



Money Yarns, Stronger Futures

The consumer, credit and debt issues
of First Nations consumers in Victoria.

Integrated Practice Project report 2021-2023



Victorian
Aboriginal
Legal Service



Acknowledgement

We acknowledge the Aboriginal and Torres Strait Islander Peoples as the traditional custodians of the lands, waters and skies of Australia. We pay deep respect and give thanks to the Elders of all Aboriginal and Torres Strait Islander communities, both past and present and we strive to do all we can to support and walk with emerging Elders along their journey.

For over 60,000 years Aboriginal and Torres Strait Islander people treaded lightly upon this land, caring for country and walking with the spirits of their ancestors as they shaped its lands, waters, creatures and plants. We acknowledge the strength and resilience of the Aboriginal and Torres Strait Islander people and are humbled by the love and kindness they have shown in recent times when their own place within modern Australia was called to question.

We are aware of the privileges we have gained due to the displacement of Australia's First Peoples, and the subsequent disadvantage their descendants have faced in their daily lives. This divergence of the paths of our ancestors and the legislation, policies and events of colonisation which prohibited Aboriginal and Torres Strait Islander people from engaging with our western financial system¹ have been significant causes of the gap that exists between Aboriginal and Torres Strait Islander people's financial literacy and that of modern, white Australia.

At Consumer Action we acknowledge our own journey towards cultural safety and reconciliation. Through the casework and interviews conducted, as well as our learnings and reflections from talking to and working with some incredible First Nations people, we are learning the best outcomes are achieved when we adopt culturally safe practices that create time and space for First Nations people to share their stories. We are committed to understanding better the consumer, credit and debt issues that First Nations people face, to work alongside them in identifying the systemic and policy changes we can advocate for together, that will achieve a more equitable market for First Nations people.

¹ ASIC Indigenous Services Framework <https://download.asic.gov.au/media/35wn0xyp/asic-indigenous-financial-services-framework-published-february-2023.pdf>



Special thanks

Consumer Action would like to sincerely thank all the First Nations people who graciously gave their time and shared their stories for the purposes of this report. Their contributions have resulted in more meaningful and powerful data and have allowed us increased confidence that the recommendations put forward are in line with the needs of the community.

We also wish to thank the leadership and staff of the numerous Aboriginal Controlled Community Organisations (ACCO's) and First Nations organisations that have enabled us to contextualise our research with their data and anecdotal findings.

A special thank you to Uncle Rodney Jackson for his leadership, insights and cultural guidance during the drafting of this report. Consumer Action has gained so much from our ongoing partnership, and we have been honoured and humbled by your generosity and kindness.

Language

First Nations

The terms 'First Nations peoples' and 'First Nations' have been used throughout the remainder of this document in place of the terms 'Indigenous Australians', 'Indigenous Peoples' and 'Aboriginal and Torres Strait Islander peoples'. We believe this term to be inclusive and refers to the diversity of First Nations peoples and their communities. We note that the Victorian Aboriginal Legal Services (VALS) use the term Aboriginal and Torres Strait Islander Peoples in their reports and acknowledge this difference.

Consumer Action has historically used the term 'Koori' both internally and externally across the Koori Help resources and social media that we provide. Historically the term Koori was a widely used and accepted term for First Nations people living in Victoria. We acknowledge that First Nations peoples living in Victoria are from many varied community groups and therefore this term may not be reflective of the diversity of the Victorian population and furthermore that First Nations peoples in Victoria may not refer to themselves in this way. Because of this, Consumer Action is planning on undertaking a consultative review process of the Koori Help brand and related resources in 2024.

Vulnerability/Vulnerable

This term has been used throughout this report to indicate the result of social and systemic barriers. It does not indicate an individual characteristic. We acknowledge the deficit framing of this language choice and wish to express our strongly held views that First Nations peoples are some of the world's strongest and most resilient people and it is due to historical and ongoing systemic racism that to be an Indigenous Australian equates to a social and systemic vulnerability.

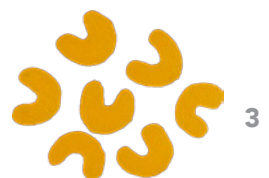


Artist acknowledgement

D. Kerr (Yorta Yorta) 'Your Journey' 2023, acrylic on canvas.

Story: You, the viewer, when you look at this artwork I want you to see your journey, your journey through life, across Country, to new and old places. I want you to think about the adventures, the memories, the joy and happiness, even the anger, sadness and heartbreaks, and then think to yourself, this is my journey.

This artwork was created through The Torch, a not-for-profit organisation that provides art, cultural and arts industry support to First Nations people currently in, or recently released, from Victorian prisons.



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Who we are

Consumer Action Law Centre

Consumer Action Law Centre (**Consumer Action**) is an independent, not-for-profit consumer advocacy organisation, with the purpose to make life easier for people experiencing vulnerability and disadvantage in Australia. Consumer Action operates as a community legal centre, a financial counselling centre, and a nationally recognised and influential policy and research body. Our services include telephone and online-chat based financial counselling, legal advice (including a dedicated Koori Helpline), legal representation, and capacity building through sector training. We have a proud history of success because of the model for reform we follow – that is to identify problems through our casework and the data we get from our frontline advice services and advocating for fair business practices and law reform.

The Victorian Aboriginal Legal Service Co-operative Limited

Victorian Aboriginal Legal Service (**VALS**) is an Aboriginal Community Controlled Organisation (ACCO) with 50 years of experience providing culturally safe legal and community justice services to Aboriginal communities across Victoria. VALS is committed to caring for the safety and psychological well-being of clients, their families and communities and respecting the cultural diversity, values and beliefs of our clients. Our vision is to ensure that Aboriginal Victorians are treated with true justice before the law, our human rights are respected, and we have the choice to live a life of the quality we wish. Through our Civil and Human rights Practice, we act for clients with consumer, credit and debt matters.





Messages from the CEO's

It gives me great pleasure to endorse the publication of our third Integrated Practice Project report. The Integrated Practice project with VALS has achieved fantastic outcomes for First Nations consumers and, we believe, has done much to increase the understanding of consumer rights amongst First Nations people in Victoria.

We regularly hear positive client outcomes resulting from our partnership with VALS, and these stories and insights are threaded throughout this report. One standout example on the national scale and covered in this report is our work with other First Nations advocates and organisations as part of the Save Sorry Business Coalition, seeking justice for people harmed by the Youpla/ACBF funeral insurance collapse. This was a shocking example of predatory financial services and reprehensible conduct toward First Nations communities at its absolute worst. We welcome Government's enduring resolution for customers impacted by the collapse of Youpla/ACBF, and along the way we have observed the success and strength of a First Nations-led campaign for justice.

In Nicole's message below, she refers to Consumer Action providing mentoring to VALS and developing VALS lawyers' consumer law expertise. I feel like that was the easy part. This partnership has provided Consumer Action with the opportunity to reflect and learn from our First Nations colleagues, clients and partners about systemic injustice, power and racism that is confronting, challenging and a lifelong process of learning.

I am proud to note that we launched our Cultural Safety framework in late 2023 and work is underway on the ongoing process of embedding cultural safety in our organisation including, as we have learned from our work through the Project, listening to and learning from First Nations people on the issues that impact them. This has led to the creation of a permanent First Nations policy officer role at Consumer Action, as well as an increase of resources committed to our Reconciliation Working Group.

We have been incredibly lucky to have Uncle Rodney Jackson providing invaluable advice and cultural leadership on the project, for Consumer Action's cultural safety journey.

Shelley has deeply considered and presented the issues that systemically hold back our First Nations clients, stakeholders, friends and neighbours from accessing justice and having power in the marketplace, in such compelling terms. Parts of this report are challenging to read and yet that is the unavoidable experience of many First Nations consumers across our country. To me, this report sets a roadmap for Consumer Action's work with First Nations consumers and organisations, that will be a priority for our organisation. I look forward to seeing this work develop under Shelley's leadership, in partnership with, and always gratefully learning from, our friends at VALS.

I want to thank the team at VALS for their generosity and support of Shelley and many Consumer Action staff through our ongoing partnership. I look forward to sharing more about our work with First Nations clients, communities and partners, and our achievements, in the years to come.

Stephanie Tonkin,
CEO
Consumer Action Law Centre



VALS is thrilled to be launching this report with Consumer Action Law Centre. This report marks an important milestone in our partnership, highlighting the invaluable insights drawn from the stories of our clients.

Community legal services are at the front line in holding predatory companies to account for the harm they cause to consumers. We have seen many examples of companies, such as funeral and telecommunications providers, target and exploit Aboriginal and Torres Strait Islander communities.

The partnership between VALS and Consumer Action is making a real and tangible impact on the lives of many Aboriginal and Torres Strait Islander consumers. With Consumer Action's assistance, VALS has built our legal expertise in consumer law. This has enabled us to secure compensation, refunds and waivers for our community as well as jointly deliver important community legal education to community members and community workers.

An example of the strength of our partnership is our work together on ACBC/Youpla. As early as 2019, VALS was supporting many clients with misleading and deceptive conduct cases against ACBF. Through this work, Consumer Action was able to help draw the government's attention to ACBF, ahead of their financial collapse in 2022. This advance notice allowed the government to have an interim solution in place for those affected by ACBF/Youpla, and created a pathway for the Save Sorry Business coalition to forge ahead with advocating for an enduring solution. We are pleased that an enduring solution finally in place.

This report has shown whilst a lot has been achieved, our work is far from done. We look forward to continuing our partnership with Consumer Action to provide high quality consumer law services to Aboriginal and Torres Strait Islander people across Victoria.

Thank you to all who contributed to this report – most importantly, to the clients whose stories have informed and inspired this report.

Nerita Waight
CEO
VALS

A message from the team

Shelley Hartle, Dja Dja Warrung Integrated Practice project manager

I came on board at Consumer Action in November 2022 to lead the Integrated Practice project and have been incredibly lucky to be able to work with a team of genuine and truly committed individuals across both Consumer Action and the Victorian Aboriginal Legal Services (VALS).

By far, the most meaningful and enjoyable aspect of this project for me has been connecting, yarning with, and learning from Community. Living in rural Victoria and working remotely, engaging in face-to-face discussions and being on country during community events like Djirra's Sisters Days Out, or our fantastic outreach and engagement events, has provided invaluable insights into what is and is not important for Community. Directly hearing from Community members about their priorities and concerns has been instrumental in cutting through the noise and understanding their true needs.

Additionally, as part of my project strategy, I conducted formal interviews with nine First Nations people who had accessed legal services through VALS for consumer, credit, or debt issues between 2021 and 2023. My aim was to directly gather their experiences with consumer, credit, and debt products and to seek their perspectives on potential improvements. While I anticipated discovering thematic findings aligning with our casework data, I also unearthed powerful insights into issues that were previously underreported or unknown.

The interviews, while guided by a structured approach, also served as opportunities for genuine connection and storytelling, devoid of strict time limits or predefined outcomes. This environment facilitated the sharing of remarkably rich information and stories, encompassing a broad spectrum of topics and themes beyond consumer, credit, and debt issues. Throughout this report, thematic findings, along with numerous quotes and stories generously shared during these interviews, are interwoven to establish a direct connection between these issues and the individuals who live them.

Two key insights emerged from this interview experience, which we have taken on board across all our work at Consumer Action and I will continue advocate for both internally and externally with our stakeholder colleagues:

- As Financial Counsellors and Lawyers providing remote advice, it's imperative to embrace flexibility, allowing time and space for trust and genuine connection to develop between our First Nations clients and our professionals.
- The active involvement of First Nations people in shaping reform recommendations for the socio-economic challenges they face is paramount. Relying solely on data is insufficient.

A theme that shone through very strongly from the people I have spoken to is Aboriginal and Community Housing, including affordability, accessibility, liveability and location. We see so many First Nations people with intersecting and compounding financial challenges which often would be improved if the person was able to live in affordable, stable and safe housing, within close proximity to their critical services including education, health, food and community and social support. This is an issue that I believe is only going to increase as cost-of-living pressures continue to take hold and more fringe lending industries become more tightly regulated to protect consumers. Although not specifically a consumer issue, housing impacts directly on consumer issues and a consumer's ability to exercise their rights. This work has led to my belief that we will have a role to play in advocating for better outcomes for First Nations people in the housing space.





“the house in Wisely was only 6-12 months until either a new house in Bairnsdale comes up or they fix my old house whichever comes first. I was OK with that but I have now been out at Wisely for 5 years ... I have accepted the fact that I am now living out at Wisely and not getting a place in town but this has made a lot of issues harder. there is no public transport at Wisely and it is 19km to Bairnsdale so I cant even walk into town because it would take a whole day to get there. While it is close to Bruthen but its a half an hour walk and there is no services there. I need to have a car to go in and out of town to just get to doctors appointments. This is what prompted me needing to get their (faulty) car.” - Interview participant

Nicole Stobart, Managing Lawyer Civil Law and Human Rights practice

I am the managing lawyer of the Civil and Human Rights team at VALS. I feel honoured to have been involved in the Integrated Practice Project with Consumer Action since 2021. Up until recently, I was in the senior lawyer role dedicated to the Project. My key role was to provide consumer law advice and casework assistance to VALS’ clients.

The Project was established in 2019 as a means of addressing some of the unmet consumer credit and debt issues being faced by Aboriginal and Torres Strait Islander community members. Before the Project commenced, despite offering consumer law assistance as part of the generalist civil practice, VALS’ work in the space was limited, having only ever received a small number of consumer related inquiries. However, within only the first year of the project, VALS’ saw a 75% increase in the number of Aboriginal and Torres Strait Islander people receiving consumer, credit and debt assistance through VALS.

Initially, the aim of the Project for VALS was to build the internal capacity of our staff to allow us to try and address some of this unmet consumer need. Consumer Action mentored and supported the VALS’ lawyer in their work, and both organisations conducted regular community engagement sessions together to increase access to justice and awareness of our consumer law service. We are proud that our internal capacity, experience and confidence in successfully running consumer cases has developed over the life of the Project, as well as community’s awareness of the assistance VALS can provide in this space.

As a result, we have been receiving nearly 100 consumer related inquiries every year and consumer law has become one of our major practice areas. We have been able to provide legal advice and casework assistance to most of those inquiries, and successfully resolved many, including very complex, cases. If you have a look at our data just for the amount of debt we have had waived and the refunds and compensation obtained for clients, you can see that our work has made a difference for many, particularly when considering the broader circumstances of the clients who are coming to us – many of whom are struggling financially and may be facing other challenges including mental health concerns, homelessness and family violence. For example, in 2019 over \$120,000 was either waived or received in compensation or refunds. Since then, this number has continued to grow, reaching close to \$150,000 in 2023.

Our aim is now to continue to work to develop our expertise in this space, as well as focus on increasing our outreach, in particular to regional areas where often those who are hardest hit live.

We look forward to our ongoing collaboration with Consumer Action in the years ahead.





A shared impact framework for First Nations financial prosperity

There is urgent need for the development of a targeted national impact framework that sets out nationally agreed outcome indicators and a shared vision for First Nations people's financial prosperity, and it must be inter-departmental in scope, connect into other key First Nations impact frameworks and strategies, and co-designed with First Nations people. The drivers of persistent financial disadvantage for First Nations people are intrinsically interconnected, and a shared framework can facilitate coordination that leads to better outcomes and, crucially, minimise the potential for reform in one policy area creating new problems for First Nations people in another.



Executive Summary

First Nations people are excellent money managers. In the face of deeply entrenched systemic disadvantage, where the laws, policies and systems of colonisation have caused their financial disadvantage to be far higher than non-First Nation's Australians, First Nations people have remained adept at juggling the money they have to cover the increasing costs of living for themselves, their family and their community. Despite their resilience, First Nations consumers continue to experience harm due to systems and regulatory approaches that do not meet their needs.

"What do you see as the biggest issue for First Nations people in terms of financial security and what do you think needs to change?" was a question we asked First Nations people as part of preparing this report. Their responses showed us that First Nations people have a deep understanding of the ways systems are stacked against them, and the challenges of surviving and thriving in what is an uneven playing field from the very start. First Nations people told us about historical and intergenerational exclusion from the financial system that continues to this day, and navigating a world that was never designed for them to succeed in.

The powerful submission to the Yoorook Truth and Justice Commission enquiry into economic prosperity by the Victorian Aboriginal Legal Service (2024) stated loudly and clearly: "Our people have persisted despite the colonial systems that have impoverished them. Our people created community-controlled organisations to provide healthcare and childcare supports, to offer food and clothing, and to provide legal services. We are a self-reliant people that have survived even when the deck is stacked against us – and we will thrive once again when the colonial boot is taken off our neck."

This report delves into the experiences of First Nations consumers across Victoria, documenting the work of Consumer Action and VALS in providing crucial civil legal and financial counselling support. By integrating client data with firsthand accounts and client stories, this report offers a view of the challenges faced and in the words of those facing them. We have identified areas where there is urgent need for improvement, presenting bold recommendations that aim to break persistent cycles of unmet need and achieve outcomes that will contribute to closing the gap over time.

Consumer, credit and debt issues and systems are the focus of this report, as these are the areas in which Consumer Action and VALS have expertise, influence and impact. However, the people we interviewed also raised issues that, while related, are outside our expertise. The issue that came through the strongest was housing. In generously sharing their insights and experiences, First Nations people drew our attention to the overlap between consumer issues and housing issues, and the need for further scrutiny in this space in terms of liveability, affordability, access and location.

Stepping back and viewing all the data, research and interviews presents some big themes regarding safety for First Nations people. Safety in systems and services, safety in the products that are available and underpinning it all the critical importance of cultural safety.

Culturally Safe practice is foundational to better outcomes

The systemic consumer, credit and debt problems experienced by First Nations people cannot be resolved without cultural safety.

Cultural safety is foundational to identifying and delivering solutions that will work for First Nations people. This principle applies to everyone – consumer advocates, businesses, regulators and beyond. While businesses, in particular essential services, are often criticised for rarely observing cultural safety when engaging with our clients, it is equally important that as consumer advocates we self-reflect on our own practices to ensure we live our values and foster genuine collaboration and engagement with First Nations people, working towards policy change that meets their needs.

Make businesses safe for First Nations people

Banks must fulfil their duty to First Nations customers and protect their money from scammers. First Nations people are particularly vulnerable to scammers, and yet scams perpetrated against First Nations people are significantly underreported. Banks must build the trust of First Nations communities that their money is safe, and reimburse losses when scammers steal their money via banks whose job it is to protect it.

An enduring problem for First Nations people is the sale of faulty used cars by licensed dealers and the multitude of system barriers they encounter when it comes to enforcing their consumer rights. Without accessible and fair ways to resolve disputes about faulty cars, dealerships are not held accountable for the sale of defective vehicles and First Nations people are harmed. Our regulatory system is creating a cushion for car dealers and needs an overhaul if further harm to First Nations people is to be prevented.



Make credit affordable and culturally safe

Small and medium amount credit products, and Buy Now Pay Later, are often relied upon to pay for everyday essentials and are considered a “safety net” by many First Nations people. While the harmful debt spirals high interest loans and insufficiently regulated BNPL accounts can cause is well-established, not enough has been done to understand and mitigate the implications of regulating products such as BNPL for First Nations people.

First Nations people are increasingly turning to the “friendly people” at their local Cash Converters for quick loans against their valued possessions. Pawnbroking is the least regulated form of credit in Australia, and arguably the most unfair. Although seen as a silent form of “credit”, there are very few consumer protections for pawn loans despite customers handing over their valued possessions as security, and there are near zero options for recourse if something were to go wrong. We need a public inquiry that examines Pawnbroking and the broader impact it has on First Nations people, taking into account their financial needs and other alternatives.

Safer systems prevent exploitative and predatory business practices

Centrepay has been used as a tool by predatory businesses engaging in exploitative practices against First Nations people across Australia. Many First Nations people use Centrepay for their essential services costs, setting up automatic payments without ongoing review or control of the usage needs and more suitable plans. The egregious actions of predatory funeral fund ACBF/Youpla, supported by Centrepay, had a devastating cultural and financial impact on First Nations communities across Australia². Significant reform of Centrepay is needed to ensure First Nations people are protected from future harm caused by businesses targeting them.

Our casework shows First Nations clients using fringe credit products that have little safeguards for when debt piles up or things go wrong. Bankruptcy is last line of defence for consumers in dire financial straits, however even here there is opportunity to prey on the vulnerable with private firms charging 20% of the total debt to provide debt agreement services that clients could often navigate themselves, or with the support and advocacy of Financial Counsellors and not-for-profit debt support services.

² <https://financialrights.org.au/mob-strong/media-release-devastating-cultural-and-financial-impact-first-nations-communities-in-crisis-after-youpla-collapse/#>

Actions and Recommendations

Actions for ourselves

First Nations outcomes embedded in Consumer Action's Policy and Advocacy Priorities

To ensure ongoing, genuine and measurable advocacy for First Nations clients, Consumer Action will engage effectively with VALS and First Nations people to embed the diverse needs of First Nations clients into the development of Consumer Action's policy and advocacy priorities.

Amplify First Nations Voices to design culturally safe solutions

With cultural safety at the forefront, we will continue to listen to and learn from First Nations people and remain open to change. We will co-design solutions with First Nations people and aim to contribute to improving professional practice in participatory approaches and co-designing culturally safe solutions. We will seek funding to develop and maintain practice guidance on co-designing reform recommendations with and for First Nations people based on our learnings, for use in consumer advocacy and legal assistance organisations in Victoria.

Enhance the Integrated Practice Project model with the addition of a First Nations financial counsellor

Consumer Action and VALS to explore future funding opportunities to support an identified First Nations financial counselling position working between our organisations, including recruitment, training and development of a First Nations financial counsellor. We will also give consideration to engaging with sector partners ICAN Learn to offer their Financial Counselling Diploma program, with work placement and on the job training delivered by Consumer Action.

Prevent harm to First Nations people caused by faulty used cars sales

Consumer Action will seek to lead a project in partnership with VALS, First Nations community and sector stakeholders, to develop culturally safe solutions to the avoidable harm caused by faulty car sales by licensed dealers (funding dependent). The project will seek to provide a deep understanding of First Nations peoples' experiences, including barriers to enforcing consumer rights, and use a participatory action research approach to co-design solutions.

Recommendations for Government and Industry

Understand First Nations peoples experiences of Buy Now Pay Later products

The Australian Security and Investments Commission (ASIC) should conduct an investigation to understand the ways First Nations people use Buy Now Pay Later products, and how the products are marketed to them, so that any unintended impacts of the new and much needed regulations can be mitigated. The inquiry should be a collaboration of ASIC, First Nations consumer advocates and ACCOs, and be inter-departmental in scope so the broader drivers of harmful over-use of BNPL products can inform policy responses.

Reforming the pawnbroking industry

An independent public inquiry should be conducted into the Australian pawnbroking industry to examine and assess the current size, operation, business models, conduct and consumer outcomes and the impact that the industry is having, specifically, on the lives of First Nations people and communities. In assessing the impact of pawnbroking on First Nations communities, the inquiry should apply culturally safe participatory action research principles, co-design solutions and data collections with First Nations people and their representatives.

The inquiry should assess the adequacy of current regulatory settings for pawnbroking across all governments, and what improvements are required, including who is the best regulator for the industry. The regulator can then continue data collection and analysis.

Make Centrepay safe for First Nations people

The Australian Government should continue to work collaboratively with the Centrepay Reform Peak Advisory Reference Group to improve safeguards and protections to ensure the right products and services are available through Centrepay and harmful businesses, products and services are removed. The Reference Group includes Services Australia staff and leading First Nations advocates from across the consumer advocacy sector.

Considering the significant engagement with the Peak Advisory Reference Group and reliance on their advocacy for culturally safe reforms, The Australian Government should make resources available to ensure ongoing and effective engagement is viable for these organisations.



Increase First Nations Peoples' access to the No Interest Loans Scheme

The Australian Government should investigate the accessibility of the No Interest Loans Scheme (NILS) to ensure providers are administering the scheme in ways that are more accessible to and culturally safe for First Nations community members.

The review should consider whether the funding for no interest loans should be increased to ameliorate the reliance on particularly harmful forms of credit by First Nations people, and whether the scheme should be expanded to include additional First Nations organisations as new providers to increase access.

First Nations voices amplified in Telco reform design

In all future reform and consumer protections consultation activities, telecommunications businesses and the ACMA should work directly with First Nations experts from each region across Australia to identify and codesign proposed solutions to the various obstacles faced by First Nations people in accessing essential telecommunications services, including for affordability, connectivity, financial hardship and telco responses towards those experiencing vulnerable circumstances

Redesign of the essential services delivery model with First Nations people

First Nations Peoples must have culturally safe access to essential services. The Essential Services Commission (ESC) should work in close partnership with First Nations representatives to understand the impacts of service delivery models and find ways to ensure essential services retailers work in ways that are culturally safe and appropriate to the needs of First Nations people and communities. This work should form part of the expected review and resetting of commitments within the ESC's Getting to Fair strategy within the next 12 months.

National Anti-Scams Centre research into First Nations peoples' experiences

The National Anti-Scams Centre should investigate the types and prevalence of scams perpetrated against First Nations people their experiences of seeking remedies and reimbursement, and the breadth and severity of harms that are caused. The approach should include partnerships development with legal, financial counselling and social support services so that foundations are established for subsequent implementation of culturally safe, evidence-based prevention strategies.

Improve the affordability and cultural safety of the bankruptcy system for First Nations people

The Attorney-General's department should develop a legislative instrument that prevents unaffordable Part IX agreements which prolong hardship, by introducing a payment-to-income ratio such that the effective minimum annual income threshold to enter a debt agreement is linked to the Base Income Threshold Amount, or alternatively, the National Minimum Wage³.

Additional funding for AFSA is recommended to ensure it can properly scrutinise Part IX agreement proposals for compliance with these new obligations.

AFSA should work with First Nations people to ensure its services are culturally safe and accessible for First Nations people seeking information and support regarding unmanageable debt and Bankruptcy.

Funding should also be made available to support organisations providing free and informal debt agreement assistance to also provide outreach and engagement services for First Nations communities. Such funding could allow for the exploration of opportunities on how to broaden their service offerings to best assist First Nations communities.

³ At the time of writing, the Attorney Generals department has announced long-awaited reforms to bankruptcy and commenced consulting on a minimal asset procedure. Our recommendations above still stand.

Part 1: About the Integrated Practice Project

The project

In March 2019, Consumer Action and VALS formally embarked on an Integrated Practice Project (**the IP Project or the Project**), funded by the Victorian Government through the Federation of Community Legal Centres Integrated Services Programs, as one way of addressing some of the unmet consumer, credit and debt needs of Victorian Aboriginal communities. Despite the achievements of the Project to date, we know that consumer legal need for First Nations people across the state has remained very high.

Working together to resolve consumer law and credit and debt issues

Consumer Action and VALS have a long history of working together to resolve consumer law, and credit and debt issues for First Nations people, with formal partnership arrangements dating back to 2017. These initial arrangements focused on strengthened referral pathways, increasing VALS' internal capacity to run consumer, credit and debt cases, and collaborating on community engagement activities.

Identifying the widespread need

In 2018, through the Consumer Action Koori Justice Action Group⁴, it was identified that the priority issue of credit and debt, and consumer issues detailed in the 2013 report 'Civil and Family Law Needs of Indigenous Peoples in Australia' by the Australian Indigenous Legal Needs Project⁵ was still prevalent in community.

The extent of this need was recently confirmed by The Public Understanding of Law Survey (PULS) in 2023⁶, which noted both that consumer law problems were the most commonly reported problem overall, and of the respondents who identified as Aboriginal and Torres Strait Islander, more than 25% said they experienced consumer law issues. The Australian Consumer Law Survey 2023⁷ finds that while First Nations people may be somewhat more resilient due to greater awareness around their rights, they are considerably more likely to run into problems when purchasing goods or services (72% experienced a problem compared to the national average of 61%) and are significantly less likely to go to the Ombudsman or a dispute resolution service or tribunal to complain about being treated unfairly by a business (21%) compared to all consumers (33%).

VALS Civil Lawyer Nicole Stobart reflects that *'our clients often do not realise that they have a claim under the Australian Consumer Law or what their rights are in terms of hardship arrangements or when dealing with debt collectors'*. In order to address this widespread consumer law need and resultant harm experienced by First Nations Victorians, Consumer Action and VALS sought to formalise a project to jointly work on addressing these issues. As well as improving the understanding within community of their consumer rights, the project has focused on simultaneously achieving casework outcomes for impacted individuals, pursuing systemic reforms, and education and awareness through community engagement and outreach.

The impact the Project has had on the lives of First Nations people has been significant.

Over the 5-year partnership, VALS has provided at least 465 First Nations Victorians with legal support relating to their consumer, credit and debt issues. Over 1000 First Nations Victorians have received financial counselling support and/or legal casework support (including through their support worker) at Consumer Action and countless others have received individual advice and support at our many joint community engagement sessions. VALS' internal capacity and expertise in the delivery of consumer, credit and debt legal services has increased exponentially over this time, with their Civil Law and Human Rights team independently achieving significant outcomes for their clients. Consumer Action has gained highly beneficial cultural insight into working with and supporting Victorian First Nations communities, has referenced VALS casework in the identification of systemic issues, and has tapped into VALS' on-the-ground insight to develop and guide Consumer Action's advocacy for policy reform.

The impact the Project has had on the lives of First Nations people has been significant. Jane's story provides just one example of the change for individuals assisted through the Project.

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

5 Schwartz, M., Allison, F. and Cunneen, C., 'The Civil and Family Law Needs of Indigenous People in Victoria', . Cairns: James Cook University, https://www.jcu.edu.au/_data/assets/pdf_file/0011/121889/jcu_131180.pdf

6 Balmer, N.J., Pleasance, P., McDonald, H.M. & Sandefur, R.L.(2023) The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need. Melbourne, Victoria Law Foundation.

7 Australian Consumer Survey 2023, Final report. Kantar Public, Australian Consumer Law. <https://consumer.gov.au/sites/consumer/files/inline-files/acl-aust-consumer-survey-2023.pdf>



Janes's Story:

Jane* is a working, single parent who had struggled with increasing rent prices and staying on top of her household bills and living expenses. Struggling with the stress of bills piling up, Jane made enquiries and agreed to move forward with a part IX debt agreement for \$40,000 over 5 years (amounting to a payment of around \$150 per week) and during which time she would be unable to obtain any other forms of credit including refinancing etc.

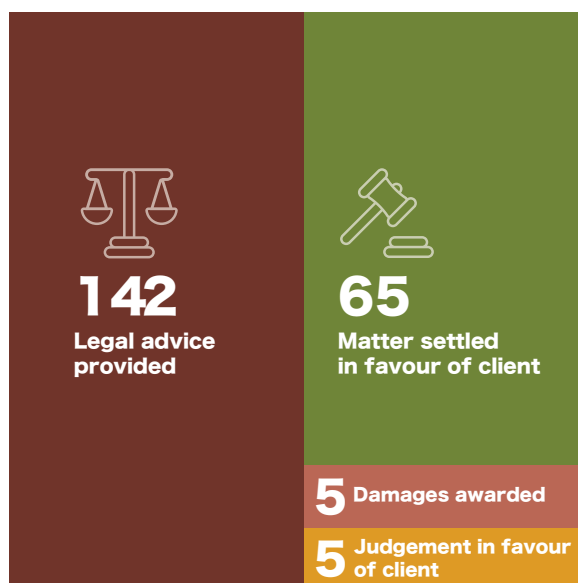
"I became a single mum when son was 1, worked the whole time to try and make sure he was supported and because rent was so high I got into debt with cards and bills piled up. I decided to go into a Part IX debt agreement which ended up being more and more stressful for me. I was trying to negotiate with electricity and gas and Afterpay which I couldn't pay, phone bill, credit cards with (two different banks) . I just couldn't pay anything. I called them (Part IX debt agreement manager) because I knew a friend who had it years ago so I just rang up and applied for it, not knowing exactly what it was.

(I thought) a Part IX debt agreement would be the best thing, but it actually wasn't. They didn't disclose they get a fair bit of money from you as well which is on top of all the debts as well. Then you can't get a loan or credit for 5 years, it's one step before bankruptcy. Nicole from VALS listened back to all of the tapes and the lady (that I spoke to when I applied) got me at the most vulnerable time and they didn't disclose all of the fees that they put (on top).

Nicole (at VALS) was able to get this reduced to \$10K from over \$40K. All I had to do was pay \$10K and it was broken up to each of them (the debtors) and they accepted it., so Nicole really helped me with it.

November next month I will have nothing on my record and I will never get another credit card or loan ever again. It is an amazing feeling to know that next month I will be completely debt free. I spent my whole life in debt, bringing up my son on my own."

We know financial challenges can cause a decline in mental health⁸ and that debt compounds disadvantage and can lead to other preventable problems. As Jane reflects, it is a huge relief for people to be freed from debt and move on with their lives. Beyond the single story above, VALS has been able to work with clients to achieve some fantastic outcomes including old debts and fines waived, negotiating compensation awards and refunds. In the 2022-23 financial year the Civil and Human Rights Practice secured \$829,469.05⁹ of debts waived, compensation awarded, and infringements revoked for Aboriginal and/or Torres Strait Islander clients.



8 Services Guide for Financial & Mental Wellbeing 2024. Beyond Blue, Financial Counselling Australia

9 VALS Nuther-mooyoop to the Yoorrook Justice Commission: Economic Prosperity, April 2024




Who we have assisted


Typically, both VALS and Consumer Action’s First Nations clients are more likely to be women than men, with 56% of VALS clients and 60% of Consumer Action First Nations clients identifying as female, while only 34% of VALS civil clients and 34% of Consumer Action First Nations clients identified as male.


Both VALS and Consumer Action typically receive more requests for assistance from First Nations clients between the ages of 25 and 34, than any other age.

Overall, the clients who have been assisted through the Project have been fairly evenly spread over metropolitan and regional/rural Victoria, with a slight majority from rural and regional areas. However, when looking at the yearly data (presented in Figure 1) this breakdown is often less evenly spread. As well as a decrease in client numbers overall during the peak Covid and lockdown periods of 2020 and 2021 (the 2021 IP Project report¹⁰ explores these impacts further), the number of clients in regional and rural Victoria decreased significantly which may reflect access to services outside people’s immediate community being significantly restricted and issues with the rollout and uptake of digital communication options, with First Nations people in rural and regional areas often facing barriers to online access.

Key findings



 **56% Women / 34% Men**

 **22% 25-34 age range**


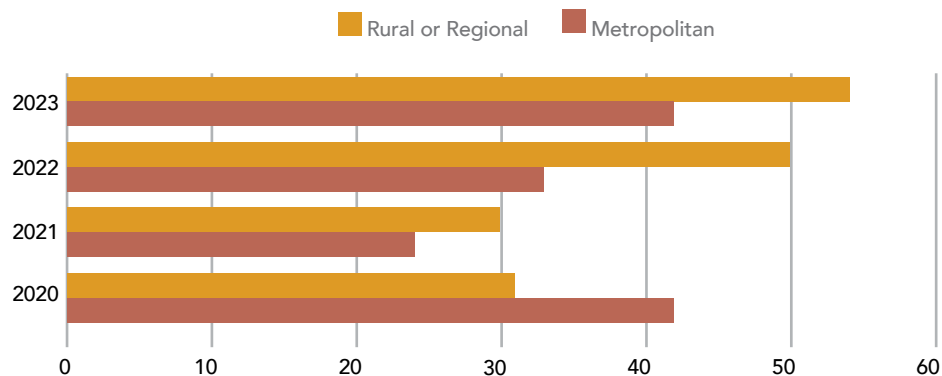
 **44% Rural or Regional**

Figure 1: VALS - Clients by location yearly



¹⁰ Consumer Issues in Victorian Aboriginal Communities during 2020, Integrated Practice Project Report June 2021. Consumer Action Law Centre https://consumeraction.org.au/wp-content/uploads/2021/06/VALS-IP-Report_FINAL_UPDATED2_WEB.pdf

Outreach and Engagement in Victorian First Nations Communities

VALS and Consumer Action have partnered on many outreach and engagement activities over this time and continue to find these well attended and critical for Victorian First Nations communities as it allows our organisations to:

- connect with individuals and build trust within Victorian First Nations communities, well as foster strong connections with ACCHOs/ACCHOs and other services providers
- provide community with culturally appropriate consumer, credit and debt legal support and financial counselling services on-the-ground and in real time, with no waiting times or queues
- increase the understanding of consumer law and consumer related issues within First Nations communities and encourage open discussion about finances, credit and debt with culturally appropriate resources and information sessions
- listen to the stories and experiences of community and gain critical insight into the issues being faced, and translate these into systemic reform recommendations and advocacy
- work to our individual and organisational strengths in partnership, learning from each other and growing together, to achieve better outcomes for individuals and community.

The impacts of Covid-19 and subsequent lockdowns were significant on our ability to partner on the delivery of outreach and engagement activities throughout 2021¹¹ and somewhat into 2022. These impacts are still being felt within our sector, with community events typically seeing less participation than in pre-covid times.

Here is just a snippet of some of the wonderful outreach and engagement activities we have partnered on during 2021, 2022 and 2023:

Sisters Day Out

We were lucky enough to attend a number of Sisters Day Out events in 2023 – Djirra’s long-standing wellbeing workshop, where Aboriginal women can support each other, enjoy a little pampering, get information about rights and options, and engage with support services available¹².

Consumer Actions First Nations Engagement lead Jacqui Watkins said ‘the Sisters Day Out events are so important for our work as the majority of our First Nations clients are women, and often these women are in particularly vulnerable situations including Family Violence. Being able to speak with them in a culturally and physically safe space means women who otherwise might not be able to talk to us, can do this’.



Sisters Day Out Bendigo 2023



Sisters Day Out Shepparton 2023

11 Consumer Issues in Victorian Aboriginal Communities during 2020, Integrated Practice Project Report June 2021. Consumer Action Law Centre https://consumeraction.org.au/wp-content/uploads/2021/06/VALS-IP-Report_FINAL_UPDATED2_WEB.pdf

12 Upcoming Events, DJIRRA <https://djirra.org.au/get-involved/check-our-events/>

Bring Your Bills Day

Bring Your Bills Days are a wonderful way for community to meet face to face with numerous services including financial counsellors, lawyers and legal advisors, government services and local community services. Community can receive support, advice and/or assistance for:

- making sense of their bills and living expenses, exploring options for better value providers and assisting with dispute resolution, hardship requests and waivers (where possible)
- legal advice for a range of legal issues, in particular possible breaches of their consumer rights
- navigating and understanding Centrelink services, payments and debts
- insurance and disaster relief grants after major weather events
- housing and tenancy concerns or complaints
- scams and other financial losses
- complaining to regulators and accessing the VCAT system



Forging successful partnerships

Community engagement activities also provide us with an invaluable opportunity to forge relationships and explore partnership options with various social and community services. The level of trust achieved by the professionalism and hard work of our staff at the Sisters Day Out events has resulted in Consumer Action (A non-First Nations led organisation) being seen as an active and important participant and Djirra now regularly invites our teams to attend a variety of activities.

Similarly, Consumer Action and VALS staff were able to form relationships with the wonderful staff at Bendigo and District Aboriginal Coop (BDAC), which lead to the coordination and delivery of a Community Justice Day on country at Djimbaya Kindergarten in 2023. This was the first community justice day held at BDAC since covid lockdowns, therefore community attendance was unfortunately low. However, Consumer Action and VALS staff used this opportunity to genuinely connect with a broad range of services including Social Security Rights Victoria, The Victorian Ombudsman's Office.



Part 2: Consumer, credit and debt issues among our clients

Our previous reports have drawn data from our casework and community intelligence to explore consumer, credit and debt issues impacting First Nations Victorians, and to propose reforms to address the harms being experienced by community. This section of the report continues this work, again using our casework data to identify consumers issues our First Nations clients have reported to us over the past three years, but this time supplementing this work with a number of client interviews to explore people's experience in more depth.

Throughout the interview planning and delivery process we maintained our commitment to cultural safety and connection, by allowing for time and space for interview participants to feel comfortable to share their stories and broad thoughts regarding the consumer, credit and debt issues of First Nations people in Victoria. This led to rich conversation across a diverse range of topics which was incredibly valuable in outlining the numerous financial decisions and complicated systems First Nations typically people are juggling daily. It has been incredible to witness that while the laws, policies and systems of colonisation have resulted in First Nations people falling significantly behind non-First Nations Australians in terms of financial literacy, ***First Nations people across the board are excellent money managers with a strong sense of pride and accountability and a keenness to work through their financial issues themselves as much as possible.***

The richness of thematic data that was able to be gleaned from these interviews led to some significant internal reflection at both VALS and Consumer Action with both organisations looking at ways our services can replicate this level connection and trust across our service areas. Broad thematic findings of these interviews are included below, and the stories and quotes of interviewees have been woven throughout this report along with casework data since the last report, from 2019-2023.

Client interviews - what our clients told us

Strength of spirit

The First Nations people we interviewed, no matter their financial circumstances or the stressors of their lives, all displayed an internal strength of personal pride, accountability and a wish to work through their financial issues themselves as much as possible. They were all astute money managers, juggling and balancing multiple debts to keep themselves and their families housed and fed.

"We were always brought up with respect and ethics and to accept our actions. I was happy to pay back what I spent but the (additional) fees and interest wasn't fair" – Interview participant



Giving back to community

Four of the nine people interviewed stated that they volunteer their time in support of their local community, particularly with local mob. Many spoke about learning about how to deal with debt collectors or other financial tips from their friends and family and also sharing their learnings with their community.

"I volunteer to do other things for the mob like I run groups with another person, I try to get the Aboriginal people connected in." – Interview participant

"I am involved with a big building project here at (a regional town) which is an hour from where I live... its eight fully self contained units and its a beautiful building... I am the director on that with eight of us. At my age I just want to help the next generation and help our culture carry on, That's my role now." – Interview participant



Communicating with mob

Four people talked about not understanding or choosing not to read important documents / mail because the language is confusing, it's not written in plain language or even that the print is too small.



"They need the information given to them in our language, not all the strategic words but basic words that we understand. And to have that person be culturally sensitive in effectively communicating with our people, don't explain things in a way that's not even in our DNA." – Interview participant

"we need dot point and simple and easy words and instructions" – Interview participant

"No I didn't look at the whole thing because they do it in very fine printing" – Interview participant

Identifying problems and solutions in a culturally safe and appropriate way

From our work on the Project over the past three years, we believe there to be a wide gap in the knowledge and skills base of Community Legal Centres and the broader social services sector, in how best to develop recommendations for reform with and for First Nations consumers. Typical practice is to utilise case studies and client data to inform organisations of the current issues facing First Nations Victorians, with recommendations based on an individual's (or team's) specialist skills and understanding of the issues developed in response. It is only after this is done that 'consultation' with various First Nations representatives may (or may not) occur. With this in mind, we have ensured the actions and recommendations developed for this report include effective consultation and codesign principles with First Nations people.

We are exploring current and emerging systemic issues for First Nations consumers in Victoria, with a vision to collaborate on a future project which employs true co-design principles, in order to commence developing a best-practice model to guide and support our sector in better developing recommendations with and for First Nations people.



Action: Amplifying First Nations Voices in the co- design of culturally safe solutions

With cultural safety at the forefront, we will continue to listen to and learn from First Nations people and remain open to change. We will co-design solutions with First Nations people and contribute to improving professional practice in participatory approaches and co-designing culturally safe solutions. We will seek funding to develop and maintain practice guidance based on our learnings for use in consumer advocacy and legal assistance organisations in Victoria.



Cost of living, the shrinking safety net and increasing reliance on fringe lending

“having trouble to even find a job or finding that extra bit of money to help because I know centrelink isn’t enough when you’ve got the biggest mob, so it is always good to find other organisations that can help you”– Interview participant



Of the 402 calls by First Nations clients to Consumer Action’s Financial Counselling Practice between 2019-2023, the most common financial difficulty types were utilities (13%), housing arrears (12%), third tier lender (8%), personal loans (8%) car loans (7%), budgeting/insufficient income (6%) and credit card debt (6%).

The category of budgeting/insufficient income typically is used to categorise cost-of-living related issues. Budgeting/income has almost doubled year on year and in 2023 is sitting at the highest it has ever been. This, along with credit card debt, housing areas and utilities, has taken over as the most common presenting issue in 2023, providing a stark image of the cost-of-living crisis for First Nations Victorians.

The prioritisation of cost-of-living pressures above other debts does not mean those debts have reduced. Our interviews revealed instead that more people are struggling to feed themselves and their families or afford the basics to survive, and this is the financial difficulty that is causing them the most distress (while the other debts continue to compound at the same time).

Never before has access to culturally appropriate financial counselling services been more critical for the wellbeing of First Nations Victorians. Financial Counsellors are qualified professionals who provide information, advice and advocacy to people in financial difficulty¹³. This could look like supporting people to take an objective view of all their income and expenses, navigate hardship arrangements and any possible waivers as well as any grants or emergency relief payments people might be entitled to. However, our financial counsellors are now speaking with many more people who have already taken these steps and are still in a position of financial trouble. People simply do not have enough money to cover their basic needs, as well as their bills and financial obligations.

With people increasingly unable to make ends meet, they are often pushed into accessing easy credit to stay afloat financially. This is borne out by our casework, as many people we speak to are dealing with multiple debts including BNPL, household bills and rent or mortgage arrears. Concerningly among the clients we interviewed almost all (seven) expressed that they had taken out expensive forms of credit such as consumer leases, payday loans and pawning of their personal belongings for cash, with only two people having ever accessed the No Interest Loan Scheme (NILS). Below, we explore the issues associated with several credit products our clients have reported accessing.

Action: Enhance the Integrated Practice Project model with the addition of a First Nations financial counsellor

Consumer Action and VALS to explore future funding opportunities to support an identified First Nations financial counselling position working between our organisations, including recruitment, training and development of a First Nations financial counsellor. We will also give consideration to engaging with sector partners ICAN Learn to offer their Financial Counselling Diploma program, with work placement and on the job training delivered by Consumer Action

13 https://consumeraction.org.au/wp-content/uploads/2024/03/CALC032_Cost-of-Living-Snapshot_FA_WEB_Scroll.pdf

Buy Now Pay Later



"I was really good with my Afterpay payments, I would pay off everything I could about \$200 a fortnight or a week on the purchases I had made because I would rely on this for like food shopping and stuff, I could go out and buy gift cards with it. So this was my main stability thing of going ok cool, I can get this thing and then pay that back later" – Interview participant

"There is \$800 on there (BNPL) and I just use it to buy vouchers from there for my petrol or coles. I've never used it for anything like a phone or anything. It's for living expenses." – Interview participant

First Nations people in Victoria that we have been talking to have been turning to BNPL products for everyday essentials such as petrol and groceries – maxing out their accounts by purchasing gift cards they can use at the register. Easy access to BNPL credit has been disguising the fact that the safety net in Australia has been shrinking and leading people into poverty. After the 2023 Federal Budget, CEO of ACOSS, Dr Cassandra Goldie described Jobseeker as a "poverty payment" and said:

"... the real increases to base rates of JobSeeker, Youth Allowance and Rent Assistance will still leave more than one million people in poverty, unable to afford three meals a day and a roof over their head. Whilst every dollar counts, the \$20 a week increase to JobSeeker and related payments is well below the Economic Inclusion Advisory Committee's finding that it needs to rise by at least \$128 a week to ensure people can cover the basics..."¹⁴

At the time of writing, the base rate of Jobseeker for a single with dependant child or children is \$816.90 a fortnight. In a household, this needs to cover the basics including housing costs, food, electricity, transport, water and telecommunications services. As prices for essentials increase, it is becoming harder to make ends meet for those who rely on Jobseeker.

In previous IP Project reports we outlined how First Nations people are particularly vulnerable to BNPL products such as ZipPay and Afterpay, as at the time, they were a new and easy way to purchase goods quickly, without the need for credit checks. However, the flipside of this is that clients can easily fall into a debt trap by signing up to multiple BNPL debts, which they cannot afford to repay.

Based on our interviews with First Nations clients, and the call statistics reported through the National Debt Helpline, more First Nations people in Victoria are relying on BNPL to cover their day-to-day essentials such as groceries and petrol. Four out of the nine people we interviewed said they had a current BNPL balance with two stating they use this regularly for living expenses - purchasing vouchers for petrol and groceries weekly/ fortnightly.

We are pleased that the Australian Government has committed to introducing legislation this year to regulate BNPL as credit. However, we are concerned that little attention has been paid to understanding the impact that the proposed legislation will have on First Nations consumers.

Given the apparent increase in the use of BNPL for day-to-day living expenses by First Nations people and the growing problem of a poor safety net in Australia, we believe there is a role for ASIC (as the financial services regulator) to undertake research to understand the extent to which First Nations people are using BNPL, and what the impact the proposed laws will have on First Nations using BNPL to access basic essentials.

"It used to be that clients used BNPL for smaller, incidental purchases - like new shoes for instance or things for their kids. But we're seeing bigger and multiple BNPL debts and more people telling us that they're using it to buy gift cards so they can buy groceries or petrol. People are choosing between feeding themselves and maintaining housing - they prioritize housing (rent or mortgage) and increasingly use BNPL to manage other essentials so it's easy to see how a debt spiral can happen. So many people we speak to are constantly juggling and struggling, with much of their salaries being deducted for BNPL debts, often on the same day the money hits their accounts"- Claire Tacon, Assistant Director, Financial Counselling Practice, Consumer Action.

¹⁴ Many welcome measures but JobSeeker still a poverty payment that must be fixed. ACOSS 2023. https://www.acoss.org.au/media_release/many-welcome-measures-but-jobseeker-still-a-poverty-payment-that-must-be-fixed

We are aware of BNPL being advertised to pay for everyday essentials, and this may push people to use BNPL for essential purchases, to the exclusion of other supports that may be available to them. To this end, in addition to the regulation of BNPL, advertising of BNPL to pay for essential goods and services should be banned or restricted, potentially through the Design and Distribution Obligations that will soon apply to all BNPL products falling under credit legislation.

It is critical that if access to BNPL is to be tightened through the introduction of responsible lending obligations, First Nations Victorians must have access to other sources of credit or no/low interest loans. It is important to ensure NILS or other similar no/low-cost credit products are accessible and culturally safe for First Nations people.

Recommendation: Understand First Nations peoples experiences of Buy Now Pay Later products

The Australian Security and Investments Commission (ASIC) should conduct an investigation to understand the ways First Nations people use Buy Now Pay Later products, and how the products are marketed to them, so that any unintended impacts of the new and much needed regulations can be mitigated. The inquiry should be a collaboration of ASIC, First Nations consumer advocates and ACCOs, and be inter-departmental in scope so the broader drivers of harmful over-use of BNPL products can inform policy responses.

Consumer Leases/Rent-to-buy

"I am paying a bit extra on them, but I am happy" – Interview participant

"Just affordability, when it comes to it, is easy to pay \$30 a week rather than \$3000 straight up and having to wait for it" – Interview participant

"I was looking at the contract, its around \$1000 (for a dining table). I have read it and I understand it. Me and my partner were both looking at it, it was a pretty easy set up to be honest. Centrepay gets taken out of my pay to pay for the furniture so that's another deadly thing about it as well." – Interview participant

Consumer leases are seen by some First Nations clients as an easy way to obtain goods, even though people are aware they are paying more for the goods and services they are purchasing through Centrepay.

In 2021 we reported that consumer leases were an issue among First Nations communities¹⁵, particularly since there was no cap on the fees that could be charged which often made them the most expensive form of regulated credit in Australia. Furthermore, consumer leases regularly had additional fees attached (e.g. dishonour fees, costs for damaged/stolen goods, termination fees and charges and insurance/warranty fees) which consumers don't find out about until they find themselves in financial hardship.

We advocated for 'law and policy reform to stop unethical practices and the unfair contracts' including the specific recommendation that consumer lease providers no longer be able to take lease payments from a person's Centrelink benefit via Centrepay.

Consumer leases have continued to present as an issue for both Consumer Action and VALS clients over recent years, with 7% of First Nations Victorians contacting Consumer Action's lawyers seeking advice on consumer leases, and 2% of VALS clients seeking assistance resolving

15 Consumer Issues in Victorian Aboriginal Communities during 2020, Integrated Practice Project Report June 2021. https://consumeraction.org.au/wp-content/uploads/2021/06/VALS-IP-Report_FINAL_UPDATED2_WEB.pdf

issues with rent-to-buy schemes. Furthermore, six of the nine people interviewed reported using consumer leases for the purchasing of household goods, with many commenting that they found the purchasing process very easy, and the payments spread over weekly or fortnightly deducts more affordable for them.

We have heard across our Financial Counselling lines and from interviewees that staff working for consumer lease providers work hard to form personal connections and customer relationships with First Nations people. Staff sell 'easy to make purchases' to First Nations people, and are seemingly understanding and flexible with payments according to their situation. While this presents as good customer service to the individual, often staff are engaging in irresponsible lending practices (a practice that the regulatory measures introduced in 2023 will work to address), and unconscionable conduct¹⁶ in the form of appearing willing to extend loan terms. Extending loan terms indefinitely ultimately keeps the client trapped in the debt for longer, which leads to further financial hardship.

Consumer leases were regulated in June 2023, with providers now having to comply with caps on the maximum amount they can charge someone. These reforms have ensured better protections and stronger safeguards and have also changed the way the market operates.

While we supported the reforms one of the outstanding reform proposals that Consumer Action had been advocating for, was not included in the package of proposals. That is "kicking" consumer leases off Centrepay. After much discussion with First Nations advocates, we heard that the call of many in our sector for consumer leases to no longer be available on Centrepay would in fact negatively impact many First Nations consumers and did not consider their needs or experiences, in the short term. For instance, in many regional and remote communities there are a significant lack of options for First Nations people to purchase essential products such as white goods and furniture. For people receiving Centrelink in those communities, the choices are even less as they are often not able to access regulated forms of credit and/or unable to save up the funds needed to make such large purchases. Taking away what in many cases is the only option for people and communities to purchase essential items can be counterproductive. While we still see removing consumer leases from Centrepay as a long term positive outcome, we know there needs to be accessible and safe options in place for people to make these purchases before this can occur.

Pawnbroking



"I needed the cash. I had to put my phone in and my speaker (with a pawnbroker)... The interest is a bit high, I thought I had learned when I had my ipad in there for almost a year or 2 and I just kept paying \$90 interest and \$90 interest and I learned because it was in there for about a year and a half but then I must have learned because I didnt use them again for a year... But then last month I had to put my phone and my speaker in. I never thought about using a NILS loan" – Interview participant

While pawnbroking can provide access to credit for people unable to access mainstream lending, the current state of weak regulation is exposing people to harm. This issue of lax regulation is explored in depth in a recent paper 'Lending on the edge' by Lucinda O'Brien, Ian Ramsay and Paul Ali, which argues that "... the light regulation of pawn lending creates a high risk of consumer harm and regulatory arbitrage by unscrupulous providers."¹⁷

One of the largest national consumer lease providers, Cash Converters, also runs a pawnbroking service. Through our work we see people readily turning to pawnbrokers whom they have developed friendly relationships with for their consumer leases, and choosing to also borrow against their belongings for cash loans, rather than seeking out alternative options such as NILS. This came through in our client interviews, with 3 of the 9 people interviewed speaking about regularly pawning their good for cash loans, often with the same providers of consumer leases.

This risk of consumer harm has been demonstrated in Consumer Action's recent experience in launching a class action against pawnbroker Taylors Business. We were contacted by numerous people in Delahey, including First Nations customers, who were unable to claim their pawned goods when Taylors shut its pawnbroking shop

¹⁶ Cash Converters pays customer \$4,000 to drop legal challenge to pawnbroking - ABC News. <https://www.abc.net.au/news/2016-05-17/cash-converters-pays-customer-to-drop-legal-challenge/7421462>

¹⁷ O'Brien, Lucinda and Ramsay, Ian and Ali, Paul, Lending on the Edge: Pawnbroking in Australia (April 11, 2024). University of Queensland Law Journal, Vol. 43, No. 1, 2024, Available at SSRN: <https://ssrn.com/abstract=4808299>

without notice in mid-2023. More than a year on, Taylors has still yet to return pawned goods, with many of our clients understandably distraught about not having items of sentimental value returned to them.

Despite the recent class action, we have not otherwise seen a large volume of pawnbroking related cases through our project work, with only 1 call from a First Nations person to Consumer Action's legal practice for assistance with a pawnbroking issue over the period of this report.

"Pawnbroking is a silent form of credit for First Nations people, many people in community are regularly pawning their goods for cash without telling anyone including their partners. I have spoken to women who were pawning their engagement and wedding rings out of a desperate need for money without their husband knowing. The fact that people are not able to get their pawned items back for at least 7 days means that even when they only needed cash for a day or two until their pay comes in, they are having to wait the full 7 days by which time they are likely once again unable to afford to get their items back and end up getting stuck in that debt trap. You only need to walk down the main street of any town or suburb with a high percentage of First Nations people living there to see the thriving business of cash converters and other similar pawnbrokers." – Jacqui Watkins, CALC First Nations Engagement Lead

The paper by Lucinda O'Brien and colleagues is the first major scholarly study of pawnbroking in Australia, which suggests that despite pawnbroking being an old form of credit, there is more to understand about the consumer harm associated with it. To this end, we would like to see further research undertaken to understand the First Nations experience with pawnbroking and explore law and policy reforms to protect First Nations people from any harms caused by pawnbroking loan.

Recommendation: Reforming the pawnbroking industry

An independent public inquiry should be conducted into the Australian pawnbroking industry to examine and assess the current size, operation, business models, conduct and consumer outcomes and the impact that the industry is having on the lives of First Nations people and communities. In assessing the impact of First Nations communities, the inquiry should apply culturally safe participatory action research principles, co-design solutions and data collections with First Nations people and their representatives.

The inquiry should assess the adequacy of current regulatory settings across all governments, and what improvements are required, including who is the best regulator for the industry. The regulator can then continue data collection and analysis.

Payday loans

"(I needed cash to) support my kids while they were at their fathers. Current loan with wallet wizard and cash train and money 3. I am just barely getting through with the payment but I manage. I would have considered using NILS if it was for a big purchase" – Interview participant


"I borrowed \$300 but the loan was \$700 to payback.. There was a few months where I just needed to catch up on bills. Cigno has been paid off for a while now, still ongoing with Cash converters. I have a couple of different ones paying about \$300 per fortnight. I struggle with these especially with changes in circumstances but I am managing.. Have gone to look into it (NILS) but have been met with questions about why cant you afford it yourself and is off-putting. Feels judgemental." – Interview participant

In our previous IP Project report we noted that ‘payday loans have been a recurring issue amongst the Victorian Aboriginal community for many years.’¹⁸ Unfortunately, this has continued to be reflected in IP Project data over 2021-23, with 6% of Consumer Action’s legal cases for First Nations clients over the period involving payday loans, while 2% of VALS cases involved payday loans. During the same period, eight percent of financial counselling sessions undertaken by Consumer Action’s financial counsellors working with First Nations clients involved ‘third tier lenders’.

Payday loans have proven particularly problematic given they have been historically easy to get and charge excessive fees on top of the original loan amount. These loans can leave people with astronomical levels of debt they are unable to repay, while also being unable to afford their everyday living costs.

Based on our interviews, payday loans clearly remain an issue for many First Nations Victorians, despite recent changes to the law which have introduced increased consumer protections. Three of our interviewees regularly use payday loans. Typically, people reported that the process for obtaining these loans was much easier than any other lending option (including NILS), but they also acknowledged the high interest rates and fees associated with these products and the desire to have access to less expensive options.

Centrepay

- 
- “Centrepay works good for me. I trust the companies that are on Centrepay” – Interview participant*
- “Most assuredly is the best way for me. we have never fallen into arrears with them. With electricity I can demand a reasonable rate of concession from them... It has been a godsend really.” – Interview participant*
- “It takes the money before I can even see it so there is no missing the money thats not there.” – Interview participant*
- “I supposedly have a \$4000 debt with them (Housing Commission) and I am not sure how that has come about if I am paying out of my Centrepay and all of a sudden I have a \$4000 debt” – Interview participant*

Six of the people we interviewed stated they use Centrepay for payment of rent and regular household bills. Each of them prefer this payment method as the money is taken out before they see it. The majority of these interviewees (5 of 6 people) also stated they would either not be able to pay the bill, or would be late paying the bill if they did not use Centrepay.

When Centrepay is used as a tool for consumers to manage their essential living expenses in this way, it is valuable and allows people to maintain control of their household expenses. Unfortunately, we have seen too many examples of Centrepay being used a vehicle for financial abuse by businesses, against vulnerable consumers, and particularly First Nations communities. This includes the particularly egregious case of ABF/ Youpla, as well as numerous other businesses offering high-cost, low-value products and services.

Issues with Centrepay are widespread and not limited to those providing high-cost, low-value products. Many of the clients that call the National Debt Helpline have reported issues with their rent payments and payments to essential service providers, even though they have direct debits in place through Centrepay.

In March 2023 we, along with a range of national consumer and First Nations advocates, wrote to the Minister for Government Services calling for significant reform of Centrepay to ensure organisations are not targeting vulnerable consumer groups, and better protection for consumers are in place. We also sought that the payment of essential items such as rent and bills are prioritised over the purchasing of low-value, high-cost products. We are pleased with the Ministers response and subsequent commitments by Services Australia to undertake genuine reform of this service and work with advocates to ensure the best outcomes for the users of Centrepay. We look forward to continuing to work with the Centrepay Consumer Caucus, Services Australia and the Ministers office.

¹⁸ Consumer Issues in Victorian Aboriginal Communities during 2020, Integrated Practice Project Report June 2021. https://consumeraction.org.au/wp-content/uploads/2021/06/VALS-IP-Report_FINAL_UPDATED2_WEB.pdf



Recommendation: Make Centrepay safe for First Nations people

The Australian Government should continue to work collaboratively with the Centrepay Reform Peak Advisory Reference Group to improve safeguards and protections to ensure the right products and services are available through Centrepay and harmful businesses, products and services are removed. The Reference Group includes Services Australia staff and leading First Nations advocates from across the consumer advocacy sector.

Considering the significant engagement with the Peak Advisory Reference Group and reliance on their advocacy for culturally safe reforms, The Australian Government should make resources available to ensure ongoing and effective engagement is viable for these organisations.

Access to affordable credit

"I never thought about using a NILS loan". – Interview participant

"I would definitely use it (NILS) again, I had forgotten about it." – Interview participant

"Have gone to look into it (NILS) but have been met with questions about why can't you afford it yourself and is off-putting. Feels judgmental" – Interview participant

Across all of the above debt issues, it is clear that the First Nations people we spoke to, and as well as many in our wider client base, would benefit from access to safe, low-cost credit. Despite the availability of NILS as an alternative (and less expensive) credit option for essential purchases, concerningly only two of the nine people we interviewed had used NILS previously. One of these people had a current BNPL balance and had also recently pawned some of their belongings for a cash loan. The other person who had used NILS previously was paying a consumer lease and had multiple payday loans. When asked about using NILS both people responded that they didn't think of NILS. Another two interviewees stated they had never heard of NILS at all, while others mentioned knowing about the scheme but were either not considering it or preferring not to use it as other, more expensive credit options felt easier to access.

Based on these responses we believe that more needs to be done to understand whether the current NILS scheme is working for First Nations people. It is clear that more needs to be done to both promote NILS to First Nations Victorians to improve awareness, and ensure that the scheme operates in such a way as to be a culturally safe and more appealing option for First Nations Victorians. Consideration should to be given to the possibility of expanding access to No Interest Loans, including through First Nations led organisations.



Recommendation: Increase First Nations Peoples' access to the No Interest Loans Scheme

The Australian Government should investigate the accessibility of the No Interest Loans Scheme to ensure providers are administering the scheme in ways that are more accessible to and culturally safe for First Nations community members.

The review should consider whether the funding for no interest loans should be increased to ameliorate the reliance on particularly harmful forms of credit by First Nations people, and whether the scheme should be expanded to include additional First Nations organisations as new providers to increase access.

Access to fair and affordable essentials services



"I think that they do need to be culturally safe and aware. They need to ask the question too "are you Aboriginal or Torres Strait Islander", I have never been asked." – Interview participant

"No cultural safety - you never feel respected even though you have just told them your whole life story and it feels like you are talking to a robot. It doesn't help if you get angry with them" – Interview participant

Essential services, including energy, water and telecommunications services are necessary for a decent standard of living. In a developed country such as Australia, no-one should have to struggle to keep the lights or heating on, access clean water or worry about having mobile phone service disconnected. However, for First Nations people experiencing financial hardship, we often hear about poor responses from businesses, who offer no or little practical support that will help people manage their bills and ensure they stay connected. The issues that First Nations Victorians experience with their utilities providers are not necessarily different to those of non-First Nations people. However, compounding disadvantages often result in additional challenges in finding solutions. Six of the nine people we interviewed stated they had a recent issue paying an electricity, gas or water bill and noted their concern about the increasing costs of essential services, in particular electricity, with the understanding that this was only getting higher and harder to afford.

Previous IP Project reports have discussed the high rate of issues to do with essential services (telecommunications, energy and water bills) presenting among First Nations clients. This has continued through this period, with 12% of VALS matters and 13% of Consumer Action's financial counselling sessions with First Nations clients involving assisting people experiencing issues with essential services.

For people seeking assistance to manage the cost of their essential services, we want to see providers proactively and consistently providing help. However, we heard in our interviews that this help sometimes fails to materialise, leaving people with large debts and at risk of having their services restricted or disconnected. This came through in the client interviews with three of nine people mentioning having been recently disconnected from their essential services.

There is also the issue of providers being difficult to deal with, and not communicating in ways that are culturally appropriate. Four of the clients interviewed talked about not understanding or choosing not to read important documents or mail because the wording is confusing and not written using plain language. We asked interviewees who had issues paying for their essential services if they felt their provider was culturally safe, and if they felt respected and listened to by the customer service staff. The interviewees responded with the quotes outlined at the start of the section.

Telcos




"Late payments, I have been disconnected even after just making a payment. I have to call them up and tell them about the payment to get reconnected, I have to use someone else's phone or online chat to get through to them" – Interview participant

"No contracts given initially, took a lot of complaining to Dodo - took a lot of calls to understand if there is hidden fees, only to find out later that there are other costs. Threatened with going to the ombudsman but have worked out a deal." – Interview participant



"I usually have insurance on my phone because I am notorious for dropping my phone. (Recently) my screen got smashed so I asked Optus about making an insurance claim and they said I don't have insurance anymore. I argued that I always have insurance on my phone. I ended up having to get a new phone and pay the old phone outright, even though I had only had the phone for a couple of months. I had to pay around \$1300 and needed to go into a payment plan, I needed a phone as live in rural area. It was such a headache, got calls from their collection department even though I had a payment arrangement with the hardship department" – Interview participant



In our last IP Project report, we noted that a significant increase in casework related to issues with telecommunications providers, including upselling of expensive and unsuitable telecommunications products, unrealistic hardship and poor dispute resolution. This has continued in this period with 6% of Consumer Action's First Nations clients, and 3% of VALS clients contact with issues relating to telcos. Eight of the nine people we interviewed had experienced issues with their telco provider.

While the recent introduction of a Financial Hardship Standard by the Australian Communications and Media Authority (ACMA) which commenced on 29 March this year, will improve protections for telco customers experiencing financial hardship, it is clear more needs to be done.

This is particularly the case for First Nations Victorians, with a 2023 ACMA report¹⁹ highlighting that poor telco outcomes have disproportionately affected First Nations people. It found that across telco, energy, water and banking services, the telco sector had the highest experience of failed direct debits (25%) by those in financial difficulty or experiencing concern about bills, and that 28% of First Nations consumers (compared to 11% overall) do not find direct debit an easy method for paying their telco bill. It also highlighted a study that found 80% of First Nations consumers (compared with 32% overall) have experienced a payment problem with their telco bill and asked for help.

Additionally, First Nations customers are artificially disadvantaged by the poverty premium they must pay to access their essential telco services.²⁰ Many low-income customers, especially those who live in regional areas, are given little choices when it comes to telecommunications options and can be effectively locked out of the post-paid market by telco providers due to poor or no credit records as a result of identification barriers, historic debts, defaults or negative listing, with expensive pre-paid services often the only option.

The voluntary regulatory framework that still covers many areas of consumer protections has not worked for First Nations customer experiencing vulnerability.²¹ Broader systemic reform is needed across the telco industry to ensure First Nations people have access to affordable telco products and receive appropriate support to manage their bills at times when they are experiencing financial hardship.



Recommendation: First Nations voices amplified in Telco reform

In all future reform and consumer protections consultation activities, telecommunications businesses and the ACMA should work directly with First Nations experts from each region across Australia to identify and co-design proposed solutions to the various obstacles faced by First Nations people in accessing essential telecommunications services, including for affordability, connectivity, financial hardship and telco responses towards those experiencing vulnerable circumstances.

19 ACMA, What consumers want – Consumer expectations for telecommunications safeguards: A position paper for the telecommunications sector, July 2023, <https://www.acma.gov.au/what-consumers-want-consumer-expectations-telecommunications-safeguards>

20 Consumer Action Law Centre. March 2024. 'At the front line of the cost-of-living crisis: Insights from a Telephone Financial Counselling Helpline'. Available at: <https://consumeraction.org.au/report-at-the-front-line-of-the-cost-of-living-crisis/>; Anglicare Australia. September 2023. The Poverty Premium: The High Cost of Poverty in Australia'. Available at: <https://www.anglicare.asn.au/publications/the-poverty-premium/>

21 <https://consumeraction.org.au/consumer-fail-new-telco-code-proposal-delivers-little-for-vulnerable-consumers/>

Energy



"I put in for hardship but they haven't applied it yet. I think i did it in early September and someone was going to get back to me in 14 days but they haven't yet" – Interview participant

"(now) I make sure that I'm on the stay connect plan with AGL. I always call them and let them know if I can't afford it and go onto a payment plan." – Interview participant

"Had disconnection notices, like when you get a bill and it says pay by this date. But I always pay fortnightly with my bills but sometimes it still falls behind like when I use more gas in winter and less in summer. sometimes I get caught up but sometimes I get disconnection notices and I (have to) ring them up and tell them what's going on and tell them to put me onto the hardship program. I have gotten letters threatening to disconnect me and I tell them no you're not, put me on the hardship program"
– Interview participant

First Nations people experience high levels of energy related financial hardship, including disproportionately high levels of disconnection,²² yet there are at least some signs that thinking is shifting in this space. Both the Victorian and national energy regulators have released vulnerability strategies recently, which focus on breaking down barriers to create more equitable access to essential services for consumers. While it is positive that regulators are thinking about these issues, there remains more to do in terms of practical implementation by essential services providers to ensure their service offerings work for First Nations people. From our casework data, 3% of Consumer Action's First Nations clients reported issues to do with their energy retailers, and 7% of VALS clients reported issues do with their energy and water bills during the period.

All businesses providing essential services should take the challenge of overhauling their operations seriously, looking at how they can redesign their service delivery so that they operate in a culturally safe/appropriate way, to improve experiences and outcomes for First Nations people and communities. Critically, this must be done in genuine partnership with First Nations organisations, communities, and people.



Recommendation: Redesign of the essential services delivery model with First Nations people

First Nations Peoples must have culturally safe access to essential services. The Essential Services Commission (ESC) should work in close partnership with First Nations representatives to understand the impacts of service delivery models and find ways to ensure essential services retailers work in ways that are culturally safe and appropriate to the needs of First Nations people and communities. This work should form part of the expected review and resetting of commitments within the ESC's Getting to Fair strategy within the next 12 months.



²² Essential Services Commission, Getting to fair: Breaking down barriers to essential services (6 May 2021), available at: <https://www.esc.vic.gov.au/sites/default/files/documents/Getting%20to%20fair%20-%20Draft%20decision%20paper%2020210507%20.pdf>

Saving Sorry Business

"(I) Was involved with Youpla unfortunately, that was a bad experience but we have put that behind us. No correspondence whatsoever, have not spoken to VALS, is something that my wife was involved with. Its been a nasty experience that we had and we have just forgotten about it now. Never had correspondence from the company but we would expect to get that correspondence indicating what the government is prepared to do for those people who lost money"– Interview participant



Our previous reports have explored insurance-related consumer issues for First Nations Victorians through the specific lens of funeral insurance. In the past reports we have noted the particular importance of funeral insurance for First Nations people given the cultural aspects and significance of funerals (Sorry Business) within Victorian Aboriginal communities.

This has been borne out through our casework during this period, with 18% of VALS client files during this period relating to funeral insurance, making it the most common issue dealt with by VALS during 2021-23. A further 5% of VALS clients' files during the period related to general insurance issues. At Consumer Action, 15% of legal files during the period related to insurance issues. When looking at the specific insurance product people were calling about, funeral insurance was by far the most common product type mentioned by First Nations clients.

The 'Save Sorry Business' campaign, A First Nations led campaign, achieved an enduring resolution for First Nations people affected by the collapse of predatory insurance provider ACBF/Youpla, an issue that we reported on in-depth in previous IP Project reports. A case study of our involvement in the campaign and the outcomes achieved is presented below.

'An enduring resolution': Government provides \$97 million for victims of predatory insurance provider Youpla/ACBF

"It's been many years and it's a great outcome. I went to the Royal Commission, and I am so glad we got this up. Well done all!" Tracey Walsh

"The program is a welcome acknowledgement and a chance to recover some of our money. I'm not sure how much that's going to look like or what that's going to be, but I'm glad there's going to be something," Nikki Foy

After years of fierce advocacy by First Nations financial counsellors, advocates and policyholders, the government announced in February an 'enduring resolution' for over 13,000 people affected by the collapse of predatory funeral insurer Youpla/ACBF. The news was greeted with a sense of relief from First Nations advocates and families who had lost thousands and could finally hope they might see some of their money back.

Bettina Cooper, Boandik woman and Save Sorry Business Coalition Coordinator & Aboriginal Financial Counsellor at Mob Strong Debt Help said she commended Ministers Linda Burney and Stephen Jones for "...following through with their commitment to put a scheme in place to address the harm to First Nations people caused by Youpla, Centrepay and regulatory failures over many years.

"This resolution will relieve immediate financial hardship for many, provide certainty around Sorry Business for others, and enable thousands of families to move on with their lives," she said.

In early 2022, Consumer Action, through its partnership with VALS played a key role in the first phase of the campaign and was influential in raising the awareness of ACBF's predatory practices with decision makers in Canberra, and the media profile of the issue through the work of First Nations clients Tracey Walsh, Nikki Foy and her mother Diana Nikkelson, Josephine Beckhurst and her sister Sharon Weston. They appeared together on A Current Affair, which profiled the issue in a powerful story in April 2022. Nikki went on to travel to Canberra with the #SaveSorryBusiness campaign on visits to lobby Ministers in Canberra.

Consumer Action with over 160 community and Indigenous organisations supported the second phase of the campaign which involved several advocacy trips to Canberra (including Nikki plus Consumer Action staff). Our First Nations Engagement Lead, Jingili Mudburra woman from the top of the Top End Jacqui Watkins has also been involved in the latest stage of the campaign, giving advice, support, and guidance about cultural communications in community.

Jacqui said:

The Youpla Support Program will begin in July 2024 and run to the end of June 2026. It will cover anyone who held an active policy on or after August 1, 2015, and:

- make a one-off Resolution payment to the ACBF Payers (the person who was making payments to ACBF for all those years) for each policy
- be an amount that is either 60% of all payments made or the benefit amount on the ACBF certificate, whichever is lower.
- give the ACBF payer the choice to put the money into a safe and secure low risk funeral bond for safekeeping OR put the money into their own bank account.
- give the ACBF payer access to a free financial counsellor to help them decide the best option for them, including how to protect any payments from scams or bad businesses.

For more information visit: www.financialrights.org.au/factsheet/acbf-youpla/

Although the Government's announcement of resolution payments will provide some of the people impacted by the collapse of Youpla/ACBF with some of their money back, there remains more to be done, both ensuring that similar predatory businesses offering policies targeting First Nations consumers are forced out of the market, and also that ensuring culturally appropriate, safe and low-cost product options are available for First Nations people who want to be able to put money away to cover the costs associated with Sorry Business.

Faulty cars and dodgy car finance



"Last car loan I paid off and that was a lemon car. It looked alright but it started deteriorating straight away, little bits started breaking like the electric windows and then water leaking in. I didn't take it back to the dealership as I didn't have the chance". – Interview participant

"I got a car a couple of years ago - I think it was a Captiva. I tried to negotiate down the price and they said no that its a really good car. I paid 15 or 20 grand and 2 months later the whole transmission went so it cost another 3 grand to get fixed. He wouldn't do anything to help me." – Interview participant

The sale of faulty cars by licensed dealers and the multitude of barriers to have disputes resolved has comprised a high proportion of support provided to clients of Consumer Action for a very long time. For First Nations clients, faulty cars remain a critical issue that causes significant harm to finances, health, employment, education and wellbeing. More than half of the interviewees reported having been sold a lemon car.

In addition to problems with defective vehicles, we continue to see First Nations people experiencing problems related to loans to buy the car. In the reporting period, 7% of First Nations people supported by Consumer Action's financial counsellors, and 4% of support provided by VALS legal service related to car loans.

An excellent example of the power of the IP Project partnership model to drive systemic reform is the Consumer Policy Research Centre's report "Detours and Roadblocks", released in October 2023. First Nations consumer experiences were a focus of the research, and involved analysis of casework data from the IP Project and in-depth case study analysis of the experiences of nine clients who had been supported by VALS for their car-related consumer problems. The research found that First Nations people face some of the harshest practices from used car dealers, and on the basis of the evidence identified developing culturally appropriate solutions with and for First Nations people as the area of greatest need for further research and investment.

Consumer Action is seeking funding to lead a project to better understand the experiences of Victorian First Nations consumers when buying a used vehicle through a registered dealer, as well as implement actionable systemic and procedural changes that reduce and prevent the harms caused by faulty vehicle sales. This would be a First Nations led project that acts on the Detours and Roadblocks report recommendation that First Nations people should be empowered to design and develop culturally appropriate solutions to this problem. Using a participatory action-research approach, we will collaborate with First Nations communities, individuals and their representatives to understand their experiences of the financial and other harms caused, identify distinct barriers to accessing justice, develop policy and community-based solutions, and strengthen First Nations leadership of advocacy for their implementation.



Charlotte's Story:

*Charlotte is a single parent of three children, living in regional Victoria with Centrelink as her only source of income.

In 2019, Charlotte attended a local used car dealership with a friend. She had a relatively small amount of money with her and was looking to buy a cheap car, something she could use to drive her children around. Her friend asked the sales representative if Charlotte might be able to get a loan. Charlotte did not think she would be eligible as her only source of income was Centrelink.

To Charlotte's surprise, the sales representative told her he would easily be able to organise a loan for her. The sales representative put her on the phone to a broker who asked her some brief questions and then advised her she could borrow approximately \$10,000. The broker told Charlotte to select her car and the loan would then be finalised.

The sales representative showed her a Holden Captiva. As it was a larger car, she thought it would allow her to care for her young family. Charlotte then spoke to the broker again briefly twice, who finalised the loan and signed her up to an extended warranty for an extra cost of nearly \$3,000, promising "hassle free driving for three years". Charlotte picked the car up a couple of weeks later.

A year later, the car broke down. Charlotte took the car to a mechanic who advised it needed a complete engine replacement. She tried to make a claim on the warranty but was advised the issue would not be covered as it was "wear and tear"

VALS assisted Charlotte by making a complaint to the car dealership, loan company, the extended warranty provider and the broker. The car dealership refused to fix the car, and the extended warranty provider only agreed to pay \$1,000 to the mechanic once the repairs had been completed. Luckily, the loan company eventually agreed to waive the full balance of the loan, refund the cost of the extended warranty, and allow Charlotte to retain the car. The broker also eventually agreed to refund Charlotte the approximate \$1,000 broker fee she had initially paid.

Recommendation: Prevent harm to First Nations people caused by faulty used cars sales

Consumer Action will seek funding to lead a project in partnership with VALS, First Nations community and sector stakeholders, to develop culturally safe solutions to the avoidable harm caused by faulty car sales by licensed dealers. The project will seek to provide a deep understanding of First Nations peoples' experiences, including barriers to enforcing consumer rights, and use a participatory action research approach to co-design solutions.

Scams



"I rang the bank soon after the money got taken out they said I would have to call them back in regards to reimbursement. They said at first you have to get your phone cleaned, and while my phone was getting fixed they scammed me a second time. I ended up getting my phone reset again and I was waiting for the bank to reimburse me and they go you haven't asked us to reset or actually claim for it and I said I did (when I had) rung up. When I went into the bank they thought I was deaf, they were so rude.. they said oh she's only closing her account because she got scammed.. I heard every word. They shouldn't have said what they did. I don't know why I am still with them they are so abrupt and rude. VALS helped me to get reimbursement." – Interview participant

Although scams did not feature in previous IP Practice reports, addressing the staggering number of scams targeting Australians has become a high priority for Consumer Action. The first annual report on scams activity from the recently established National Anti-Scams Centre (NASC) found that in 2023, First Nations people reported 6,192scams compared to 3,889 in 2022. Losses for First Nations people decreased by 26.1% to \$3.8 million across the year.²⁴

Whilst scams have not been one of the most common issues reported by First Nations clients in our casework, with only 2% of VALS clients and 1% of Consumer Action's financial counselling clients contacting us to discuss being the victim of a scam, we believe this to be a significant underrepresentation of the extent of the issue among First Nation Victorians. It is generally well accepted that scams are under-reported.

There are several different reasons as to why there may be a hesitancy for First Nations people to report to Scamwatch/their financial institution that they have been scammed, this could include feelings of shame or a lack of trust in banks and government. It may also be the case that people do not realise they have been scammed, or do not have knowledge of the reporting process beyond reporting it to their financial institution or are unaware of support services to escalate the matter once reported.

In stark contrast six of the nine people we interviewed mentioned they had been the victim of a scam, but only one person had reported this to a regulator. The type of scams interviewees experienced are broad and include Facebook marketplace scams, phishing scams, unauthorised third-party access to a person's online account, phone call scams, and instances where a person's ID had been stolen and loans, credit cards and fines were incurred in that person's name.

"I have spoken to a couple of First Nations people recently who disclosed they had been scammed, but only after spending considerable time talking through numerous other issues and building a level of trust with them. Even still, these people tended to prefer not to discuss the details of the scams or any possible recourse for them, preferring to speak in general terms or moving on from the conversation as quickly as possible" – Ally Stuart, Financial Counsellor

We understand that NASC has identified First Nations people as a priority audience for outreach and engagement and has been reviewing the prevalence, breadth and severity of scams impacting First Nations Australians with key First Nations stakeholders. We will support NASC to continue their work in analysing the responses of banks to First Nations customers who have fallen victim to a scam. One quarter of the interviewees who had experienced a scam also reported that their bank did not provide appropriate assistance to them, said there was nothing they could do, or in one case treated the customer very poorly.

NASC is also currently working on a First Nations engagement strategy, and we look forward to continuing our support in the delivery of some of this work. It is our strong recommendation that any information gathering activities in community be accompanied by outreach and education services. People should have access to appropriate supports to assist them to complain, and the broader community should be provided with information on how to report to scamwatch, as well as information on what help is available if they fall victim to a scam in the future.

²⁴ Targeting Scams, Report of the National Anti-Scam Centre on scams activity 2023. April 2024 <https://www.accc.gov.au/system/files/targeting-scams-report-activity-2023.pdf>, p.1



Recommendation: National Anti-Scams Centre research into First Nations peoples experiences

The National Anti-Scams Centre should investigate the types and prevalence of scams perpetrated against First Nations people, their experiences of seeking remedies and reimbursement, and the breadth and severity of harms that are caused. The approach should include partnership development with legal, financial counselling and social support services so that foundations are established for subsequent implementation of culturally safe, evidence-based prevention strategies.

25 What is a debt agreement? AFSA <https://www.afsa.gov.au/i-cant-pay-my-debts/debt-agreement/what-debt-agreement>

26 Response to the "Personal Insolvency Discussion Paper". Submission to: Attorney General's Department, 2023. Financial Counselling Australia. <https://www.financialcounsellingaustralia.org.au/docs/response-to-the-personal-insolvency-discussion-paper/>

Bankruptcy

Part IX Debt Agreements



“(I thought) a Part IX debt agreement would be the best thing, but it actually wasn’t. They didn’t disclose they get a fair bit of money from you as well which is on top of all the debts as well. Then you can’t get a loan or credit for 5 years, it’s one step before bankruptcy. Nicole listened back to all of the tapes and the lady (that I spoke to when I applied) got me at the most vulnerable time and they didn’t disclose all of the fees that they put (on top)” – Interview participant



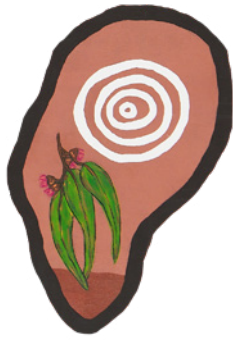
“(I had a) Part 9 debt agreement for around \$60K for cards and loans. One Christmas I called a bank and tried to sort something out and they told me they could give me a \$10K loan over the phone and it was right before Christmas so I said yes! They gave me \$10K line of credit to spend, so this came into the part IX debt agreement. I would rob Peter to pay Paul and use money from one credit card to pay another credit card for years and years until one day I realised I was never going to get ahead, so I did the part IX debt agreement. ... it was very hard to do, they said once you do it you won’t have any credit cards and so I had to make sure to set myself up first before going into it... It took me 4 years and about \$125 a week for me to pay back which was quite a bit but it was only hard until you get used to it.” – Interview participant

Part IX debt agreements are widely seen by First Nation clients as a flexible and easily accessible way to settle debts, without becoming bankrupt.²⁵ While these types of debt agreements do work for many, too often people are entering into unsuitable debt agreements after receiving poor advice.²⁶ The fact that they are a formal act of Bankruptcy, which attract significant fees which a person entering into such an agreement is liable to pay, mean they are often far from the best option for people with low to no disposable income and limited assets to protect.

Out of the nine clients we interviewed for this report, two had entered into a part IX debt agreement within the preceding five years. While neither VALS nor Consumer Action currently have the casework data to present Part IX debt agreements as a priority issue for First Nations people, the increasing number of people entering, or considering entering, into a Part IX debt agreements stands out.

The debt agreement negotiation market is a lucrative one, evidenced by the number of for-profit firms operating in this space. These firms are remunerated by adding significant fees (typically 20% of the client’s total debt) on top of the already unaffordable debts the client has incurred. People accessing these services are often at their most vulnerable as they are facing the very real possibility of either choosing (or being forced into) bankruptcy or losing their family home and/or other assets including their car when they can’t meet the terms of the agreement. This creates opportunity for predatory practices, and we are seeing people entering into debt agreements that they cannot afford, where there is evidence of irresponsible lending, opportunity for requesting debt waivers from lenders, or where a better outcome could have been achieved through alternative means.

We strongly support the emergence of not-for-profit debt negotiation organisations into this space, providing informal debt agreements (where appropriate) which are free for the consumer, as well as working closely with financial counsellors. Organisations like Way Forward operate under a model that has been successful in the UK for over 30 years. This is a voluntary model where lenders make good their commitment towards genuine hardship response, by signing up to donate 20% of a client’s debt payments back to Way Forward – thus negating the fee to the client.



Stephanie's Story:

Stephanie was a victim of family violence by her ex-partner, referred to the Victorian Aboriginal Legal Service (VALS) by Consumer Action. During their relationship Stephanie signed up to a credit card and a personal loan, under duress, which was used by her partner to purchase goods for his business and himself, Stephanie received no benefit.


Prior to obtaining advice from VALS Stephanie entered into a Part IX debt agreement with Fox Symes, a debt consolidation company. This debt agreement included fees of nearly \$3,000 to Fox Symes to consolidate her debts. At the time she told Fox Symes that the debts were due to her being a victim of family violence and despite knowing this they still signed her up to the Part IX agreement. Stephanie struggled to make the fortnightly payments of \$100. Fox Symes then contacted the lenders who agreed to waive the remainder of the clients debts because of the family violence. However, by this stage Stephanie had already paid fees to Fox Symes and made repayments on the debts, (which could have been waived in the first place). The other consequence was the Part IX agreement was recorded on her credit report. Having this on her credit report was preventing Stephanie from getting credit she needed and was stopping her from getting a home loan.

Unfortunately, VALS were not able to recover the fees Stephanie paid for the Part IX agreement or have it removed from her credit report. If Stephanie had received advice prior to entering this agreement she would have likely saved herself thousands of dollars and avoided the Part IX agreement being recorded on her credit report and National Personal Insolvency Index. VALS explained the length of time the Part IX agreement would remain on Stephanie's credit report and wrote her letters of support and explanation to show lenders in order to support her application process for a home loan. Stephanie now knows that she should always get advice before entering into any type of 'debt consolidation' agreement.

For both clients who mentioned entering into Part IXs, the debt agreement was unaffordable and ultimately put them in further financial distress. As part of Bankruptcy reform undertaken by the Attorney General in 2018, we strongly supported the prevention of unaffordable Part IX's that prolong hardship, by introducing a payment-to-income ratio, however strongly opposed the prescribed figures as they defeat the intention of the legislation.²⁷

We maintain our recommendation from the 2018 consultation that the prescribed amounts for debt agreements be set on the basis that the effective minimum income is the only available income, and that income must be sufficient to meet essential living costs, repay debts not included in the Part IX (such as car loans, fines and child support) and regain financial stability.

27 181023-Joint-Submission-Legislative-Instruments.pdf (consumeraction.org.au)




Recommendation: Improve the affordability and cultural safety of the bankruptcy system for First Nations people

The Attorney-General's department should develop a legislative instrument that prevents unaffordable Part IX agreements which prolong hardship, by introducing a payment-to-income ratio such that the effective minimum annual income threshold to enter a debt agreement is linked to the Base Income Threshold Amount, or alternatively, the National Minimum Wage.

Additional funding for AFSA is recommended to ensure it can properly scrutinise Part IX agreement proposals for compliance with these new obligations.

AFSA should work with First Nations people to ensure its services are culturally safe and accessible for First Nations people seeking information and support regarding unmanageable debt and Bankruptcy.

Funding should also be made available to support organisations providing free and informal debt agreement assistance to also provide outreach and engagement services for First Nations communities. Such funding could allow for the exploration of opportunities on how to broaden their service offerings to best assist First Nations communities.





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