



CONSUMER ISSUES **in Victorian Aboriginal** **Communities during 2020**

Integrated Practice Project Report **June 2021**

CONSUMER ISSUES in Victorian Aboriginal communities during 2020

Integrated Practice Project Report **June 2021**



Acknowledgment of Country

Consumer Action and the Victorian Aboriginal Legal Service are located on the land of the Kulin Nations. We acknowledge all the Traditional Owners of Country throughout Australia and recognise the continuing connection to lands, water, 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.

Contents

01	About our organisations and acknowledgements	3
02	About the Integrated Practice Project and our report	4
03	A message from the team	5
04	Report summary	8
05	Community engagement and media	11
06	Consumer issues during 2020	17
07	Correlation between consumer, credit and debt issues and other determinants	40
08	Correlation between financial hardship and crime	42
09	Conclusion	44
10	Recommendations	45
11	Glossary	46



Our Artwork

Creator: **Dixon Patten**

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

01

About our **ORGANISATIONS & ACKNOWLEDGEMENTS**

We acknowledge that we work on the unceded Country of the people of the Kulin Nations. During this project, we have also worked on the unceded Countries of a number of other Victorian Aboriginal communities. We pay our respects to Elders past, present, and emerging.

We would like to acknowledge the Victorian Aboriginal communities that have demonstrated courage in sharing their stories and experiences with us, and their continuing strength and resilience. Their stories form the basis of the report and play an integral part in showing the impacts of consumer issues throughout 2020. In sharing your stories, you have contributed to making some laws and systems fairer for all Victorian Aboriginal communities.

We would like to acknowledge the Aboriginal Community Controlled Organisations (ACCOS) who work tirelessly for their communities and have continued to support our work.

This report was funded through the Victorian Department of Justice and Community Services Integrated Services Fund 2020, 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 people in Victoria. VALS has teams of solicitors specialising in criminal law, family law and 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 and our report

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 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 report (**the 2013 Indigenous Legal Needs report**), published by James Cook University's Indigenous Legal Needs Project.¹ In early 2018, Consumer Action's Koori Engagement Manager convened the Koori Justice Action Group, which identified that the priority issues detailed in the 2013 Indigenous Legal Needs report were still relevant. 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.

In its first year in 2019, the project partners participated in community engagement sessions throughout Victoria. The sessions served to connect these communities with legal advice services, financial counselling, policy work, and legal education relating to consumer, credit, and debt issues.

In 2019, the IP Project released its first report, the Integrated Practice 2019 Mid-Year Report (**the 2019 Mid-Year report**).² At the beginning of 2020, the IP Project released its second report, Consumer Issues in Victorian Aboriginal Communities (**the 2020 Project report**).³

The project is now in its third year. During this time Victoria was unfortunately struck by the global COVID-19 pandemic, which ceased all face-to-face community engagement sessions, and restricted the project team's movement around the state. This report sets out our approach to engagement and the consumer issues raised by community members during 2020.

During lockdown, the project team has continued to work together virtually. Engagement sessions have continued through online training and social media, along with legal and financial counselling casework and policy work. In September 2020, Consumer Action also launched a Koorihelp Facebook page,⁴ and relaunched the Koori Help website,⁵ to assist with getting much needed and valuable information to community about the financial effects the pandemic could have on households, their legal rights, where complaints could be made, and our services.

¹ M. Schwartz, F. Allison and C. Cunneen, Australian Indigenous Legal Needs Project (2013), *The Civil and Family Law Needs of Indigenous People in Victoria*, <https://apo.org.au/sites/default/files/resource-files/2013-11/apo-nid36506.pdf>

² Consumer Action Law Centre and the Victorian Aboriginal Legal Service (2019), *Integrated Practice 2019 Mid-Year Report*, <https://consumeraction.org.au/20191010-ip-project-midyear-report/>

³ Consumer Action Law Centre and the Victorian Aboriginal Legal Service (2020), *Consumer Issues in Victorian Aboriginal Communities: Integrated Practice Project Final Report 2020*, https://consumeraction.org.au/wp-content/uploads/2020/02/VALS-IP-Report_FINAL_ForWeb_UPDATED.pdf

⁴ See: <https://www.facebook.com/KoorihelpConsumerAction/>

⁵ See: <https://koorihelp.consumeraction.org.au/>

03

A Message FROM THE TEAM

2020 was a tough year for most, including our project team. We needed to adapt our community engagement, casework and policy and campaigning work in response to the COVID-19 crisis.

Throughout the year, the project team were consistently checking up with one another and attending project meetings via Zoom and Teams. At the end of 2020, we asked some of the members of the project team for their thoughts on 2020, the consumer issues they have seen impacting community, the hurdles they have faced and any positive reflections, as well on as their thoughts on the project itself.

Samantha Rudolph | Aboriginal Policy Officer
at Consumer Action Law Centre



I am the Aboriginal Policy Officer working in the Policy and Campaigns team at Consumer Action Law Centre.

My role was created for the IP project. In this role, I speak with the Senior Civil Lawyer at VALS, the Financial Counselling team, the Legal Practice team, and with Kaylee our Koori Engagement Manager, to analyse trends that we are seeing

in community, and use de-identified client stories and information we have from the other members of the policy team to advocate to industry and government. With this information we can also run campaigns, have meetings with external stakeholders to pass this information on, and write reports such as this one. I also keep tabs on changes in law or regulation and communicate this to community and to other people in the IP team and other organisations.

One of the big things I keep hearing about is Buy Now Pay Later. Other areas I have worked on have been responsible lending laws, issues with telco providers, and funeral insurance. There were also other themes around COVID-19 that stand out like the tower lockdown in Melbourne, and the constant worry of communities about the impacts of COVID-19.

The biggest hurdle for me personally was starting this role during the pandemic and Victorian lockdown. I started this role in early April 2020 and Consumer Action staff had already been working

from home for about a week by then. It was almost a year until I was able to enter the office for the first time and see my desk and where my colleagues were sitting. It was hard to adjust to working from home but transitioning into 'normal' life again was even harder. Workwise, not being able to go out to community and speak to people face-to-face has been hard. That's what is so great about this project—getting the stories from community first-hand, and hearing their stories helps us advocate harder and gives us a better idea of what the trends are in the consumer space.

This project is amazing, the communities I work with are amazing, and so are the people at Consumer Action and VALS—this has been a huge highlight for me. I get to work with intelligent people every day who are passionate about what they do and love waking up in the morning so they can get back to work. I am passionate about this, and the work that this project does is so valuable. I can help someone in community tell their story, and give community that platform to raise the consumer issues and trends that they have been seeing.

Throughout 2020 it has been difficult as we would normally go out to community, have a yarn with people about consumer credit and debt issues they have been seeing and what issues or difficulties they may have faced themselves. This year, the project has adapted to change quite well with our new Koorihelp Facebook page where we can share new information on rights and regulation and where to seek assistance, and we have been creative in using Instagram and Twitter. We brainstormed new media platforms we can use going forward and we are looking forward to going back to visiting community.



Siobhan Doyle | Senior Civil Lawyer
at the Victorian Aboriginal Legal Service (VALS)

I am the Senior Lawyer employed by VALS to work on the IP Project with Consumer Action. Along with providing legal advice and representation, I work closely with the Koori Engagement Manager to deliver outreach events as well and working with the Consumer Action policy and legal teams on policy and advocacy campaigns. During 2020 the same common issues of consumer leases, pay day loans, car loans, utility debt and funeral insurance persisted in Victorian Aboriginal communities. There may have been a respite from the normal financial stress that is common in the community because of the extra government assistance provided during the worst of the pandemic. However, this assistance has already been wound back and we are starting to see an increase in clients coming to us with large debts and unaffordable contracts.

The biggest hurdle this year was connecting with and educating the community without actually being able to visit them! The biggest highlight has been overcoming this hurdle by building

our social media presence and regularly posting about consumer law issues, which is something we did not do much of in 2019. I know we will continue to build our presence on social media moving forward as well as finally getting back out into the community to deliver our important in person outreach sessions.

If the IP Project didn't exist, I don't think many people in the community would know that they can get legal assistance with their consumer law issues. Prior to the commencement of the project VALS assisted very few people in this area of law. Now that we have the funding and expertise, consumer law is one of our major practice areas. It is an area where we can show our clients that the legal system can be used by them to improve their situation rather than our client's common experience of it being used against them to take away their rights and freedoms. I am proud that during the two years the project has run VALS have been able to obtain compensation, refunds and waivers of \$179,000.



Amber Johnston | Financial counsellor
at the National Debt Helpline (Consumer Action Law Centre)

I am a Financial Counsellor working on the National Debt Helpline and that involves talking with people to understand what options and rights they have with bills or debts they are having trouble with. As you could imagine 2020 presented a lot of challenges and different debt issues were coming up. I started my involvement with the VALS IP project in 2020 (alongside other colleagues) which has meant that we can share information between our financial counsellors and feed information back to our policy workers, lawyers (here and at VALS) and our Service Development and Partnerships team about what kind of issues are coming up for community and also brainstorm to link people in with the most appropriate supports.

It also meant that when COVID-19 did happen and our Koori Engagement Manager had to redirect how we'd be connecting with community given that everything was going online, we

could put in place practical actions. For example, we'd ask Aboriginal clients whether they had heard of any issues coming up for their family or community with any debts or bills and we could use that helpful information to inform what infographics we put out online targeting specific issues.

I have noticed a lot of energy issues have come up this past year, which was pretty concerning because during a pandemic the last thing you should need to be worrying about is having to deal with an energy or water company. I think a highlight from the year was how we were able to support each other at work despite the great challenges we were facing during a pandemic and the incredible survival skills and resilience which came into action for the people that were on either end of the phone call.

REPORT SUMMARY

Purpose and scope

The report has collated data, community intelligence, and case studies to answer the following questions:

1. **What consumer, credit and debt issues are impacting Victorian Aboriginal communities?**
2. **Has COVID-19 had an impact on these issues in community, and if so, how and why?**

The data, community intelligence and case studies in the report have been drawn from the IP Project team and VALS and Consumer Action's case work and telephone advice calls.

The data in this report is from 1 January 2020 to 31 December 2020. However, we acknowledge that community intelligence on the ground is also highly regarded evidence and this was largely unable to be obtained in 2020 as we were unable to visit community in person.

Data from our social media analytics, website analytics and media monitoring is also contained in this report.

This report demonstrates the continuing unmet legal needs of Victoria Aboriginal communities, including unidentified need. This report also shows the need for more legal, financial counselling and engagement services in Victorian Aboriginal communities and the importance of this project. The report also contains recommendations for policymakers about ways unmet consumer credit and debt legal need in community can be addressed. Furthermore, this report highlights the correlations between consumer credit and debt issues and other social determinants, and financial hardship and offending.

For the purposes of this report, Aboriginal and/or Torres Strait Islander people living in Victoria will be referred to as 'Victorian Aboriginal communities'.

Key findings

The most common or concerning issues we have seen continuing to impact Victorian Aboriginal communities throughout 2020 include:

1. **Payday loans**
2. **Consumer leases**
3. **Buy now pay later**
4. **Irresponsible lending**
5. **Debt vultures**
6. **Telecommunications products and services**
7. **Energy hardship**
8. **Funeral products**
9. **Correlation between consumer, credit and debt issues and other determinants**
10. **Correlation between financial hardship and offending behaviours and recidivism**

We have continued to see similar consumer, credit and debt problems to those noted in the 2020 Project report, and the 2013 Indigenous Legal Needs Report. This suggests that several years after the 2013 report was published, that there are still similar significant unmet consumer, credit, and debt needs in Victorian Aboriginal communities.

The data and information in this report are likely to only show the beginnings of the impacts of COVID-19 in Victorian Aboriginal communities. The full impacts will only start to show over time as COVID-19-related support measures are rolled back (for example, Centrelink COVID-19 supplement payments end, and energy disconnections recommence). We will also have a better understanding of the impacts of COVID-19 when we are able to visit communities in person again.

About the data and case studies

Below is a summary of the quantitative and qualitative data and research in this report.

Quantitative Data

1. **Consumer Action case work and call data from clients identifying as Aboriginal and/or Torres Strait Islander (Victorian callers only) comprising of:**
 - ▶ Calls to Consumer Action financial counsellors through the National Debt Helpline
 - ▶ Calls to Consumer Action lawyers through the Koori Helpline, worker advice line, and consumer advice line
 - ▶ Legal Practice representation files opened during 2020
2. **VALS case work data**
 - ▶ Discrete assistance and case work files opened and assisted by Senior Civil Lawyer
3. **Media and Koori Help website**
 - ▶ Number of engagements and reach of our social media posts
 - ▶ Data from media monitoring services
 - ▶ Number of impressions (views) of Koori Help website, and search terms that led people to the website
4. **Data and information from previous reports**
 - ▶ Data and information from the 2020 Project report, 2013 Indigenous Legal Needs report, and our 2019 Mid-Year report were considered as part of this report.
5. **Data and research from external stakeholders**

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.

Qualitative Data

1. **De-identified case studies from Consumer Action and VALS clients.**
2. **Interviews with IP Project team members**

Victorian Aboriginal communities are often impacted by a number of complex matters. There is still significant unmet legal need on a range of issues. Enquiries are often made to our services about matters such as tenancy, employment law, and discrimination. As these legal issues are not consumer, credit or debt-related, they fall outside the remit of the IP Project and have been excluded from the data in this report. However, these are still very important issues in community that need to be addressed.

The data for this report has been drawn from different sources and databases, meaning the categorisation of cases differs slightly in some figures in the report. To avoid inconsistencies, the 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 may have called Consumer Action's Koori Helpline, and has been referred to VALS and therefore there could be an overlap. This also includes clients who may have been referred to Consumer Action's Legal Practice by our financial counsellors at the National Debt Helpline.

The case studies presented in this report are based on real VALS or Consumer Action cases. Some case studies are from community members who are receiving ongoing assistance, have been given one-time assistance or provided advice over the phone. Clients' names have been changed to protect their identity and for privacy reasons.

Even though we have data from both Consumer Action and VALS in relation to our casework, many people do not recognise credit and debt issues as 'legal problems' so our data is unlikely to show the full extent of the impact that consumer credit and debt issues have on communities. We expect that our data represents the 'tip of the iceberg' when it comes to the consumer, credit and debt issues impacting on Victorian Aboriginal communities. Consumer Action and VALS are still in the process of building community capacity on consumer, credit and debt issues, and the pandemic has made this more difficult than usual. We would also like to note that information stated in this report may not reflect the opinions and issues that affect every Victorian Aboriginal community member.

COMMUNITY ENGAGEMENT & MEDIA

Community engagement

In response to the COVID-19 public health crisis, the project ceased face-to-face community engagement sessions from March 2020. Community engagement sessions are integral to the IP Project's success.

Community engagement sessions:

- ▶ provide community with access to culturally appropriate consumer, credit and debt legal support delivered by both a specialist legal service and an Aboriginal legal service;
- ▶ upskill community on consumer, credit and debt issues through culturally relevant resources and information sessions;
- ▶ provide both Consumer Action and VALS with the opportunity to foster stronger partnerships with the Victorian Aboriginal community and ACCOs;
- ▶ enhance our understanding of the incidence of consumer, credit and debt issues within the community; and
- ▶ provide community with the opportunity to share their stories and experiences which is incorporated into policy and relevant campaigns for systemic change.

An Innovation Project Plan was developed in 2020 to ensure that the project was still meeting the needs of the community, to ensure that we continued to have presence within the community and to ensure the partnership between both organisations was supported. The plan also prioritised and strengthened policy, social media, traditional media and campaigns, and maintaining the Integrated Practice partnership.

The Innovation Project Plan addressed some of the following areas:

- ▶ Enhancing the partnership
- ▶ Gathering relevant community intelligence
- ▶ Social media
- ▶ Training to external services
- ▶ Media, policy and campaigns

Enhancing the partnership

Additional efforts were undertaken to ensure the organisational relationship between Consumer Action and VALS was maintained throughout 2020. Meetings were held weekly to discuss relevant issues, workshop social media posts and define ways to provide ongoing consistent support to community.

The IP Project team grew to include Consumer Action's Media & Communications Adviser and financial counsellors who worked alongside the Koori Engagement Manager, Aboriginal Policy Officer, Consumer Action IP Lawyer and VALS IP Lawyer. There was a significant increase in transparency and communication to support project continuity.

The team completed partnership training with an external facilitator from Health Justice Australia to better understand the principles of a successful integrated project and to provide both organisations with the opportunity to strengthen their approaches to working together. Training allowed both organisations to identify mutually beneficial processes, agreed roles and clarity of expectations.

Gathering relevant community intelligence

Community engagement and being present in the community previously provided the IP Project team with local intelligence on what is impacting the community. Anecdotal information complemented our efforts for systemic change as well as tailoring community engagement session to the needs of local community. To continue these efforts, the team engaged VALS staff, financial counsellors and Consumer Action lawyers in new ways.

VALS Client Service Officer (CSO) and Community Legal Education Officer (CLE)

VALS CSOs are located in most regions within Victoria. The CSOs provide support at a local level to ensure that community are well supported with their legal issues including court support for criminal matters, linking community with services and information sharing including attending local events.

The VALS CLE Officer is based in Shepparton and has links to the local community as well as strong links to Victorian ACCOs. Both provide referrals into VALS on all issues within VALS' scope of practice.

The IP team provided an updated consumer credit and debt session to CSOs and CLE officers during the initial stages of lockdown in June 2020 to support the team with the ability to issue spot consumer, credit and debt matters and to assist with referrals. Ongoing information on issues impacting community, COVID-19 impacts, and community intelligence was shared with the IP team throughout the year.

Financial Counsellors

Consumer Action's Financial Counselling Practice, which answers the majority of Victorian calls to the National Debt Helpline (NDH), was operating largely offsite during 2020. Financial Counsellors were allocated to this project to share information on the issues and impacts that were being identified during calls. It also provided a way for the IP Project team to provide additional resources to community with information packs being sent out to community members who requested additional information.

Consumer Action Lawyers

The Koori Help, Consumer and Worker Advice Lines provided by Consumer Action continued to play a vital role in both supporting community with their legal needs and a mechanism for gathering information on current issues. Issues coming through advice lines further complemented the information gathering by CSOs and financial counsellors.

Social media

On 23 September 2020 we launched the Koorihelp Facebook page. The Facebook page was created to establish a social media presence and to further our reach to community when community engagement was not possible. The IP Project team co-designed posts for the Facebook page about changes happening in relation to consumer issues identified as the greatest need. We also provided information on COVID-19-specific supports available such as hardship arrangements and relevant referral pathways. The Facebook page promotes Consumer Action Koori artwork created by Dixon Patten and all posts were in plain language and culturally relevant and appropriate.

As of March 2021, we had made 72 posts on various consumer related issues and topics of concern to Koori communities in Victoria. As a result, we had acquired more than 800 followers, reached an audience of approximately 15,000 and had 501 engagements with our posts. Engagement refers to likes, comments and shares of articles and stories.

Throughout 2020 we were also quite active on other social media platforms such as Twitter. Our Koori Help posts are also tweeted from Consumer Action's Twitter account and generated a large number of impressions. For example, in September and November 2020, tweets with Koori Help resources were the most viewed tweets from Consumer Action's Twitter account with 1038 and 838 audience impressions respectively. In January 2021, a Koori Help tweet on 'beware of payday lenders' was Consumer Action's most viewed tweet with 3508 impressions.

VALS shared Koorihelp Facebook posts and tweets on their own social media channels, offering further opportunities to collaborate and demonstrating a consistent approach to addressing consumer credit and debt needs within the Victorian Aboriginal community. In early 2020 VALS also released a short comical video about consumer leases, which in June 2020 had reached 27,343 people on the VALS Facebook page.

FIGURE 1: Sample of Koorihelp social media posts



PHONE, INTERNET AND COVID-19

Are you worried about paying for your phone or internet?

Here are some things you could do:

- ✓ Speak to your phone and internet provider. Let them know you are experiencing financial hardship. They should offer you an affordable payment plan or arrangement
- ✓ If you are unhappy with their response, contact the Telecommunications Industry Ombudsman (TIO) on 1800 062 058

If you are at risk of disconnection or you have other urgent issues, call the TIO on 1800 046 686

BUY NOW PAY LATER AND COVID-19

What's 'Buy Now Pay Later'?

It's a type of loan where you to make purchases online or in-store and receive the product, then pay it back over several weeks. Buy now pay later includes services like AfterPay.

But remember:

- ➡ If you fail to pay you can be charged late fees - AfterPay charges \$10 and a further fee of \$7 if the payment is not paid within 7 days
- ➡ AfterPay's late fees are capped at 25% of the price of the item you purchased or \$68 (whichever is less)

Job Keeper and Job Seeker payments will be reduced at the end of this month. If you're having trouble paying, you can ask the company for hardship assistance

ESSENTIAL SERVICES (GAS, WATER AND ELECTRICITY)

Don't accept pressure from your energy retailer to pay out your debt, know your rights!

- ➡ You have the right to ask for hardship arrangement and pay the amount that YOU can afford
- ➡ You have the right to ask for a Utility Relief Grant and ask your retailer for help to fill out the form
- ➡ You have the right to ask your retailer if you are getting the best price for your electricity and gas

If you are still having issues, give us a call!

FIGURE 2: Koorihelp Facebook page followers and likes – September 2020 to April 2021

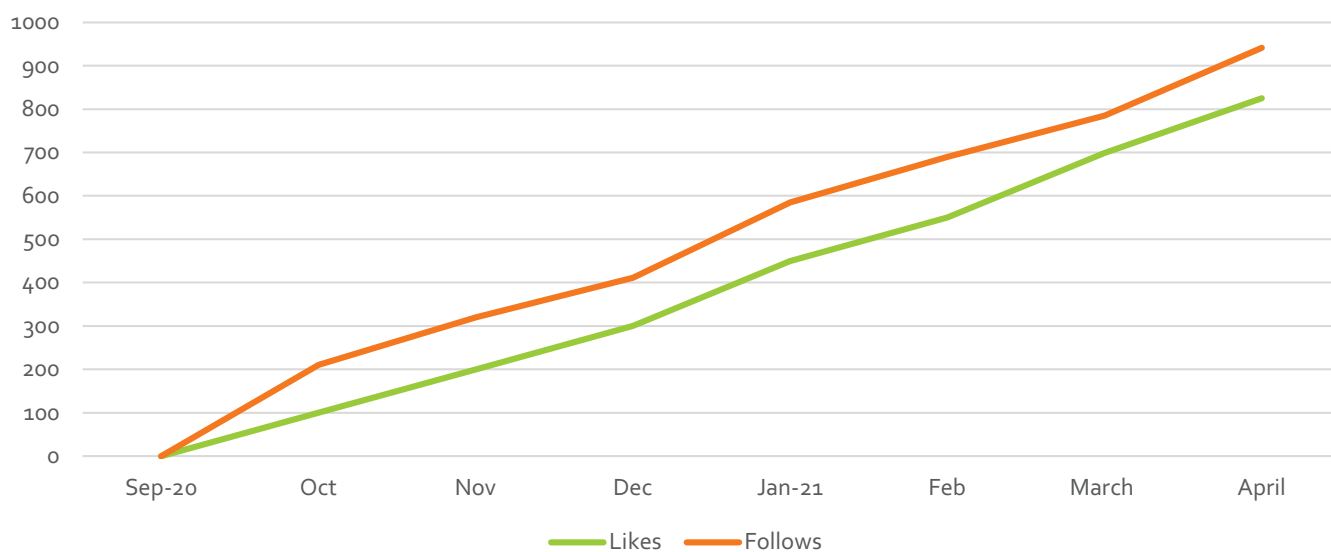


FIGURE 3: Koorihelp Facebook page banner



Traditional media: radio, TV & print

Traditional media continues to be an effective way to communicate information about consumer law issues to large national audiences and community. In line with the Innovation Project Plan, the IP project team made a consistent effort to bring key consumer issues into media focus. As a result, in 2020 IP Project team members and clients featured in media as diverse as National Indigenous Radio, National Indigenous Times, ABC Radio National, ABC TV, Channel 9's A Current Affair, The New Daily, Insurance News and MSN News.

For example, on 26 November 2020, following the launch of Consumer Action's report *The Trouble with Telcos: Stories from 2020*,⁶ Aboriginal clients 'James' and 'Katy' were featured in an ABC Online news⁷ article entitled '*Phone and internet customers reveal debt trouble with telco companies during pandemic*'.

IP Project lawyer Siobhan Doyle was interviewed twice by ABC Radio⁸ in March 2020 about car loans. In October 2020, she was interviewed by National Indigenous Times⁹ and The Guardian¹⁰ about a dispute VALS won against funeral insurer ACBF/Youpla.

IP Project Policy Officer Samantha Rudolph was interviewed in April 2020 by ABC News about the ACBF/Youpla case.¹¹ The story also featured evidence given by Consumer Action client Tracey Walsh at the Banking Royal Commission about ACBF/Youpla's practices.

Koori Engagement Manager Kaylee Anderson was interviewed by National Indigenous Times¹² in September about her co-authored article with Siobhan Doyle and Mark Holden, a lawyer from Financial Rights Legal Centre, published in Precedent¹³ magazine on the negative impact of funeral insurance on community.

6 Consumer Action Law Centre (2020), *The Trouble With Telcos: Stories from 2020*, https://consumeraction.org.au/wp-content/uploads/2020/11/201120-Covid-Telco-Report_V7.pdf

7 R. Clayton, '*Phone and internet customers reveal debt trouble with telco companies during pandemic*', ABC News, 26 November 2020, <https://www.abc.net.au/news/2020-11-26/internet-mobile-customers-in-debt-trouble-with-telcos/12922622>

8 D. Carrick, '*Protecting buyers from dodgy car loans*', ABC Radio National, 10 March 2020, <https://www.abc.net.au/radionational/programs/lawreport/protecting-buyers-from-dodgy-car-loans/12019700>; D. Carrick and N. Wiggins, '*Car buyers saddled with debt after signing up to loans they can't afford*', ABC Radio National, 27 March 2020, <https://www.abc.net.au/news/2020-03-27/car-loans-saddling-people-with-debt/12049224>.

9 R. Knowles, '*Mob misled by non-Aboriginal funeral insurance provider*', National Indigenous Times, 31 October 2020, <https://nit.com.au/mob-misled-by-non-aboriginal-funeral-insurance-provider/>

10 L. Allam, '*Funeral insurer accused of targeting vulnerable Aboriginal communities now facing deceptive conduct charge*', The Guardian, 8 November 2020, <https://www.theguardian.com/australia-news/2020/nov/08/funeral-insurer-accused-of-targeting-vulnerable-aboriginal-communities-now-facing-deceptive-conduct-charge>

11 D. Ziffer, '*Funeral insurer Youpla, formerly ABCF, barred from taking on customers after selling coverage to babies and targeting Indigenous Australians*', ABC Online, 29 April 2020, <https://www.abc.net.au/news/2020-04-29/funeral-insurer-youpla-coverage-babies-barred-new-customers/12197934>

12 R. Knowles, '*Funeral insurance policies culturally incompetent*', National Indigenous Times, 4 September 2020, <https://nit.com.au/funeral-insurance-policies-culturally-incompetent/>

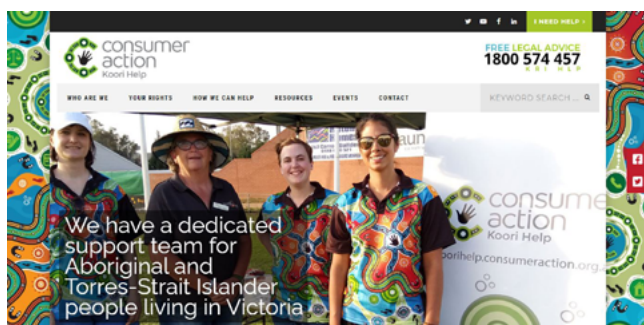
13 M. Holden, S. Doyle, and K Anderson, '*The impact of funeral insurance in Aboriginal and Torres Strait Islander communities*', Precedent, July/August 2020, issue 159, https://consumeraction.org.au/wp-content/uploads/2020/08/PR_159_Holden_Doyle_Anderson.pdf

Revamped Koori Help website

To support the Innovation Project Plan strategies, including the social media presence, the Koori Engagement Manager worked alongside Consumer Action operational support staff and website designers to update the Koori Help website. The website now provides the same information as the Koori Help 'simple advice for everyday legal issues' printed resource that was previously distributed during community engagement sessions and used as a tool for engagement. The website revamp ensured we had useful information accessible online, and it provided another referral point for community workers and community.

The website is easy to use and has easy to find tools and information for those who wish to self-advocate or those who wish to find out more on consumer credit and debt issues in their own time. The website had 18,200 views in 2020. Google search terms that led people to the webpage included 'loans like Cigno', 'fast payday loans', 'online loans fast', 'Centrepay rentals' and 'direct payday lenders Australia'.

FIGURE 4: Screenshots from Koori Help website



GAS, ELECTRICITY
& WATER



DEBT
COLLECTORS



CAR PROBLEMS



PAYDAY LOANS



FUNERAL
PRODUCTS



RENT TO BUY

Training to external services

Delivering training to external organisations enabled the development of a suite of culturally appropriate training materials that can be used to engage community workers on issues relevant to the community. Sessions demonstrated to community workers the importance of this partnership in addressing the needs of community. Sessions also assisted in the dissemination of additional information such as the role of a regulator and referral pathways for their clients. Hard copy resources were sent out after all sessions for community workers to distribute to community and their clients. Some examples of sessions run in 2020 are set out below.

Victorian Aboriginal Community Controlled Health Organisation (VACCHO)

VACCHO is the peak body and a Registered Training Organisation (RTO) for ACCOs within Victoria. The RTO branch of VACCHO provides professional development training for all community workers from all ACCOs.

Consumer Action and VALS provided a co-designed joint session on issue spotting consumer, credit and debt matters for community workers employed by ACCOs. The session identified key issues within the community that we have seen through our previous community engagement sessions and through advice lines.

Consumer Action provided an additional four sessions to workers on the National Disability Insurance Scheme (NDIS), family violence, financial counselling supports and bushfires.

Elizabeth Morgan House

Elizabeth Morgan House (EMH) delivers secure refuge accommodation and specialist family violence services to Aboriginal women and their children. EMH also supports parents of Aboriginal children, partners, and ex-partners of Aboriginal people. Both Consumer Action and VALS provided an issue spotting and information session to the workers at EMH on consumer, credit, and debt matters.

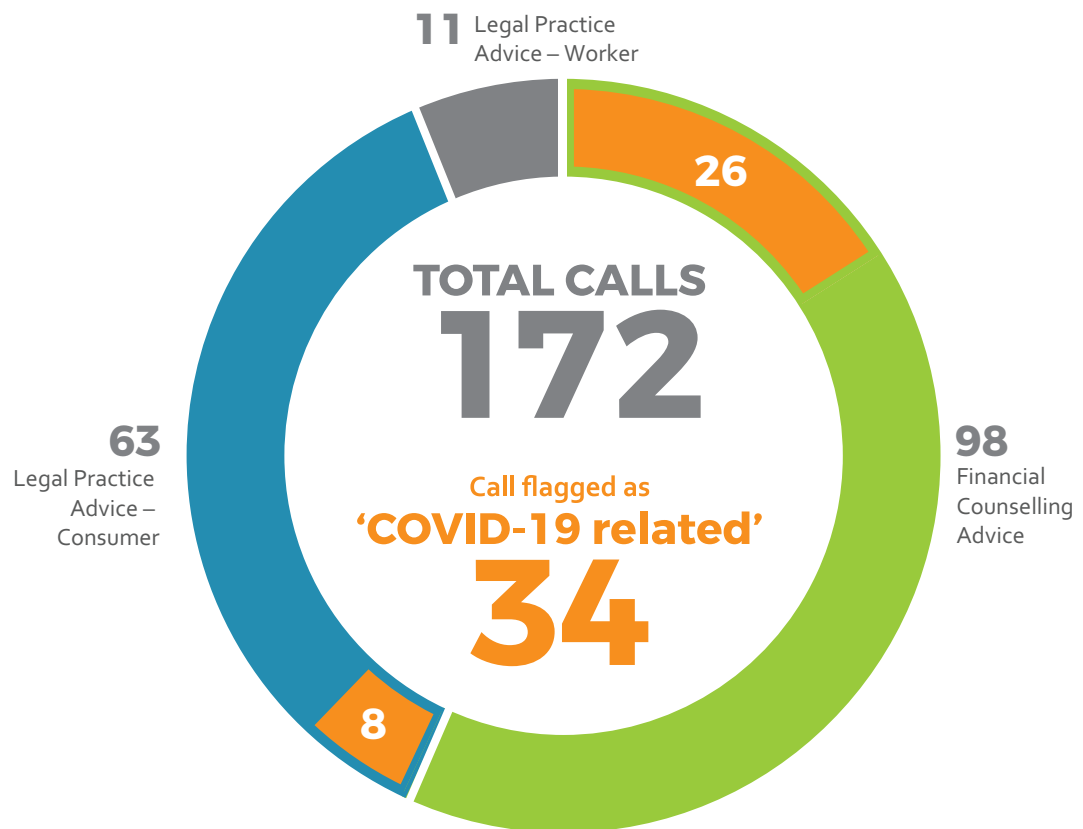
CONSUMER ISSUES DURING 2020

Statistics from advice services

Consumer Action's financial counsellors and lawyers received 172 calls from people who identified as Aboriginal and/or Torres Strait Islander, including community workers seeking advice on behalf of their Aboriginal clients.

Of the 98 calls to our financial counsellors, 27% were flagged as 'COVID-19 related'. Financial difficulty type was recorded in 85 of these calls, and the most common financial difficulty types identified were utilities (40%) third tier lenders such as payday loans (24%), credit card debt (24%), and housing arrears (19%).¹⁴ Other reasons people called our financial counsellors included personal loans, tax debt, household debts and car loans.

Figure 5: Calls to Consumer Action advice services from Victorians who identified as Aboriginal and/or Torres Strait Islander between 1 January – 31 December 2020



¹⁴ Up to three different financial difficulty types can be selected for each call

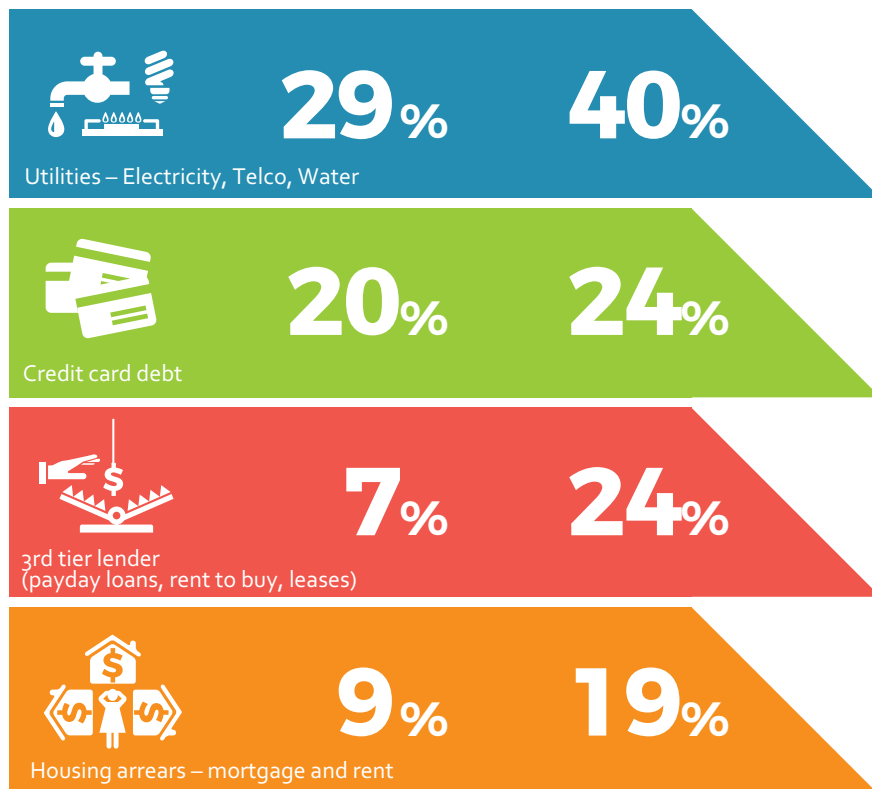
Figure 6: Calls to Consumer Action's financial counselling practice from Victorians who identified as Aboriginal and/or Torres Strait Islander between 1 January - 31 December 2020 by financial difficulty type



During 2020, Consumer Action saw a significant increase in utilities, third tier lenders, housing arrears and credit card debt being flagged as financial difficulty types compared to the July 2017 to June 2019 period.

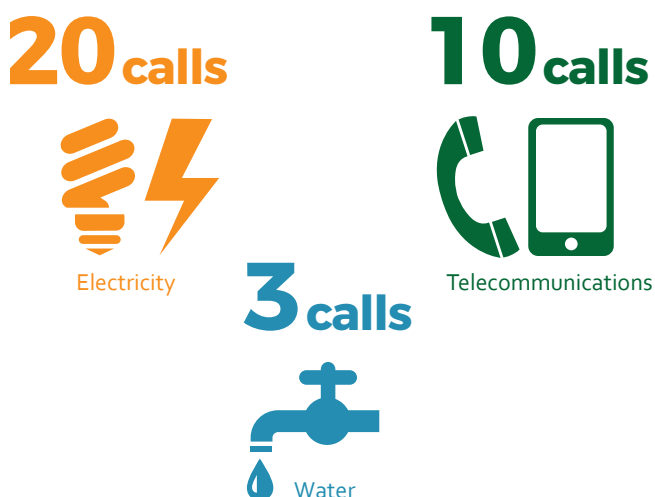
FIGURE 7: Calls to Consumer Action financial counselling practice from Victorians who identified as Aboriginal and/or Torres Strait Islander by financial difficulty type - comparison

Financial difficulty type July 2017 to June 2019¹⁵ January 2020 to December 2020



Electricity and telecommunications were the most common financial difficulty types flagged in utilities calls by far, with only three calls received from Victorian Aboriginal community members relating to water.

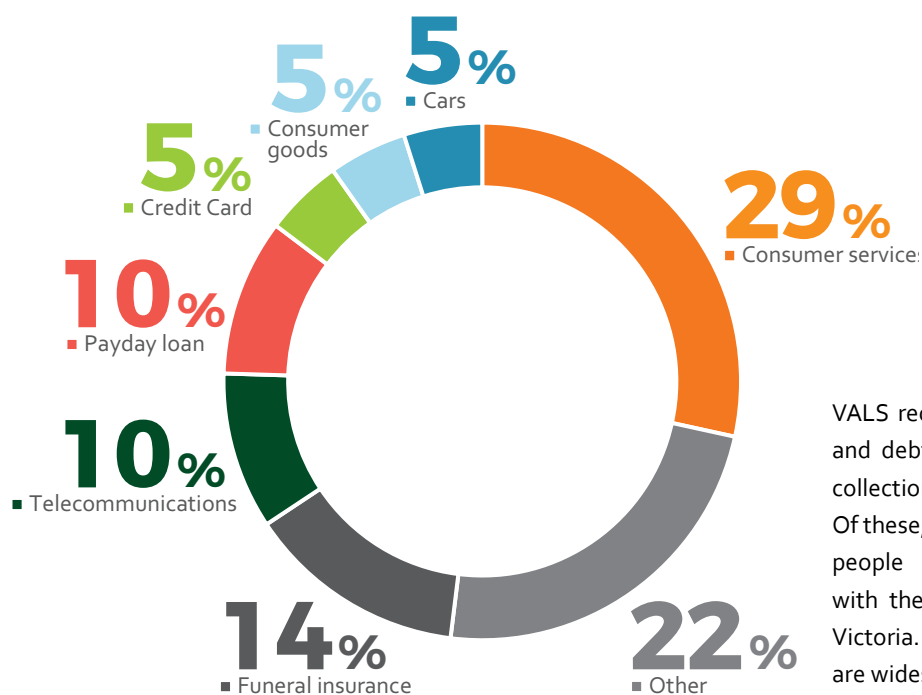
FIGURE 8: Calls to Consumer Action's financial counselling practice from Victorians who identified as Aboriginal and/or Torres Strait Islander between 1 January - 31 December 2020 by financial difficulty type - utilities



Of the 63 people who identified as Aboriginal and/or Torres Strait Islander who called Consumer Action's consumer legal advice line, 13% were flagged as 'COVID-19 related'. The product type was recorded in 42 of these calls. Of these 42 calls, the most common product types flagged were consumer services (29%), funeral insurance (14%), payday loans (10%) and telecommunications (10%). Other issues included consumer leases, cars and consumer goods. We also received 11 calls from community workers seeking legal advice to assist their Aboriginal and/or Torres Strait Islander clients. Product type was flagged in nine of those calls, with funeral insurance the most common product type (33%) identified.

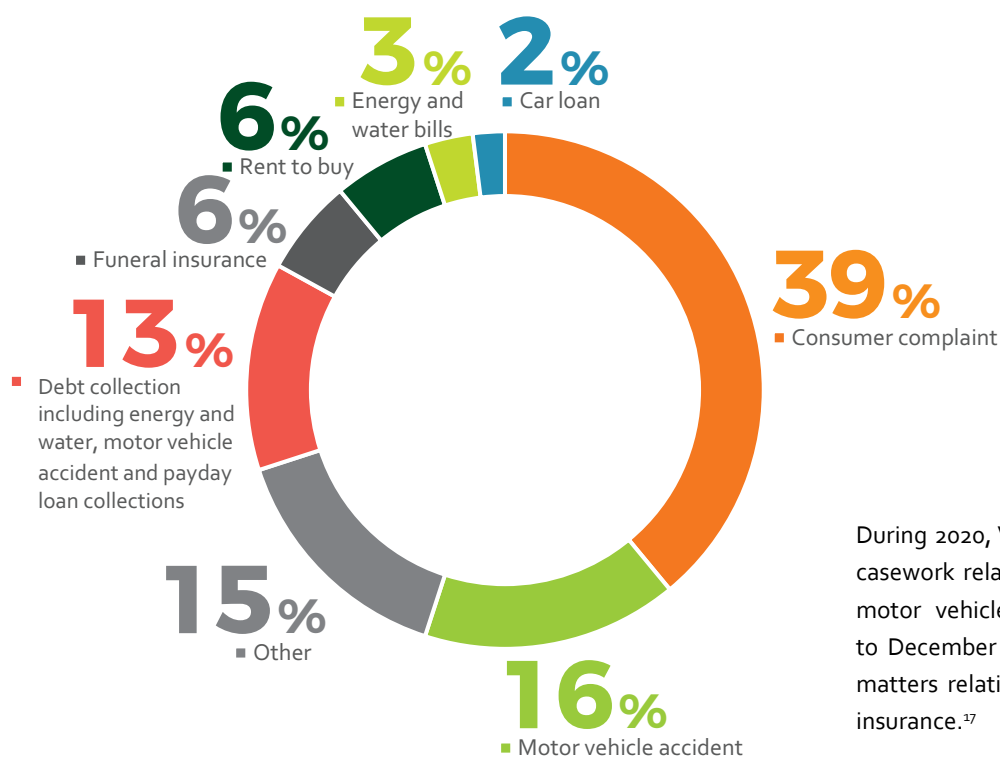
¹⁵ Above n. 3.

FIGURE 9: Calls to Consumer Action legal practice from Victorians who identified as Aboriginal and/or Torres Strait Islander between 1 January - 31 December 2020 by product type



VALS received 89 enquires on consumer credit and debt issues, ranging from car loans, debt collection, funeral insurance, plus many more. Of these, 61 enquiries have been from Aboriginal people living in metropolitan Melbourne, with the remaining 28 based in rural/regional Victoria. The enquiries highlight that the issues are widespread throughout the state of Victoria.

FIGURE 10: VALS casework data by product or service type – 1 January to 31 December 2020

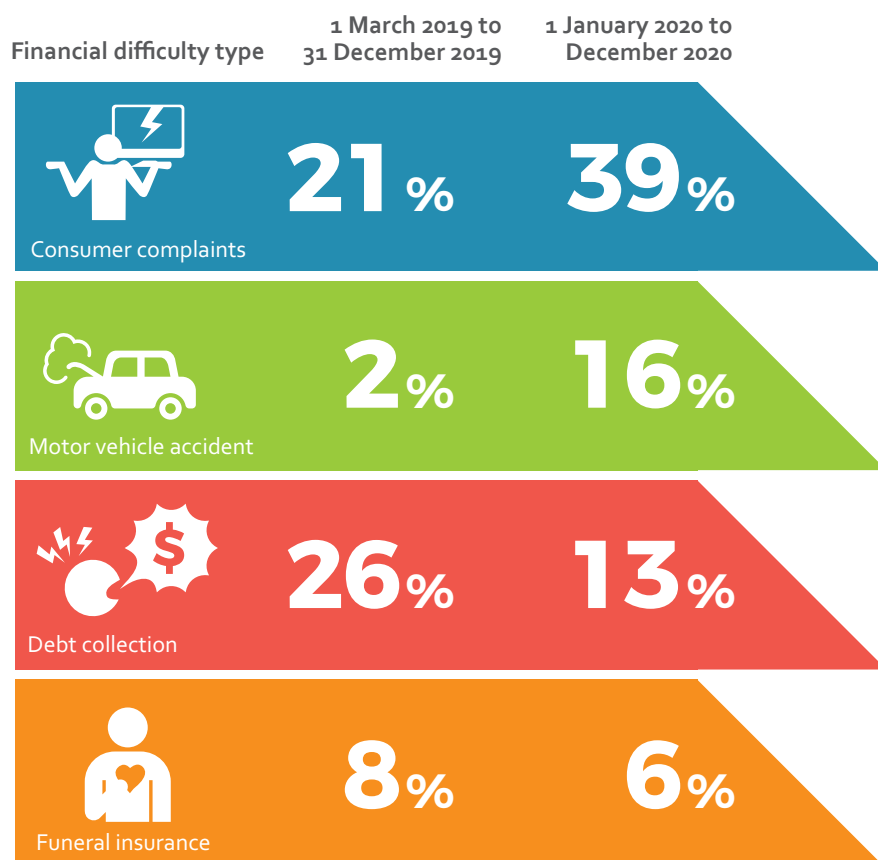


During 2020, VALS saw a significant increase in casework relating to consumer complaints and motor vehicle accidents compared to March to December 2019 period,¹⁶ but a reduction in matters relating to debt collection and funeral insurance.¹⁷

¹⁶ The IP Project commenced in March 2019, so we have limited the 2019 data range from March to December.

¹⁷ Above n. 3, page 9.

FIGURE 11: VALS casework data by product or service type – comparison



The data suggests that some Victorian Aboriginal community members are struggling to pay their electricity and gas bills during this time, as well as phone or internet bills. Third tier lenders such as payday lenders and consumer lease providers also appear to be continuing to market themselves as a solution, when there is compelling evidence these short-term, high-cost loans worsen people's financial situation through creating cycles of debt.¹⁸

We believe the temporary increase in Centrelink payments for JobKeeper and JobSeeker, and early access to superannuation, did contribute to a reduction in calls from Victorian Aboriginal community members. Some debts may have been paid off during this period which may have given Victorian Aboriginal communities breathing room to focus on staying safe during the pandemic.

However, we still received calls and enquiries for assistance from people who were struggling.

¹⁸ Data shows that over a five-year period, around 15% of payday loan borrowers fall into a debt spiral: Stop The Debt Trap Alliance (2019), *The Debt Trap: How payday lending is costing Australians*, https://consumeraction.org.au/wp-content/uploads/2019/11/Payday-Lending-Report_FINAL_UPDATED_WEB-1.pdf

Consumer services

As shown in the data above, both Consumer Action and VALS saw a surge in enquiries about 'consumer services' and 'consumer complaints' in 2020. These terms cover a range of disputes relating to goods and services. Generally, breaches of consumer guarantees, contract disputes and billing disputes were involved in these calls. The types of disputes were varied, and included matters relating to debt collection, gym membership fees, mechanic services, privacy complaints, weight loss programs, faulty cars, security cameras and plumbing works.

Some of these disputes were associated with cancellations or delays resulting from the COVID-19 crisis.

Charlie's story

Charlie is an Aboriginal man with three children who all have disabilities. Charlie contacted VALS in mid-2020 to get assistance with a dispute he was having with a retailer. Charlie and his partner had purchased an outdoor flooring system so their children who have disabilities could safely play outside. The flooring system was faulty, and Charlie wanted to return the product and get a refund. Charlie paid to have the floor system installed and he was finding it difficult to get the retailer to agree to pay him back for the installation. The COVID-19 pandemic was also causing problems as it was difficult to get trades people to attend the property and Charlie and his family were particularly wary because of the children's disabilities. VALS provided advice to Charlie about his consumer rights and wrote a letter to the retailer seeking a refund for the flooring plus compensation for the installation and associated costs. After some back-and-forth negotiation Charlie and the retailer came to a settlement.

Case study provided by VALS

Ben and Harry's story

In June 2020 Ben, an older Aboriginal man, contacted VALS to get advice about obtaining a refund for a cruise holiday that had been cut short at the start of the COVID-19 pandemic. Ben had booked the cruise with Harry, and they had left for their holiday at the start of March 2020. The day the cruise was to depart it was abruptly cancelled because of the pandemic. Ben and Harry rushed back to Australia without knowing if they would get a refund. Ben was disappointed that the Australian travel agency had only offered to give them a credit for another cruise which was due to expire at the end of 2020. Both Ben and Harry were in their later years and they both had underlying health problems. They did not want to accept the credit because they did not know when they would feel comfortable going on a cruise again. The cruise company was based in Greece and Ben had received no information from them at all. VALS provided Ben with advice about his consumer rights and told him that they were entitled to a refund under the Australian Consumer Law. VALS wrote a letter to the Australian travel agency demanding a refund. After receiving the letter, the travel agency assured Ben that a refund was forthcoming. The travel agency refunded 75% of the cost of the cruise and in March 2021 the other 25% was refunded by the Greek cruise company.

Case study provided by VALS

Payday loans

Payday loans have been a recurring issue amongst the Victorian Aboriginal community for many years, as documented in the 2013 Indigenous Legal Needs Report¹⁹ and in our 2019 Mid-Year report and 2020 Project report. During the COVID-19 pandemic, we were concerned that job losses and increases in bills due to learning and working from home would lead to a significant rise in payday loans. The data above shows a significant increase in the number of calls to Consumer Action's financial counsellors regarding third tier lenders (including payday lenders). However, our community intelligence from previous years suggests that payday loans are far more prevalent in community than our call data suggests.

Payday loans, also known as small account credit contracts (SACCs), are loans of up to \$2,000. Payday lenders are subject to responsible lending laws; however, we see time and time again that irresponsible lending with payday loans still occurs.

One of the main issues with payday loans is that borrowers are charged excessive fees on top of the original loan. The fees for the loans are astronomically high, charging people establishment fees of up to \$20 for every \$100 borrowed, plus another 4% per month (up to 12 months). This can equate to equivalent annual interest rates from 112% to more than 300%.

Because these loans are usually used for short term necessities, the loans can push people into a debt spiral where they are taking out more payday loans to stay afloat. This is made worse when payday loan companies set up a direct debit for their repayments on 'pay day', meaning the repayments can leave consumers short and unable to pay for everyday living expenses such as rent, food and utility bills.

Difficulty making repayments has been a common issue of concern amongst callers to Consumer Action's lawyers and financial counsellors, and another concern raised was Aboriginal community members feeling that they were being harassed for payment by these companies. Some said they were suffering hardship due to the debt and were unable to make the repayments, and inadequate hardship assistance was offered. Sarah and Helen's case studies are also examples of people taking out multiple loans to get by and having difficulty paying other debts such as utility bills, rent, buy now pay later and car loans.

Helen's story

Helen is an Aboriginal woman who called the National Debt Helpline in April 2020 seeking assistance on a number of issues. Helen called mainly asking about what to do with her multiple payday loans, and wanted to know the implications of bankruptcy.

Helen told us she is currently looking for work, and has applied for a factory job. She currently has a car on finance and is struggling to make the repayments. She has stated that she needs this car to get to this potential new factory job. She is currently living off Centrelink payments until she can secure work.

Helen told us that she currently has 4 or 5 loans to numerous lenders. Helen says this includes a loan of around \$1,000 with Cash Converters, \$500 with Nimble, \$400 with Moneyspot, \$600 with UO and a \$200 loan with Cigno. Helen told us she also owes \$600 to Afterpay.

Due to this, Helen is now considering bankruptcy. Helen is under 30, and for someone quite young, the impacts of bankruptcy could affect her life in the long run.

We recognised that Helen needed further support, advocacy and assessment. Helen was referred Helen to a locally based financial counsellor.

Case study provided by Consumer Action Law Centre

¹⁹ Above n. 1, page 51.

Sarah's story

Sarah, an Aboriginal woman from Victoria, contacted the National Debt Helpline in April 2020 as she told us she was struggling to pay rent and was in arrears. Sarah said she is now living off Centrelink income.

Sarah advised us that she was offered a job, but it has now been put on hold due to businesses closing.

Sarah told us that she is paying off a number of debts from payday lenders and has utilities debts. Sarah thinks she has about four payday loans. Sarah said she has loans from Cash Converters, owing a total of around \$1400, and owes Lion Finance approximately \$2000. Sarah said she also owes a debt collector around \$500 and \$280 for other loans, as well as owing around \$600 to Credit Corp.

Sarah told us her brother is staying with her to help pay the rent temporarily whilst she isn't working. We referred Sarah to a local financial counsellor for further assistance with her debts, and also suggested she contact a housing organisation to get assistance with her rent.

Case study provided by Consumer Action Law Centre

When analysing the calls from Victorian Aboriginal community members that Consumer Action received regarding payday loans and Google search terms used to find the Koori Help website, the lender 'Cigno' is mentioned quite often. Cigno is a company without a credit licence that arranges loans similar to payday loans, but which are not regulated by the *National Consumer Credit Protection Act 2009* (Cth). As the loans they arrange are not subject to regular cost caps, they charge excessive fees that can often amount to many times the original loan amount. During 2020, the Australian Securities and Investments Commission (ASIC) commenced legal proceedings against Cigno and their partner association BHF Solutions alleging they provided credit to people without a licence.²⁰ ASIC has also made product intervention orders against Cigno twice.²¹

Payday lending often masks insufficient income, and the reality is that a credit product is clearly not suitable for people who cannot afford the high repayments. More needs to be done to raise awareness of the dangers of these products, and ensure Victorian Aboriginal community members have access to legal and financial counselling assistance when they are caught out by these products. One way of doing this is increasing access to financial counsellors and legal assistance for all Aboriginal communities. Centrelink benefits have also recently been reduced back to virtually the same rate as prior to the pandemic, which will leave many people in financial hardship. We strongly support raising the rate of Centrelink benefits to lift people out of poverty. We also need stronger protections implemented to make these products more affordable and safer for people.

²⁰ ASIC, 20-226MR ASIC commences proceedings against Cigno and BHF Solutions over unlicensed credit activity, 30 September 2020, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-226mr-asic-commences-proceedings-against-cigno-and-bhf-solutions-over-unlicensed-credit-activity/>

²¹ ASIC, 19-250MR ASIC makes product intervention order banning short term lending model to protect consumers from predatory lending, 12 September 2019, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-250mr-asic-makes-product-intervention-order-banning-short-term-lending-model-to-protect-consumers-from-predatory-lending/>; ASIC, 20-159MR ASIC consults on second product intervention order to stop continuing consumer harm, 9 July 2020, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-159mr-asic-consults-on-second-product-intervention-order-to-stop-continuing-consumer-harm/>

Amanda's story

Amanda was a current client of VALS in a tenancy arrears matter when in June 2020 she mentioned to her lawyer that she had a number of outstanding payday loans that were causing her a lot of stress. Amanda is a single woman in her 50s who lives in government housing and is reliant on the Disability Support Pension. Amanda can sometimes spend more than she receives in income and this is often because of unexpected expenses such as travel and medical expenses.

VALS requested the loan documents from the payday lender and looked to see if the responsible lending legislation was followed. VALS then sent a complaint letter to the payday lender asking them to refund the interest and fees paid on two loans because they did not follow the requirements of the legislation. The payday lender did not agree to settle the matter through Internal Dispute Resolution and VALS lodged a complaint to the Australia Financial Complaints Authority (AFCA) on behalf of Amanda. After some more negotiations the payday lender agreed to refund the fees and interest on the two loans and not market any more loans to Amanda in the future. Amanda received a refund of \$1,200. The refund helped Amanda get back on her feet and she now better understands the true costs of payday loans.

Case study provided by VALS

Consumer leases

Consumer leases are often marketed to people whose limited access to credit and limited savings make it difficult for them to purchase essential goods outright. As an alternative to credit cards and other measures, consumer leases are another way for people to obtain essential goods for their home by 'renting to buy' the product. Consumer leases allow people to have these goods immediately without having to pay the full purchase price upfront. Although this may seem like a good alternative for consumers, these leases cause significant problems, due to the way they are marketed and sold to consumers and the excessive overall cost of the leases. The arrangements are made worse because consumers do not legally own the goods at the end of the lease.

Unlike other consumer products there is absolutely no cap on the fees that can be charged for a consumer lease, making them often the most expensive form of regulated credit in Australia.²²

Another issue with consumer leases is the extra fees attached to these contracts, that some people don't find out about until they find themselves in financial hardship. Some extra costs that consumers may need to pay can include:

- ▶ **Dishonour fee:** You may be charged this if the lease provider cannot process the direct debit.
- ▶ **Costs for damaged or stolen items:** If this occurs, you might still have to pay all rental payments until the lease ends.
- ▶ **Termination fees or charges:** If you end the lease early, you might have to pay an amount almost equal to all rental payments for the remainder of the lease.
- ▶ **Insurance and warranties:** Some people are offered insurance or warranties for a leased item, but these are often very poor value for money.

Lauren's story

Lauren called VALS in June 2020 to ask for help with consumer lease contracts she had with a consumer lease provider. Lauren is a single mother to 4 children and her sole source of income is Centrelink benefits.

Lauren entered into 8 contracts with the consumer lease provider between July 2018 and April 2019. Lauren rented a range of household goods, including a TV and a dryer, to furnish her home as well as communication devices, including mobile phones and a laptop, for her 4 children who were moving to live with her permanently. Lauren always struggled to make payments on the contracts because she could barely keep up with her other living expenses.

VALS lodged a complaint with the consumer lease provider and argued that the sum of the contracts were unsuitable for Lauren because they would cause financial hardship. After some negotiations, the consumer lease provider made an offer to settle the dispute with Lauren for approximately \$1,200 in compensation and ended all ongoing contracts, allowing Lauren to keep all the goods without having to make further payments. Lauren chose to accept this offer. The compensation paid to Lauren was very useful over the Christmas period.

Case study provided by VALS

²² ASIC, *REP 447 Cost of consumer leases for household goods*, 11 September 2015, <https://www.asic.gov.au/regulatory-resources/find-a-document/reports/rep-447-cost-of-consumer-leases-for-household-goods/>

The problems associated with consumer leases are particularly prevalent in rural Aboriginal communities where issues such as geographical isolation and financial hardship can make it more difficult for people to obtain goods outright, making them appealing targets for consumer lease companies. People often sign up to consumer leases for essential items such as fridges, washing machines, or even computers for their children.

Throughout 2020, Aboriginal community members who called Consumer Action's financial counsellors and lawyers told us about a number of issues with their leases including feeling harassed by the lessor, inappropriate use of Centrepay to make lease payments, and unaffordable repayments.

VALS assisted five clients last year with their consumer leases as well as one client who had contacted VALS for assistance as they had been referred to a debt collection agency over their consumer lease debt.

The 2013 Indigenous Legal Needs report named consumer leases as an unaddressed consumer issue for Victorian Aboriginal communities, amongst other consumer credit and debt issues.²³ Since 2013 little has been done to protect consumers from these unfair rent-to-buy products and contracts. Additional funding for legal assistance, financial counselling and outreach services could help Victorian Aboriginal communities access sufficient assistance to deal with these issues, but law and policy reform is also needed to stop unethical practices and the unfair contracts. For example, consumer lease providers should not be able to take lease payments from people's Centrelink benefits via Centrepay.

Irresponsible lending

Responsible lending laws prohibit lenders and consumer lease providers from offering credit or consumer leases unless they have assessed the financial situation of the person and verified that people can afford to make repayments without suffering substantial financial hardship. The lender must be satisfied the loan is 'not unsuitable' for the borrower.

Many calls to our advice services about credit products such as credit cards, payday loans and consumer leases involve potential breaches of responsible lending laws. Other issues also often raised in these calls include misleading and deceptive conduct and inadequate hardship assistance. In our cases involving irresponsible lending, we are able to give advice to people on their rights and potential redress.

We are worried that bad lending behaviour will be turbocharged if these laws are removed, as proposed by the Federal Government, as people will have fewer rights to recourse against banks and other lenders.²⁴ Legislation to repeal responsible lending obligations for most lenders and brokers is currently before Parliament.²⁵

The proposed reform would also reduce the likelihood that lenders would face court penalties for breaching lending standards. For the largest banks, the ability for regulators to take court enforcement action for lending misconduct would be almost entirely removed. It would also weaken credit assessments, by reducing the requirements for lenders and brokers to verify information on loan applications and ensure loans are suitable.

²³ Above n. 1, page 54

²⁴ The Hon Josh Frydenberg MP, 'Simplifying access to credit for consumers and small business', 25 September 2020, <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/simplifying-access-credit-consumers-and-small>

²⁵ National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 (Cth)

Michelle's story

Michelle is an Aboriginal woman living in Victoria with her partner and young children. Michelle is a survivor of family violence from her ex-partner.

Michelle contacted Consumer Action about 3 debts. She told us that after having an account with a bank since childhood, when she was an adult, she noticed that the account had gone into overdraft, despite never having applied for an overdraft or discussing it with the bank. Michelle's abusive partner at the time found out about the overdraft and pressured her to withdraw money for him, and so Michelle's outstanding balance kept increasing. After a few years, the bank sold the debt to a debt collector. Following Consumer Action's advocacy, the debt collector agreed to waive the outstanding amount.

A second issue Michelle informed us about was a credit card which was obtained after Michelle's ex-partner pressured her into applying for it for him. Michelle's ex also stood over her and forced her to apply for a credit limit increase for the card over the phone, which was approved even though the card limit had previously been exceeded. Michelle never benefited from any of the funds that her ex used on the credit card, however he didn't make any repayments – she made all the repayments herself including after she fled the relationship. This debt was also sold to the same debt collector as the first debt.

When Michelle came to Consumer Action in 2019 the bank agreed to buy the debt back from the debt collector. The resolution process at the bank has been sluggish, with long delays and the bank incorrectly communicating with Michelle directly while she was represented.

Michelle told us that when the debts were with the debt collector, she was struggling to afford to pay anything, and she also did not know what the debts were about. When she asked the debt collector for documents about the debts, the debt collector delayed providing them and then later told her they didn't have to provide them to her.

Another issue Michelle told us about occurred after a payday lender provided her with a credit contract which she entered into after fleeing the violent relationship with her ex-partner. Michelle was in a position of financial hardship as a result of fleeing family violence, Michelle told the lender that she was fleeing, yet the payday lender still decided to provide Michelle with a seemingly unaffordable loan. With Consumer Action's assistance, the dispute was resolved after arguing that the payday loan company failed to meet its responsible lending obligations and raising details of Michelle's difficult circumstances.

Case study provided by Consumer Action Law Centre

We are concerned about the impact the proposed changes would have on the Victorian Aboriginal community. The fact that lenders are still entering into unaffordable contracts illustrates the need for further financial product regulation and stronger reforms – we should not be weakening current protections. We also should ensure that more suitable options are available to community. The needs of the Victorian Aboriginal community must be considered when proposing such changes.

Debt vultures and debt collection

We have seen the commercials from 'credit repair' or 'debt relief' firms promising to deal with your debts and to fix your credit report. While these promises sound great, the reality is often much worse.

These debt vultures, also known as debt management firms, can exacerbate people's financial hardship. These are operators that often charge an upfront or hidden fee to consumers, proposing to help them negotiate with lenders, repair their credit report, restructure debts, arrange repayment plans, or save the family home from repossession. Some lodge caveats against the family home to secure their fees, even when services have not been provided or did not help to resolve the financial hardship or debt problems.

The ASIC report into the debt management industry in 2016 found that:²⁶

- ▶ fees and costs were opaque;
- ▶ fees were often high and heavily front loaded;
- ▶ some sales techniques created high pressures sales environments;
- ▶ little information was provided about important risks;
- ▶ some firms had a poor understanding of the relevant law and the consequences of particular strategies; and
- ▶ these firms rarely referred consumers in financial hardship to free, alternative sources of help.

According to research from Quantum Market Research in December 2020, approximately 1.4 to 1.9 million Australians have paid for debt management or credit repair services in the last 12 months.²⁷ These companies often target people in financial hardship with poor quality debt advice and services. This is also why we call them 'debt vultures'. The research found that debt management companies, which are almost entirely unregulated, are reaching a large proportion of Australians with their advertising, largely through TV and online advertising. Over half (55%) of survey respondents had seen or heard advertising in the past year from companies providing advice or services to people to help deal with debt problems or repair credit reports. This is especially concerning as through the COVID-19 pandemic we know that consumers are concerned with their debt.

Although this isn't an issue that has come up a lot in 2020 during our work with Victorian Aboriginal communities, we are concerned that perhaps people have not recognised problems with services they might have signed up to and are not seeking help. Throughout 2020, Consumer Action still had four calls to our advice lines seeking advice on debt vultures (two to our financial counsellors and two to our legal advice lines).

²⁶ ASIC, Report 465: *Paying to get out of debt or clear your record: The promise of debt management firms*, January 2016, <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/>

²⁷ Quantum Market Research, *Debt Management Firm Research Report*, commissioned by Consumer Action Law Centre, December 2020, <https://consumeraction.org.au/up-to-1-9-million-australians-paid-debt-vultures-in-the-last-12-months-report/>

With an increase in housing arrears and problems paying utility bills, as demonstrated by the data above, we are concerned some Aboriginal consumers would turn to a debt management firm that advertise themselves as 'debt fixers'. Once regulatory relief measures and Centrelink payments are rolled back it is possible we will see an increased use of debt management companies in Victorian Aboriginal communities.²⁸ VALS also had 12 calls to their services seeking assistance on debt collection. The number of calls throughout the pandemic regarding debt collection is cause for concern. Not only are companies contacting Victorian Aboriginal consumers during a pandemic and 'chasing' them for money, but we are also concerned that this could lead people to seek help from debt vultures to deal with the debt collectors.

We were pleased to see the Government recently introduce a licencing regime for debt vultures, which will commence on 1 July 2021.²⁹ We now need to ensure that ASIC reject licence applications from predatory debt vultures. We also want to see a second tranche of reforms that would introduce specific conduct requirements to stop some of the most harmful practices we see such as upfront fees and not acting in clients' best interests.³⁰ There also needs to be more funding for outreach to upskill and inform community which can be done via information sessions and through connection with local organisations to help Victorian Aboriginal community members make the right decision for themselves.

Jack's story

Jack is an Aboriginal man in his 30s who called our National Debt Helpline in May 2020 regarding some debt issues. He was referred to us by one of his creditors. Jack said that he called a debt fix company to sort out some of his debts.

The repayments that he would have had to make were \$300 per fortnight. Jack also mentioned to us that he has no assets. He told us that he called this company due to a few debts he incurred some time ago. He told us that he was not sure what his debts were, but knows there is an old credit card, and that Credit Corp last contacted him 18 months ago in relation to a debt.

Jack told us that his father passed away a few years ago and that his father passed away due to suicide because of financial stress. Jack told us that he does not want the same thing for himself and wants to get these debts sorted as quickly as possible. Jack also told us that after his father passed away, he took on some of his bills, and to pay them off, stopped paying his own. With the help from one of our financial counsellors, Jack has been able to discuss what options are available to him. One option he has been looking at is potentially filing for bankruptcy. He has also since been able to obtain a copy of his credit file to see what debts are still there.

Our National Debt Helpline organised a warm referral for a local financial counsellor who will be able to assist Jack going forward.

Case study provided by Consumer Action Law Centre

28 For example, on 1 January 2021 a range of temporary debt relief measures ended which included a temporary increase to the minimum amount of debt that can trigger bankruptcy (increased to \$20,000, now reduced to \$10,000) and an increase to the timeframe for a debtor to respond to a bankruptcy notice (increased to six months, but now reduced to 21 days): see <https://www.afsa.gov.au/about-us/newsroom/temporary-debt-relief-measures-ended-1-january-2021>

29 National Consumer Credit Protection Amendment (Debt Management Services) Regulations 2021 (Cth)

30 For more information, see Consumer Action Law Centre et. al., *Licensing debt management firms: Exposure draft regulations submission*, 15 February 2021, <https://consumeraction.org.au/licensing-debt-management-firms-exposure-draft-regulations/>

Telecommunications products and services

In our 2020 Project report, we noted a significant rate of our Community Engagement Survey participants said they had been sold extra telecommunications products they did not need but that telecommunications issues were not a common type of enquiry from Victorian Aboriginal community members in 2019.³¹ However, in 2020 a common theme of upselling of unaffordable products, unrealistic hardship and poor dispute resolution emerged, and enquiries about telecommunication providers increased.

We believe these systemic issues in the telecommunication sector have been exacerbated in 2020 by the increased reliance on telecommunications for work and school and keeping in touch with family necessary during the COVID-19 emergency.

The initial response to the COVID-19 emergency from the major telco providers was helpful, with temporary pauses on disconnections, and agreements to pause debt collection and not to charge fees through March and much of April. However, the official industry and government response, released on 17 April 2020 committed to only minimal supports, hardly more than required by the industry code. This weak set of principles set the scene for telco providers to simply not continue their earlier helpful commitments, leaving people with the stress of increasingly unaffordable debts and threats of disconnection.

James' story

James is a young Aboriginal man living in Metropolitan Melbourne. He was referred to the National Debt Helpline in April 2020, during the COVID-19 pandemic. He is studying for a Cert III and was receiving the JobSeeker payment.

James has a disability, for which he receives the Mobility Allowance. James also told us about family violence he has experienced from his father. James said he was being contacted by debt collectors for multiple debts, including: buy-now-pay-later, a payday loan, a consumer lease and a Telstra debt of nearly \$3000, from 2017. James told us the following about his Telstra debt:

In 2017, when he was approximately 20 years old, James entered a 24-month contract for a Samsung Galaxy S8, which included an insurance policy, in-store at a JB Hi-Fi. The salesperson conducted a credit check and was aware James was on Centrelink. The monthly cost was \$80, which James felt was affordable at the time.

James lost the phone two months later and his insurance claim was declined. James said he was requested to pay out the contract. James complained to the Telecommunications Industry Ombudsman (TIO), but said the TIO responded that the claim had been denied due to the SIM still being active in another phone, and the account remaining active with a usable number. James said the nearly \$3000 Telstra debt is on his credit file as a default. James updated us in October 2020 that Panthera Finance has been harassing him about the Telstra debt and that he has been receiving more calls about it during the COVID-19 emergency in Victoria, which has been adding to his stress in what is already a very difficult time.

Case study provided by Consumer Action Law Centre

³¹ Above n. 3, page 20.

Katy's story

Katy is an Aboriginal woman who lives in regional Victoria and who has recently gained custody of her grandchildren. She called our National Debt Helpline in September 2020 regarding issues she was having with Telstra. This is what she told us:

Katy is currently receiving Centrelink payments because the COVID-19 emergency has impacted her ability to work. Her Telstra bills were about \$400 per month, which she has been struggling to pay now that she is not working. Katy disconnected her Foxtel service; however, her bills increased to approximately \$500 per month.

Katy said she has two Telstra bills, because Telstra suggested, and, in fact, pressured her to put her daughter-in-law, Silvie's, mobile and internet bundle in Katy's name. This was because Silvie had no formal ID and poor credit history with Telstra, despite the fact that Katy was not using Silvie's services. Silvie intended to get the services for her daughter (Katy's granddaughter).

Silvie is now incarcerated, so Katy is paying for it. She tried to speak with Telstra's hardship team but she has been getting the 'ring around' and no suitable hardship options have been made available to her.

On the advice of our financial counsellors, Katy called the Telecommunications Industry Ombudsman (TIO) to lodge a complaint. She is upset and is feeling very anxious about how she will be able to keep paying the huge bills.

Case study provided by Consumer Action Law Centre

Our case studies show that some Victorian Aboriginal community members were not offered a hardship arrangement or offered an appropriate payment plan that they could afford, and some telecommunications provider responses were insensitive to the circumstances the customers were dealing with. Some of these consumers were dealing with the potential threat of disconnection, while some were also sold unaffordable products which were not needed. Some telecommunication companies offered concession phone plans, such as \$40 a month plan; however, we found that these were also not good value. The data amounts offered were low, and there was a risk of overuse of data which would result in higher bills.

The Australian Communication Consumer Action Network's (ACCAN) research report, *Youth Check-In*, also demonstrated some of the problems experienced by young Aboriginal and Torres Strait Islander people with phone and internet services (see box page 33).³²

On 26 November 2020, Consumer Action's report, *The Trouble with Telcos: Stories from 2020*, was released, demonstrating the negative impact of weak commitments from this essential service. The evidence in this report shows the need for better, modernised regulation of the telecommunication sector to adequately protect people.

On that same day, the ACCC brought Federal Court proceedings against Telstra for unconscionable conduct due to the systemic mis-selling of telecommunications products to Aboriginal and/or Torres Strait Islander peoples in northern and central Australia. In May 2021, the case was finalised with Telstra fined \$50 million for its unconscionable sales practices.³³ Unfortunately, we have seen similar misleading and unfair sales conduct in Victorian Aboriginal communities.³⁴

³² Australian Communication Consumer Action Network (2020), *Youth Check-In: Exploring young people's experiences of phone and internet services*, <http://accan.org.au/our-work/research/1813-accan-youth-check-in-research-report>.

³³ ACCC, *Telstra to pay \$50m penalty for unconscionable sales to Indigenous consumers*, 13 May 2021, <https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers>.

³⁴ Consumer Action Law Centre, *Telstra cops record \$50 million fine, consumer groups say industry must improve its practices*, 13 May 2021, <https://consumeraction.org.au/telstra-cops-record-50-million-fine-consumer-groups-say-industry-must-improve-its-practices/>.

Statistics from ACCAN's Youth Check-In Research Report

x2



Twice as many young people in Aboriginal and Torres Strait households had experienced unexpected mobile charges frequently or occasionally (41% compared to 19% of youth not in Aboriginal and Torres Strait households).

1 in 3



One third (33%) of Aboriginal and Torres Strait Islander young people are on a high-cost plan, significantly more than non-Indigenous young people (22%), yet they are more likely to be on a lower personal income i.e. under \$99 (74% compared to 54% of non-Indigenous respondents).

x5



Aboriginal and Torres Strait Islander young people (33%) are also over five times more likely than non-Indigenous young people to have been contacted by their telco about money they owe, also being close to three times as likely to have taken out a payday loan in order to pay their phone bill (32% compared to 11% of non-Indigenous youth).

The telecommunication industry writes the consumer protection code that has rules about sales and hardship. As we can see, this approach does not work, and consumers are the ones that are being seriously affected by weak rules that are difficult to enforce. Without directly enforceable rules developed by the independent regulator, people are being left with unaffordable debt, poor or no financial hardship responses, the stress of poor dispute resolution and disconnections.

We continue to raise these concerns to Government, the Department of Communications,³⁵ the industry peak body known as the Communications Alliance, regulators and the Telecommunications Industry Ombudsman (TIO). These are still issues that many Victorian Aboriginal community members are facing day to day.

Suzie's story

Suzie is an Aboriginal woman and single mother who has recently transitioned to the Disability Support Pension. Suzie was previously casually employed but has always been on a low income. She lives in public housing with her teenage children.

Suzie has been a long-term customer of her internet and phone provider. Over the years she has added on more products which now include, home internet, two phone plans with high end phones leases (one for her teenage daughter), premium Foxtel package and Xbox gaming package. The minimum cost for all these items each month was \$480 per month. This amount did not include extra data charges which were sometimes incurred by her teenage daughter. Suzie did not know how much her bill was every month and was surprised to know it had crept up to the \$400 mark. The amount of \$480 per month was clearly unaffordable and Suzie quickly ended up with a large debt of \$1,800.

With the assistance of VALS, Suzie was able to negotiate with her provider to waive a substantial portion of the bill. Suzie now understands that she can't afford the current bill herself and she has made arrangements for her children to contribute to the costs along with moving to prepaid plans for her mobile once her contract expires.

Case study provided by VALS

35 Department of Infrastructure, Transport, Regional Development and Communications

Energy hardship

COVID-19 has caused significant disruption to households in Victoria, with more and more people learning and working from home. Throughout winter in 2020, the need for essential energy services was particularly pressing. COVID-19 has highlighted the need to ensure that people's health is not put at risk due to energy disconnection or under-usage. Accessing appropriate heating and power for essential household goods is critically important.

Many of our clients face a hard choice about whether to turn on heating or cooling out of fear of the cost. Billing cycles may mean large bills arrive after COVID-19-related income support measures are reduced, home loan payment deferrals are reassessed, savings or superannuation are exhausted, and individuals face uncertain or reduced employment.

When compared to previous years, there has been an increase in the proportion of calls from Victorian Aboriginal community members to our financial counsellors at the National Debt Helpline regarding utilities debts. As noted above, utility bills were flagged as a type of financial difficulty in 40% of calls to our financial counsellors in 2020, up from 29% between July 2017 and June 2019.

Utility bills were one for the largest debt concerns mentioned in the 2013 Indigenous Legal Needs Report. The Energy and Water Ombudsman Victoria (**EWOV**) also found that in the 2019/20 financial year more than 1 in 10 of EWOV's Aboriginal and Torres Strait Islander customers were facing imminent disconnection, closely followed by those who had been disconnected. This compared to only 3.5 in 100 non-Aboriginal and Torres Strait Islander customers facing imminent disconnection.³⁶ We also discussed these debt issues in our 2020 Project report where we showed that there was still further need for reforms in the sector.

Martha's story

Martha was recently released from prison to a new supported residential unit. Martha needed to set up an electricity account for her new home. Martha and her VALS caseworker called several energy providers to try and get Martha connected. Each provider ran a credit check on Martha and refused to connect her because of an old utility bill. None of the providers told Martha who her Financially Responsible Market Participant (**FRMP**) was – essentially her 'retailer of last resort' that would be obliged to connect her.

Martha and her caseworker thought she might have to stay another night in prison or in a motel because they couldn't get her electricity connected. Martha and her caseworker didn't know that there was at least one provider who could not refuse Martha. Martha's caseworker called the Civil Law Team at VALS to see if they could help. A civil lawyer called EWOV to see if they could help. EWOV told the lawyer who the FRMP was. Thankfully Martha was able to get her electricity connected in time to move into her new home.

Case study provided by VALS

³⁶ Energy and Water Ombudsman Victoria, *Missing The Mark: EWOV insights on the impact of the payment difficulty framework*, December 2020, page 14 https://www.ewov.com.au/uploads/main/Reports/missing_the_mark_report_ewov.pdf

Tim's story

Tim is an Aboriginal man who called our National Debt Helpline in July 2020 regarding a number of debts. Tim said that he had his own business and that it was going well until the COVID-19 pandemic restrictions and business stopped.

Tim told us that he is now working for an employee of his and is earning approximately \$2800 per fortnight. He also stated that he had a couple of rough years and got into debt. Tim said that he has outstanding payments with Sumo Energy for his gas. He told us that there was around \$6000 outstanding. He also said that he has around \$7000 outstanding for his energy bill with Simply Energy. He said that he is seeking payment arrangements with both providers.

He told us that he has three credit card debts, approximately \$5,000, \$11,000, and \$14,000. He told us that he has made no payments after Christmas as his business was starting to slow down. Tim said that he currently has two car loans, one with BMW Finance, approximately \$3300 is left owing and that he is currently paying the balloon payment. He told us that he also has another with BMW Finance, approximately \$14000 owing, and a balloon payment of approximately \$8500. Tim also told us that he is 'overwhelmed and struggling with debts' and has since been referred for further assessment and support.

Case study provided by Consumer Action Law Centre

Disconnections

We know from our previous research in the energy sector that disconnections are a serious issue of concern.³⁷ During the COVID-19 crisis, we saw essential service providers, such as energy companies, telecommunications companies, banks and insurers, having a critically important role to play in supporting the communities they service, and launched a campaign for people to 'Keep Connected'. We called on essential services companies to commit to providing relief for the customers, including stopping disconnections.

A coalition of over 40 community groups endorsed a statement calling for these relief measures. The coalition was incredibly broad, with signatories including Djirra, Indigenous Consumer Assistance Network, Lakes Entrance Aboriginal Health Association, MoneyMob, Talkabout, and the National Aboriginal and Torres Strait Islander Women's Alliance.

The response to the campaign was positive. Regulators, both nationally and in Victoria, introduced a 'Statement of Expectations' which set out how they expected retailers to behave during the pandemic. This included putting significant restrictions on disconnections, meaning we had less calls about disconnections and less calls about the threat of disconnections than in previous years. Based on data from the Essential Services Commission (ESC), it appears only one electricity disconnection for non-payment has happened in Victoria since the COVID-19 restrictions were imposed up until December 2020, which is a dramatically different scene to what we saw before COVID-19. Data released by the ESC showed there were 36,265 disconnections in 2018-19.³⁸ The campaign helped to achieve this, but governments, regulators and industry also already recognised extraordinary support measures were required.

Unfortunately, the retailers have since recommenced disconnections (despite the Statement of Expectations remaining in place), with close to 2,400 people disconnected in March 2021 alone (2273 electricity and 114 gas customers).³⁹

We welcome the regulators' proactive approach in setting out its expectations in relation to hardship and disconnections during COVID-19, which has been supported by distributors

largely refusing to action disconnection requests from retailers. However, we believe that we need tighter restrictions on disconnections going forward to ensure people's health and wellbeing is not put at risk due to energy disconnection.

Utility Relief Grants

Through our community engagement sessions in 2019 we were able to determine that many people we spoke with were unsure whether they had legal rights regarding their energy bill, were unsure if they could get assistance with organising hardship arrangements, or apply for a Utility Relief Grant (URG).

An URG is a one-off payment that is applied if you are experiencing temporary financial crisis. The grant is paid directly to the energy retailer to put towards the person's energy debt. During the application process and while an application has been made, all extra late fees and any other fees that may occur are stopped until the application is processed.

On 1 October 2020, the ESC implemented some much-needed reforms that require retailers to assist customers to complete URG application forms. However, we have received a number of calls from non-Aboriginal consumers complaining of long wait times for URG application processing. We also know that as of 28 February 2021 there were just under 278,000 customers who were in arrears but not receiving payment assistance or deferrals, so we believe there are more people in hardship who are eligible for URGs and assistance from their retailer than are currently receiving it.⁴⁰ We will be exploring the accessibility of URGs during COVID-19, and throughout 2021, in our future outreach sessions with community.

We support an increase in concessions, particularly via the URG scheme. It is critical that applications for these concessions are accessible and assessed promptly. This should be complemented with better support from retailers and government that addresses long term and chronic financial hardship, as opposed to one-off grants to relieve temporary hardship. We also urge the ESC to enforce requirements for retailers to offer more support to households applying for URGs.

37 For example: Consumer Action Law Centre (2015), *Heat or Eat: Households should not be forced to decide whether they heat or eat*, <https://consumeraction.org.au/wp-content/uploads/2015/08/Heat-or-Eat-Consumer-Action-Law-Centre.pdf>

38 Essential Services Commission, *Energy disconnections down by more than half*, 26 September 2019, <https://www.esc.vic.gov.au/media-centre/energy-disconnections-down-more-half>

39 Essential Services Commission (2021), *Energy customer support during coronavirus pandemic*, March 2021 <https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/energy-customer-support-during-coronavirus-pandemic>

40 Essential Services Commission (2021), *Energy customers during coronavirus pandemic – data up to 28 March 2021*, March 2021, page 4, https://www.esc.vic.gov.au/sites/default/files/documents/energy-customers-during-covid-march-2021-update-20210416_1.pdf

Funeral insurance

In this report, 'funeral insurance' refers to the term as commonly understood, not as legally defined. 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.

The 2013 Indigenous Legal Needs Report identified that funeral insurance issues as a major systemic issue impacting Victorian Aboriginal communities.

This was also identified as a significant issue in our 2020 Project report, which set out two key reasons why funeral insurance appears to have such a significant impact on communities:

- ▶ 'Sorry Business' and the cultural aspects and significance of funerals within Victorian Aboriginal communities and companies taking advantage of this; and
- ▶ targeted practices to sell to Victorian Aboriginal communities with 'tailored' products designed for them.

Funeral insurance has been one of the most enquired about consumer issues, although VALS has seen a drop in enquiries since 2019. We believe the drop in enquiries might be due to outreach sessions being on hold during the pandemic, as many of these enquiries came from people who engaged with our services during community outreach. It is also possible that community had heightened concerns about mortality during COVID-19, and wanted to ensure they were covered in case something happened.

During 2020, issues with funeral products have still been raised multiple times. Our 2020 Project report showed that funeral insurance was the number one issue that was raised with VALS during their community engagement work in 2019. In 2020, there were five enquiries about funeral insurance to VALS, whilst Consumer Action received nine calls about the matter, all to our legal advice and worker advice lines.

Emily's story

Emily was already a current client of VALS in a police complaint matter, when she called her lawyer about another funeral insurance issue she needed assistance with.

When Emily was only 20, homeless and suffering from alcoholism and mental health problems, the Aboriginal Community Benefit Fund (ACBF) signed her up to a Funeral Insurance Plan. Emily's highest level of education was year 9 and she struggles to read and write. Emily did not understand the insurance policy. The ACBF salesperson did not explain the policy to Emily and just told her she needed to sign the necessary paperwork and \$10 per fortnight would be deducted from her Centrelink payment. Emily thought she was signing up to a fund, where all the money she paid would be used for her funeral. In reality Emily entered into a contract for a poor value funeral expenses policy, where if she stopped making payments, she would lose all the money she had paid in premiums.

After losing contact for a period, Emily got back in contact with VALS in early 2019 and in May 2019 VALS lodged a complaint with ACBF, claiming that they misled and deceived Emily. The complaint was not resolved and VALS then lodged with AFCA.

After a long AFCA decision process involving many other ACBF complaints AFCA determined that ACBF misled and deceived Emily and ordered that ACBF must pay back all the premiums Emily paid with interest. Emily's determination to continue this complaint over a period of more than 2 years was crucial to her success.

Case study provided by VALS

Out of the 9 calls that Consumer Action received, 7 were regarding issues with ACBF/Youpla. VALS also received a number of calls about ACBF/Youpla, which is shown in the case studies provided. ACBF/Youpla is a company that was specifically targeting their funeral insurance products at Aboriginal communities.

In Emily's story, AFCA also found that the product was a financial service under the AFCA rules, and that they had jurisdiction to make such a determination, which is a positive step forward for many clients who have suffered a loss with these types of funeral insurance products. Another AFCA determination found that a client was misled during the sales process. This was due to the word 'fund' being used as the ordinary meaning is a 'sum of money saved or made available for a particular purpose' which AFCA found was not the case.⁴¹

ACBF's sales practices were also found to be misleading by AFCA due to the term 'Aboriginal' being used in ACBF's name, and the colours of the Aboriginal flag. This gave the impression that ACBF was an Aboriginal owned and operated company, which AFCA also found was not the case. It was only in early 2020 that an Aboriginal person became one of the owners of ACBF.

The reason why these findings are so significant for the Aboriginal community is because their concerns have been heard and now customers who have suffered due to the conduct of ACBF might be encouraged to make complaints. Hopefully these AFCA determinations will also encourage other companies in this space to operate fairly when associating with community. ASIC is still deciding whether to grant ACBF an Australian Financial Services Licence, which would allow ACBF to sign up new customers if granted. ASIC is also taking enforcement action against ACBF for alleged misleading and deceptive conduct in its sales processes.⁴²

Linda's story

Linda is a 56 year old Aboriginal woman and mother of 7 children who lives in a small rural Victorian town. In 1999 a sales person 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 on 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. Linda later signed up her other two children at a later date. Linda thought ACBF were 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 the policies which amounts to over \$60 per fortnight. Linda has paid over \$26,000 in premiums to ACBF. In another 10 years Linda would have paid over \$40,000 (if premiums stayed at their current rate).

Case study provided by VALS

Sally's story

Sally is a 60 year old Aboriginal woman who lives in rural Victoria. Sally signed up to the Aboriginal Community Benefit Fund in 2003 when Sally was visiting her sister in QLD. A salesperson from ACBF came to the family home. Sally thought ACBF were an Aboriginal company. Sally's sole source of income is the Aged Pension. She pays a premium of \$21 per fortnight and has paid about \$7,500 in premiums. Sally's benefit amount is \$10,000. In 5 years' time (when Sally is only 65 years old) she will have paid more in premiums than her benefit amount.

Case study provided by VALS

⁴¹ Australian Financial Complaints Authority, *Determination: Case number 635446 - Aboriginal Community Benefit Fund No 2 Pty Ltd*, 16 September 2020, <https://service02.afca.org.au/CaseFiles/FOSSIC/635446.pdf>

⁴² ASIC, *20-262MR ASIC commences proceedings against ACBF Funeral Plans and Youpla Group concerning funeral expenses insurance*, 29 October 2020, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-262mr-asic-commences-proceedings-against-acbf-funeral-plans-and-youpla-group-concerning-funeral-expenses-insurance/>

Buy now pay later

Buy now pay later (**BNPL**) credit is now available in most retail stores. These products are easy to obtain and almost anyone can access them. Popular BNPL providers include Afterpay and ZipPay. You generally shop at the retailer and take home the goods, then repay the BNPL provider in instalments over a number of weeks.

What these products do is allow you to purchase an item, new or used, and take it home then and there. You pay off the amount owing either fortnightly (like Afterpay), or in other instalments that you can arrange yourself through their website or 'apps'. BNPL providers are not required by law to ensure repayments are affordable under responsible lending obligations.

We have seen some of our clients sign up to these products because they are financially vulnerable or without understanding the full implications. They later find themselves with large debts they cannot afford to repay and then have further late payment fees added on top.

Donna's story

Donna was a current client of VALS in a tenancy arrears matter, when in June 2020 she mentioned to her lawyer that she had several outstanding buy now pay later (**BNPL**) loans. Donna had 14 loans with a BNPL provider between October 2019 and December 2019 and she 'borrowed' a total of \$920 for a range of goods including purchases from the chemist and a pet store. Payments on all the loans were broken up into 4 fortnightly payments. This meant that Donna was making multiple payments each week for most of the loans. The financial burden of making the payments soon added up and Donna was unable to maintain the payments and her other living expenses (which she was already struggling with). Donna then defaulted on the loans and the BNPL provider sent the debt to their debt collector.

VALS contacted the BNPL provider and they agreed not to charge Donna any late fees because of her circumstances. Donna is now trying to make small payments towards the balance of her BNPL loans.

Case study provided by VALS

Corporate regulator ASIC found the number of active BNPL accounts in Australia grew by 38 per cent in the year through to June 2019. ASIC said that one in five surveyed were missing BNPL payments, while others were going without essentials, such as meals, to keep up with repayments.⁴³ This is another cause for concern as it suggests that some people are prioritising their BNPL repayments to retain the ability to buy more products on their account, despite being at risk of financial hardship.

Throughout the COVID-19 pandemic, we have heard anecdotally that there has been an increase in the use of these products in community. However, we have received very few calls from people about this issue. VALS had two enquiries about these products in 2020. One explanation for the discrepancy between the community intelligence we are receiving and our call data is that people we are speaking to on our advice lines have not disclosed that they are using these products as they don't consider them a 'debt' or a problem.

We are concerned that now Centrelink payments have been rolled back some consumers will not be able to afford the repayments for these services and the added late payment fees on top. We are concerned that this could cause consumers to enter a debt spiral, especially for those who started using such products because they were already in an unstable financial position.

We consider that BNPL arrangements should be regulated like other consumer credit products such as credit cards, because they are essentially providing consumers with credit.

⁴³ ASIC, *Report 672 Buy Now Pay Later: An industry update*, November 2020, page 15, <https://asic.gov.au/media/5852803/rep672-published-16-november-2020-2.pdf>

07

CORRELATION between CONSUMER, CREDIT & DEBT ISSUES & other determinants

In our case work, we can see that Victorian Aboriginal communities often present with a range of complex issues that can contribute to them also being impacted by consumer credit and debt problems. Many community members also face more than one consumer, debt and credit issue, often at no fault of their own. This can be caused by a range of determinants which may result in people being placed into a position of disadvantage.

Though we do assist people who are experiencing multiple credit and debt issues, we have found that most are also experiencing difficult life

events, living with a disability, dealing with intergenerational trauma, and other difficult experiences, and some have been dealing with these issues for many years.

At least one determinant was recorded in 61 of the 98 calls to Consumer Action's financial counselling service from Aboriginal clients. A large proportion of these callers were impacted by a 'life event' (84%) (such as COVID-19 disruption), while others were identified as having limited capability (21%) or mental health issues (13%), noting that more than one determinant can be flagged for each call.

FIGURE 12: VALS casefile data showing number of clients experiencing more than one social determinant – July 2017 to December 2019

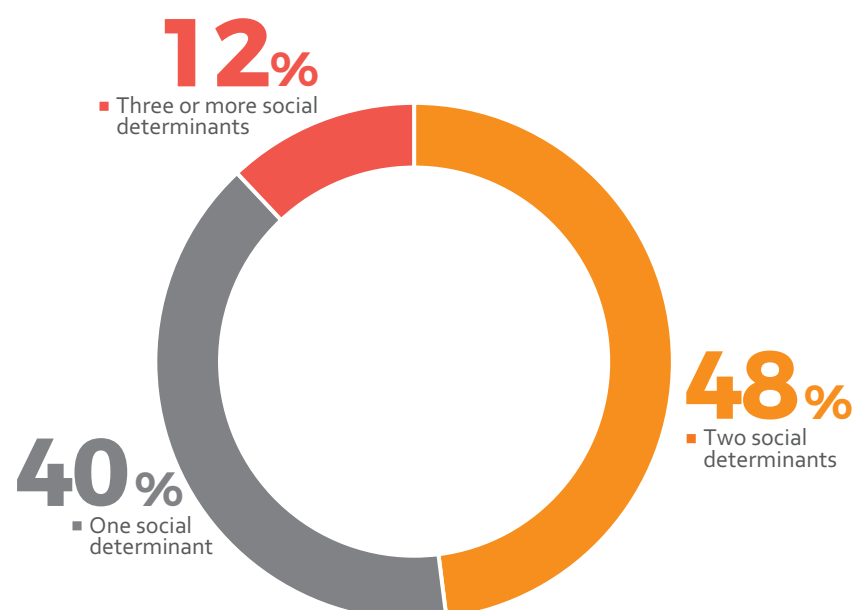
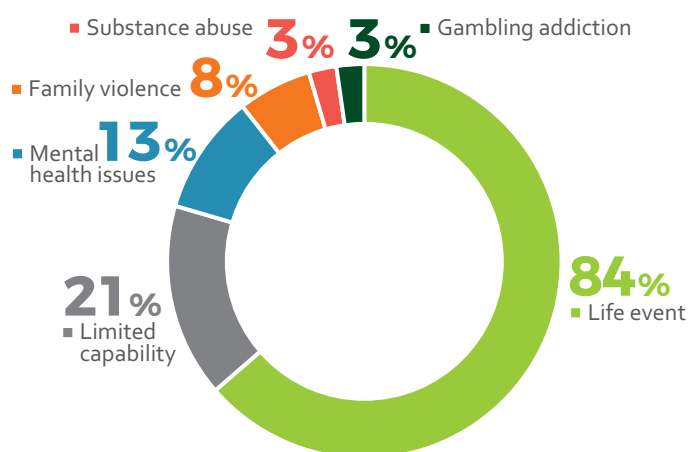
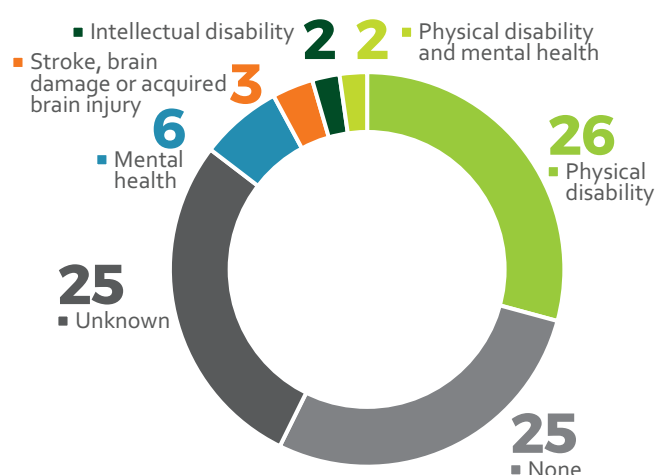


FIGURE 13: Calls to Consumer Action's financial counselling practice 1 January - 31 December 2020 by determinant



A significant proportion of clients seeking assistance from VALS for consumer, credit and debt issues were identified as having disabilities and mental health issues. Of the 89 clients VALS assisted in 2020, 26 had physical disabilities. This data demonstrates importance of this work to continue to improve the quality of life for people also living with a disability.

FIGURE 14: VALS casework by disability – January to December 2020



John and David's stories demonstrate how some of these determinants can link in with consumer credit and debt issues. Some of the difficulties this person dealt with were mental health issues, homelessness, and financial hardship.

David's story

David is an Aboriginal man who was referred to Consumer Action by another community service. We contacted him in May 2020, regarding a substantial credit card debt. David told us that he also has some physical and mental disabilities and is also unable to read or write. David told our lawyers that he is currently receiving the Disability Support Pension from Centrelink.

David told us that he was struggling to pay back his credit card, which he was approved for about 15 years ago. The original debt was approximately \$2,500. David told us that the debt has now gone up to \$10,700. He told us this as he had received an email from a debt collector, asking for the amount to be paid in full.

David told us that he was unable to pay back this debt, as he had no assets, and is currently living in public housing. David also told us that with his health issues, he is in and out of hospital, and would prefer to seek a waiver. With the assistance of our lawyers, we were able to seek a waiver for the debt.

Case study provided by Consumer Action Law Centre

John's story

John is an Aboriginal man from Victoria. John told us he is currently homeless and has mental health issues. John was distressed when he called.

John contacted the National Debt Helpline in April 2020, seeking assistance with harassment from a payday lender. John told us he was being harassed after cancelling direct debits recently.

John said he is being pursued by Money3 for an outstanding loan of \$590. John said that he has other old debts but that he is not being contacted by those creditors. We believe that John needs additional advocacy and support, so referred him to a local financial counselling agency for assistance. John is applying for the Disability Support Pension.

Case study provided by Consumer Action Law Centre

CORRELATION between FINANCIAL HARDSHIP & CRIME

Our community engagement work within the prison system with Aboriginal women in 2019 has shown that there are some links between financial difficulty and crime. As stated in our 2020 Project report, it is not always obvious in our general case work, however, we have seen in some of our case studies that either family members of our clients, or our clients, have had experiences with offending behaviour and financial hardship in the past.

While experiences of poverty and criminality can be attributed to individual circumstances, the connection between both is reinforced and magnified through structural injustice and inequalities.⁴⁴ Some Victorian Aboriginal communities are at greater risk of poverty and criminality due to the lack of equal access to support services, limited opportunities for education and employment, intergenerational trauma caused by the Stolen Generation and other factors of invasion, and discriminatory laws that criminalises the community.

In the past, we have seen people be threatened with criminal charges if they damage or sell property subject to a consumer lease. Some people are unaware of the existence of the laws prohibiting the sale of property under securities, like a consumer lease.

Research from 2004 found that Aboriginal communities were two to three times more disadvantaged than non-Indigenous communities with regards to economic status and almost 70% of Aboriginal individuals between 20 to 24 years old were inactive in educational or employment prospects. Similarly, studies in Canada show that while Aboriginal communities make up merely 4.3% of the country's population, they occupy almost 28-34% of the homeless population.⁴⁵

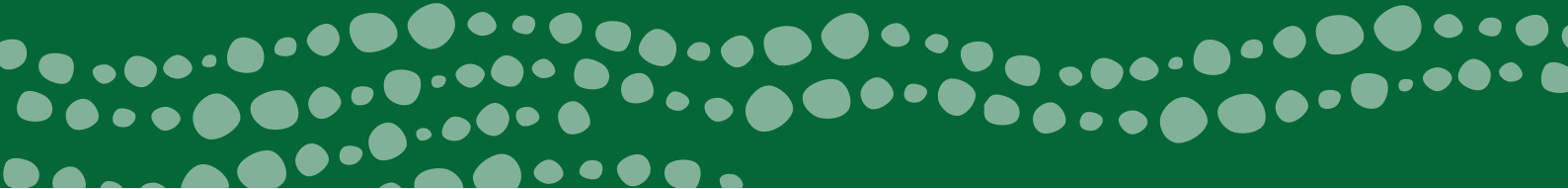
Aboriginal communities are often socially discriminated against and marginalised. They are not provided the same opportunities and access to services and experience financial exclusion that hinders the prospect of obtaining financial stability.

A 2012 study conducted for the Centre for Social Impact commissioned for National Australia Bank identified several factors which may limit financial inclusion in Australia.⁴⁶ These include geographic location, absence of identification documents, unemployment, low incomes, decreased levels of financial literacy, family structure and lower age and life expectancy. Furthermore, the study also confirmed that marginalised communities such as Aboriginal people were significantly more likely to be

44 We would like to thank Master of Criminology students at University of Melbourne for their research on this topic for Consumer Action Law Centre as part of the CRIM90016 Industry Project: Crime and Justice subject.

45 Gaetz et al. (2016) *The State of Homelessness in Canada 2016*. Toronto: Canadian Observatory on Homelessness Press, page 5, https://homelesshub.ca/sites/default/files/SOHC16_final_20Oct2016.pdf

46 Connolly, et al. (2012) *Measuring Financial Exclusion In Australia*, page 26, https://www.csi.edu.au/media/uploads/Measuring_Financial_Exclusion_in_Australia_-_May_2012.pdf;



severely or fully financially excluded with 43.1% of Aboriginal Australians facing severe or full financial exclusion in comparison to the 2012 national average of 17.2%.

Aboriginal people have been found to experience higher levels of legal need, and a higher prevalence of multiple legal problems, compared to non-Aboriginal people.⁴⁷ While there is not much comprehensive nationwide data available about Aboriginal peoples' civil law needs, there is a general understanding of the significant lack of awareness and understanding amongst Aboriginal communities regarding their civil law rights and the avenues that are available to them. This suggests that there is not only a high level of unmet needs but also a high level of unidentified need.⁴⁸

Victorian Aboriginal communities are strong and resilient, yet they are suffering from the lack of appropriate services and funding to overcome these hurdles. Culturally safe and appropriate projects that work in partnership with community and ACCOs, such as the IP Project, to deliver support and services are critically important to help close the gap when it comes to these issues.

47 Updating Justice, *Legal needs of Indigenous people in Australia*, May 2013, Issue 25, [http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ_25_Legal_needs_of_Indigenous_people_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_25_Legal_needs_of_Indigenous_people_FINAL.pdf); National Aboriginal and Torres Strait Islander Legal Services, *Productivity commission Inquiry into Access to Justice Arrangements submission*, November 2013, <https://www.natsils.org.au/wp-content/uploads/2020/12/Justice-Arrangements.pdf>.

48 Above n. 1.

09

CONCLUSION

This report has set out a number of the achievements of the IP Project throughout 2020, and detailed how we adapted to continue our work during the COVID-19 crisis to ensure community were still able to access important information and services relating to consumer, credit and debt issues. We have also provided statistics showing the key issues being raised with us by Aboriginal community members during 2020, and trends we have seen since our 2020 Project report. Some of the key areas of concern included energy hardship, telecommunications, payday lending, consumer leases, irresponsible lending and funeral insurance. We also described the correlations between consumer, credit and debt issues and other social determinants, and the relationship between poverty and criminality.

The need for more access to culturally appropriate services, community outreach and legal education should be of upmost importance for regulators, governments, and industry as

we emerge from the COVID-19 crisis. The 2013 report and our 2020 Project report has shown there is still much more that needs to be done to address the consumer issues facing Victorian Aboriginal communities.

The impacts of COVID-19 and the ongoing effects from the pandemic are starting to become more visible to our services, and we expect there is a high level of unidentified need for consumer, credit and debt assistance in community. This is another reason why community engagement is vital to our work, and why it will also be an ongoing priority for the project.

Below we have made a series of recommendations to not only empower and support community, but to hold industry accountable for their actions and treatment of Victorian Aboriginal consumers.

10

RECOMMENDATIONS

RECOMMENDATION 1

Projects that provide culturally appropriate information and access to justice and services are essential. Therefore, there needs to be sufficient and ongoing funding for projects and partnerships that specialise in working with Aboriginal communities and ACCOs. There also needs to be adequate and ongoing funding support for legal assistance, financial counselling and community legal education on consumer, credit and debt issues.

RECOMMENDATION 2

Regulators should prioritise issues impacting community, in partnership and consultation with community, and ensure community members are remediated for misconduct.

RECOMMENDATION 3

All parties, including community service providers, must embed cultural competency and safety into their practices, and work in partnership to ensure Victorian Aboriginal communities have their voices heard, are aware of their rights and can access culturally appropriate services in the areas of consumer, credit and debt.

RECOMMENDATION 4

All parties, including community services providers, should adopt a strengths-based approach in working with community and enter into partnerships with respect for, and trust in, the leadership, knowledge and services of the community, as recommended by the Close The Gap Campaign Report 2021.⁴⁹

RECOMMENDATION 5

Consult with Victorian Aboriginal community members on strengthening regulation of essential services like energy, telecommunications and lending to help address the consumer, credit and debt issues impacting community.

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

⁴⁹ Lowitja Institute for the Close the Gap Campaign Steering Committee (2021), *Leadership and Legacy Through Crises: Keeping Our Mob Safe – Close The Gap Campaign Report 2021*, page 9, https://humanrights.gov.au/sites/default/files/document/publication/ctg_report_2021_final_web.pdf

GLOSSARY

Aboriginal Community Controlled Organisations (ACCOs)

An independent, not-for-profit organisation, that has been initiated by, and is governed by Aboriginal people; thereby acknowledging the right of Aboriginal peoples to self-determination.

Australian Communications Consumer Action Network (ACCAN)

Australia's peak body for consumer representation in communications, including telecommunications, the internet and broadcasting.

Australian Competition and Consumer Commission (ACCC)

An independent authority responsible for ensuring individuals and businesses comply with Australian competition, fair trading, and consumer protection laws.

Australian Financial Complaints Authority (AFCA)

An external dispute resolution body established to resolve complaints by consumers and small businesses about financial firms.

Australian Securities and Investments Commission (ASIC)

Australia's financial markets conduct regulator, responsible for regulating the conduct of Australian companies, financial markets, and financial services organisations (including banks, life and general insurers and superannuation funds).

Buy Now Pay Later (BNPL)

A financial product where consumers purchase goods or services and pay for them in instalments over a period of time (for example, Afterpay).

Centrepay

A free bill paying service available to people who receive Centrelink, where they can pay bills and expenses as regular deductions from their Centrelink payments.

Client Service Officer (CSO)

CSOs act as a bridge between the legal system and the Aboriginal and Torres Strait Islander community by providing support with legal issues and linking community with services and information.

Community Legal Education Officer (CLE Officer)

CLE Officers work to increase legal awareness and give legal options to community members needing legal help.

Consumer leases

A consumer lease lets consumers rent an item (e.g. a laptop, or a fridge) for a set amount of time by making regular rental payments, typically weekly or fortnightly, until the lease ends. At the end of the lease, the consumer does not own the item, the company still does. The fees and charges are often very expensive.

Debt vultures

Unregulated debt management firms that offer to help people with bills, debts, and credit reports. They are often marketed as “credit repair” or “debt relief” services.

Energy and Water Ombudsman Victoria (EWOV)

A free and independent service that resolves disputes between Victorians and their energy and water retailers.

Essential Services Commission (ESC)

Victoria’s independent regulator of the state’s energy, water, and transport sectors. It also administers the rate-capping system for the local government sector.

Financial counsellors

Financial counsellors provide a free, independent, and confidential service for people experiencing financial difficulty (e.g. credit and debt issues).

Funeral insurance

A 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.

National Disability Insurance Scheme (NDIS)

A national scheme implemented by the National Disability Insurance Agency to support people with a permanent and significant disability that affects their ability to take part in everyday activities.

Small Amount Credit Contracts (SACCs)

Also known as a ‘payday loan’ a SACC is an unsecured loan of up to \$2,000 with a repayment period of 16 days to a year. These loans often come with exorbitant fees and interest rates.

Telecommunications Industry Ombudsman (TIO)

An independent external dispute resolution service for residential consumers and small businesses who have an unresolved complaint about their phone or internet service.

Utility Relief Grant (URG)

A one-off payment applied if a residential consumer is experiencing temporary financial hardship. The grant is paid directly to the energy retailer to put towards the person’s energy debt.



consumer
action
Koori Help



consumeractionlawcentre



consumer_action



consumeraction.org.au



Victorian
Aboriginal
Legal Service



VictorianAboriginalLegalService



thevalsmob



vals.org.au