were online, both received a copy of her bank statements showing her Centrelink income (and the repayments being made towards the other payday loans) and both were approved within 60 minutes. Other than providing her bank statements to the payday lenders, Jade does not remember them asking about her dependents or her living expenses. Jade does not remember the terms of the loans being properly explained to her through the online process.

Jade remembers using some of the money borrowed towards paying for a new car. Jade's car had broken down shortly after a mechanic had attempted but failed to fix it. Jade needed a car to drive her kids to their school, a 25-minute drive from where she was living at the time. Jade therefore purchased a cheap second-hand car as a replacement.

Around this time, Jade was also struggling to stay on top of her utilities bills. In fact, things got so bad that her electricity was disconnected. Because she was living in her partner's house by this

time and the account was in her partner's name, it took 6 days for the electricity to be reconnected.

The financial strife that Jade found herself in around this time was one of the reasons Jade turned to crime. In her desperation, Jade said that she felt that criminal activity was the only way she could stay on top of her financial situation.

Jade has now been incarcerated. She has no way of paying off her bills and was at risk of default fees building up. Luckily, Jade was able to seek the assistance of VALS shortly after she was incarcerated.

Thus far VALS has assisted Jade to obtain a waiver in relation to all of her utilities debts. The utility debts were all passed on to debt collectors. Both companies agreed to waive her outstanding balances. Money3 would not waive the outstanding debt but they did agree that they would not pursue Jade for the debt. VALS continues to work with Jade in relation to her other debts.

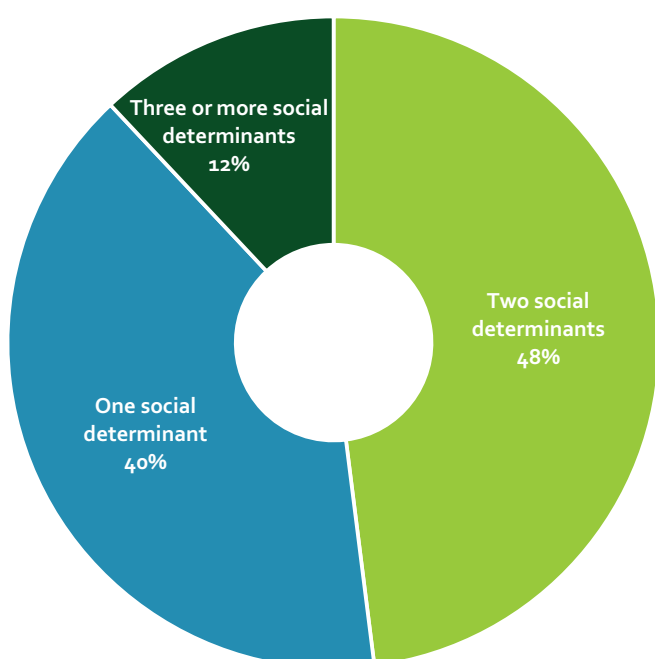
Case study provided by VALS.

## 9. The interrelationship between consumer, credit and debt issues and other social determinants

Not only does poverty and financial hardship appear to positively correlate with crime, but also appears to correlate with a range of other social determinants which may result in people being placed, through no fault of their own, in a position of disadvantage. Those who seek our assistance often experience more than one legal or debt issue, are often experiencing difficult life events or have had other challenging experiences, other than financial hardship. Case study 8, for example, not only illustrates a link between financial hardship and crime but also between family violence and financial hardship.

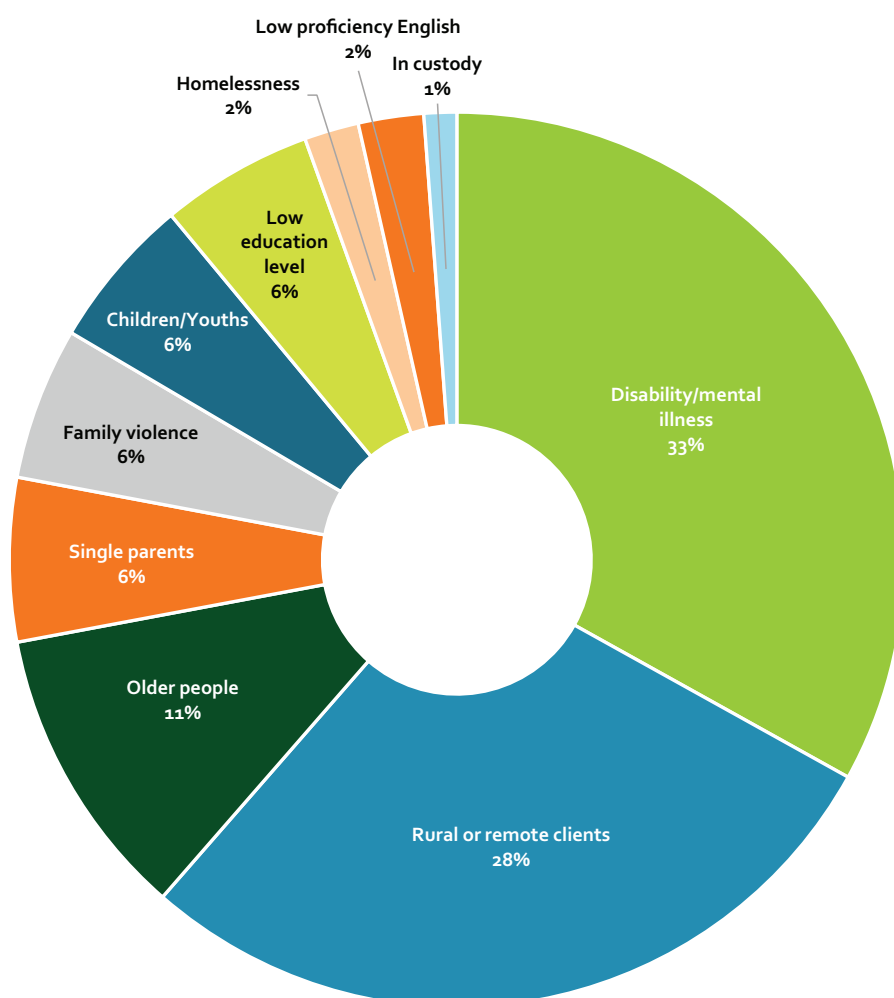
Two years of VALS casefile data relating to consumer, credit and debt issues from July 2017 to December 2019 are also illustrative. The data, represented in Figures 5 and 6, suggests that many clients with consumer, credit or debt issues were also experiencing other social determinants.

**Figure 5: VALS casefile data showing number of clients experiencing more than one social determinant - July 2017 to December 2019**



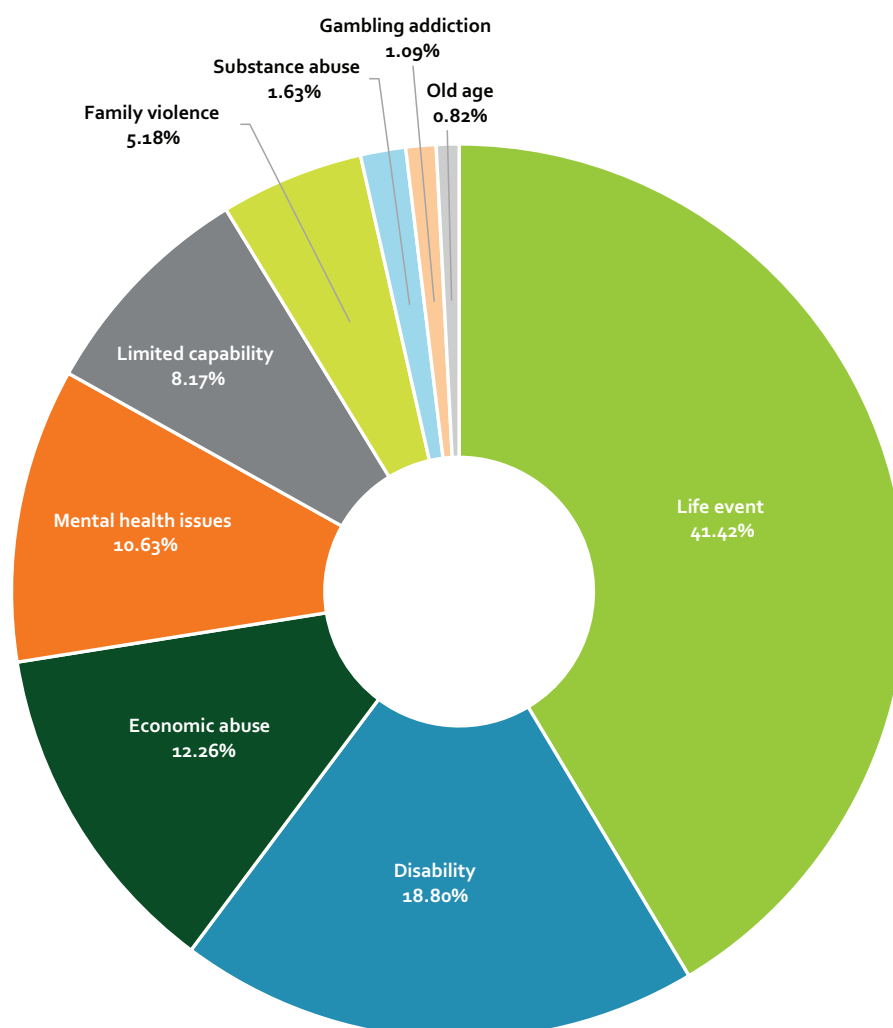
The types of social determinants experienced were as follows:

**Figure 6: VALS casework data showing type social determinant other than financial hardship - July 2017 to December 2019**



Consumer Action's casework data from the same period paints a similar picture. Looking at the NDH data, for example, of the 326 Aboriginal clients who used the service during that time, it was recorded that other social determinants of disadvantage impacted 222 of those clients. Of those clients experiencing social determinants of disadvantage, in addition to financial hardship, it was recorded that over two thirds in fact experienced three or more social determinants of disadvantage, as illustrated in Figure 7 below.

**Figure 7:** NDH data showing range of social determinants impacting Aboriginal and/or Torres Strait Islander clients - July 2017 to June 2019<sup>41</sup>



## 10. Accessibility of consumer, credit and debt information and services

A common theme identified by those within the IP Project team was inadequate access to legal and other mainstream services. Further, there appears to be a lack of action to ensure that Victorian Aboriginal communities are aware of their rights in relation to consumer, credit and debt issues and services.

This is consistent with the research presented in the 2013 Indigenous Legal Needs Report<sup>42</sup> and also our own Community Engagement Survey Data from the Portland community engagement session. In the survey, a large majority of people said that they had not sought legal or financial counselling advice for the issues they reported in the survey. 50% of survey participants went on to indicate that they did not know that they could seek advice for these types of issues.

<sup>41</sup> "Life event": The client is experiencing a major event which could change their circumstances. This includes illness or accident, death, family breakdown, reduction or loss of employment.

"Limited capability": Includes lack of formal education, low English proficiency, low literacy and numeracy levels, limited capacity to self-help or incapacity due to age.

<sup>42</sup> Reference



# 05

## CONCLUSION

Seven years on from the 2013 Indigenous Legal Needs Report, we are still observing similar the types of issues. The data presented in this report suggests that the people we have assisted most commonly had issues with funeral insurance; utilities; payday loans and car loans. The types of legal claims people were likely to have were related to the responsible lending laws; unsolicited selling and misleading and deceptive conduct. A failure of energy retailers and credit providers to advise people of their rights to seek financial hardship arrangements was also common.

The case studies presented in this report illustrate the perverse ways these issues can impact people's lives. The case studies, along with our data, also illustrates the ways debt can intersect with other hardships such as crime and family violence.

While Consumer Action and VALS are taking steps to improve our own services, including through the IP Project itself, there remains significant unmet demand for legal assistance in relation to consumer, credit and debt issues in Victorian Aboriginal communities.

More needs to be done by:

- ▶ governments, in recognising the unmet need, and adequately funding support services, including legal assistance and financial counselling;
- ▶ regulators, in addressing consumer detriment among Victorian Aboriginal communities and regulating for a fairer marketplace;
- ▶ all parties, including community service providers, in ensuring Victorian Aboriginal communities are aware of their rights and can access services working in the areas of consumer credit and debt.

Consumer Action and VALS will advocate for meaningful law reform and regulator action to address consumer harm identified in this report, and support Victorian Aboriginal communities so their voices are heard.



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