



Australian Government
Australian Financial Security Authority

7 November 2018

Mr Alan Raine
Committee Secretary
Senate Standing Committees on Economics
By Email: economics.sen@aph.gov.au

Dear Mr Raine,

Inquiry into the credit and financial services targeted at Australians at risk of financial hardship

Thank you for the invitation to make a submission for the inquiry into the credit and financial services targeted at Australians at risk of financial hardship.

Contents of the submission

This submission provides information (including some of AFSA's ongoing activities) and data derived from AFSA holdings that may assist in this inquiry relating to the following terms of reference:

Credit and financial services targeted at Australians at risk of financial hardship, with particular reference to:

1. Whether current regulation of these service providers meets community standards and expectations and whether reform is needed to address harm being caused to consumers;
2. The impact on individuals, communities, and the broader financial system of the operations of debt management firms, debt negotiators, credit repair agencies and personal budgeting services; and
3. The present capacity and capability of the financial counselling sector to provide financial counselling services to financially stressed and distressed members of the community.

Background

The Australian Financial Security Authority ('AFSA') is an executive agency in the Attorney – General's portfolio.

AFSA's purpose is to maintain confidence in Australia's personal insolvency and personal property securities systems through delivering fair, efficient and effective trustee and registry services, and risk – based regulation. AFSA is responsible for administering the *Bankruptcy Act 1966*, the *Bankruptcy (Estate Charges) Act 1997* and associated Regulations. The Bankruptcy Act establishes:

Inspector – General in Bankruptcy – AFSA’s Chief Executive is also appointed as the Inspector – General in Bankruptcy. The Inspector – General is responsible for the general administration of the Bankruptcy Act and has powers to regulate bankruptcy trustees and debt agreement administrators, review decisions of trustees and investigate allegations of offences under the Bankruptcy Act.

Official Receiver – On behalf of the Official Receiver, AFSA operates a public bankruptcy registry service with compliance and coercive powers to assist bankruptcy trustees to discharge their responsibilities.

Official Trustee in Bankruptcy – The Official Trustee in Bankruptcy, a body corporate created under the Bankruptcy Act, administers bankruptcies and other personal insolvency arrangements when a private trustee or other administrator is not appointed. AFSA provides personal resources to ensure that the Official Trustee can fulfil its responsibilities. The Official Trustee also has responsibilities under the *Proceeds of Crime Act 2002*, the *Proceeds of Crime Act 1987*, the *Mutual Assistance in Criminal Matters Act 1987*, the *Crimes Act 1914* and the *Customs Act 1901* to control and deal with property under court orders made under those statutes.

All of the above offices are performed through officials of AFSA.

Whether current regulation of these service providers meets community standards and expectations and whether reform is needed to address harm being caused to consumers

The regulatory responsibilities of the Inspector-General in Bankruptcy, as set out in the *Bankruptcy Act 1966*, are essentially aimed at ensuring high national standards of Bankruptcy Act practice and procedures.

To understand the environment in which it regulates, AFSA works to identify trends or systematic issues within the personal insolvency system, high-risk activities, and regulatory gaps. AFSA promotes a regulatory environment where all stakeholders play a part in maintaining best practice standards.

AFSA’s independent regulation section acts as delegate for the Inspector-General. The section oversees both registered and unregistered debt agreement administrators, registered trustees in private practice, solicitor controlling trustees and AFSA’s trustee function.

AFSA does not regulate debt management firms, debt negotiators, credit repair agencies and personal budgeting services, but such entities frequently interact with personal insolvency professionals - in particular with registered debt agreement administrators.

AFSA works proactively to prevent developments that have the potential to undermine public confidence in the personal insolvency system. A key tool is the annual Personal Insolvency Compliance Program (compliance program). Strategic focus areas are identified in the compliance program following an assessment of relevant regulatory issues and consultation with stakeholders. The 2018 – 19 compliance program¹ includes strategic focus areas (relevant to this submission) concerning the ‘Right option – first time’ and untrustworthy advisors.

The ‘Right option – first time’ focus is testing whether information and advice provided by personal insolvency practitioners is accurate, relevant and comprehensible for the recipient, thereby enabling informed decisions to be made by debtors and creditors. AFSA supports the National Financial Capability Strategy by delivering information that enables debtors and creditors to make informed decisions by providing the right information through the right channel in the right tone. We

¹ Link to AFSA Insolvency Compliance program 2018-19 <https://www.afsa.gov.au/insolvency/i-am-practitioner/compliance-program>

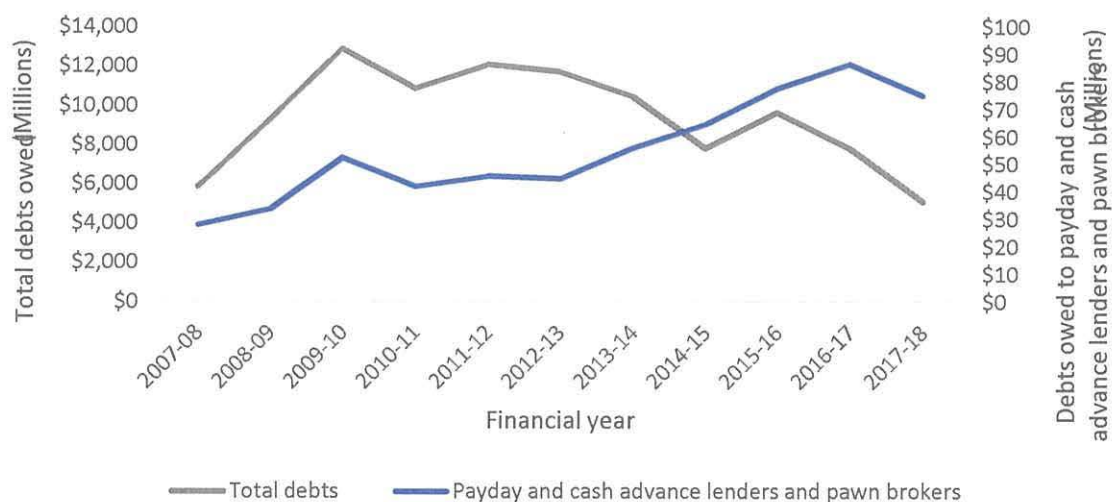
are currently using data to define personas and archetypes that will support the delivery of accurate, relevant and tailored content to support this approach.

The untrustworthy advisors compliance focus area involves using all available data and intelligence to focus on taking enforcement action (proactive and reactive) to disrupt untrustworthy advisor conduct that has potential to undermine confidence in the personal insolvency system. An untrustworthy advisor is an entity (or an individual) that provides insolvency advice which is incorrect because it is misleading and / or false and may lead to fraud. Typically, such advisors are unregulated. The actions of these untrustworthy advisors is not limited to both personal and corporate insolvency professions but can extend to the operations of debt management firms, debt negotiators, credit repair agencies and personal budgeting services. The main threats of untrustworthy advisors include irrelevant or exorbitant charges for the consumer in an insolvency process (such as the completion and lodging of a debtor's petition) or fraudulent activities (e.g. fabrication of creditors, disposal of assets etc.).

AFSA, in conjunction with the Commonwealth Director of Public Prosecutions, has been active in this area resulting in a bankrupt being convicted in July 2018 of a Bankruptcy offence after receiving advice from an untrustworthy advisor.² Other enforcement and regulatory action directed at (where appropriate) prosecution of, and disrupting the activities of, untrustworthy advisors is undertaken by AFSA. In 2017 a YouTube video was developed and published by AFSA warning debtors of the risks of untrustworthy advisors (<https://www.youtube.com/watch?v=8Gv4ThbZryA>).

The impact on individuals, communities, and the broader financial system of the operations of debt management firms, debt negotiators, credit repair agencies and personal budgeting services

AFSA collects information on the debts owed by bankrupts, debt agreement debtors and personal insolvency agreements. In 2017-2018, insolvent debtors owed over \$75 million to payday and cash advance lenders and pawn brokers. This accounted for 1.5% of the total \$5 billion owed by these debtors. As illustrated in the following graph, the growth in debts to payday and cash advance lenders and pawn brokers over the last decade has exceeded the growth rate in total debts.



AFSA's regulation of debt agreement administrators extends to monitoring of their advertising. Such advertising and marketing can potentially create a conflict of interest as debt agreement administrators market to people in financial difficulty and have the ability to provide these people with a form of welcome relief, while having a financial interest in signing up debtors to

² <https://www.afsa.gov.au/about-us/newsroom/media-release-qld-billington-bankrupt-convicted-after-receiving-advice>

debt agreements. However, a debt agreement is only one option a debtor may take in order to obtain relief from their difficulties, and sometimes it is not their best option, particularly in basic financial terms. In the pursuit of more customers a debt agreement administrator's advice and marketing can sometimes tend not to be impartial and complete. When that marketing is found by AFSA to be misleading or deceptive, action is taken in collaboration with ASIC.

The Consumer Action Law Centre ('CALC') recently made a complaint to AFSA about a debt agreement administrator. Below is a summary of their complaint which is currently under investigation.

- Their client ('The Debtor') had cause to obtain his credit file, so he used google to find a provider;
- The debtor rang a credit report provider who also had a debt agreement arm;
- The debtor was confused and unwittingly agreed for the company to prepare a debt agreement proposal for him, something he would be charged for;
- When the debtor realised what he had allegedly agreed to he attempted to cancel the agreement;
- After CALC intervened the debt agreement administrator agreed not to enforce their setup fee.

This matter was settled prior to CALC contacting AFSA. It is relevant to appreciate that the debtor did not sign a debt agreement proposal, he only consented to the debt agreement administrator preparing a debt agreement proposal, and the associated setup fees. It is also important to note the significance and importance of the 'first contact' with the debtor, which may be an associate of the registered debt agreement administrator.

While no other complaints of this particular nature have come to AFSA's attention, concerns remain that debtors are not receiving impartial advice about insolvency options, and that there may be a disconnect between what is being marketed and what the service provider hopes to sell. There is a very small minority of debt agreement administrators that market or sell services in relation to credit reports / credit histories.

It is noted that the *Bankruptcy Amendment (Debt Agreement Reform) Act 2018* which will commence from 27 June 2019 will provide important tools to assist in addressing relevant conduct prior to a debt agreement, as new provisions will now extend to debt agreement administrators' conduct prior to the signing of a debt agreement. It will also introduce a new fit and proper person requirement for registration as a debt agreement administrator.

The present capacity and capability of the financial counselling sector to provide financial counselling services to financially stressed and distressed members of the community

Financial counsellors are available in every State and Territory and work in non – profit community organisations. AFSA recognises the important role of financial counsellors in the personal insolvency system and identifies to the public the services provided by these organisations. Currently AFSA has a dedicated 'Find a financial counsellor'³ page on its external website. The webpage also includes links to Financial Counselling Australia and ASIC's MoneySmart websites, and the contact number for the National Debt Helpline.

AFSA regularly engages with the financial counselling sector to achieve common objectives and in the sharing of information. AFSA has biannual meetings with Financial Counselling Australia (FCA) and currently has a dedicated financial counsellor stakeholder liaison officer who acts as the first point of contact for financial counsellor interactions with AFSA. AFSA regularly participates in training sessions / forums for financial counsellors in Sydney, Melbourne and Brisbane. In addition,

³ <https://www.afsa.gov.au/insolvency/how-we-can-help/find-financial-counsellor>

AFSA has also recently completed sessions in more regional cities being Adelaide, Perth, Hobart and Darwin. Feedback from these engagements is that financial counselling services are under pressure to provide timely advice to debtors in financial difficulty. We are also working with FCA to identify other channels for support, such as webinars, in order to broaden our reach and support to FCA members.

As detailed in the AFSA Personal Insolvency Practitioners Compliance Report 2016/17⁴, AFSA conducted a survey (with the assistance of an external provider) on a random sample of recent bankrupts and debtors under debt agreements. Responses were received from over 650 individuals in a three – month period. A primary objective of the survey was to better understand personal insolvency arrangements from the perspective of bankrupts and debtors to assess their understanding of information, including advice they received about options, obligations and the consequences of the various types of personal insolvency administrations.

The survey asked a number of questions on how bankrupts with registered trustees and debtors in debt agreements had sourced information about personal insolvency options.

The feedback from this survey is reflected in the following table:

Question that was asked of bankrupts / debtors in debt agreements	Response Bankruptcy, with Registered Trustee %	Response Debt Agreements, with Debt Agreement Administrator %
Were free financial counsellors / helplines the first source of information you relied upon when deciding on your personal insolvency options?	13%	3%
Were you aware that you could have accessed the services of free financial counsellors, and if so did you access these services?	19%	10%
Were you aware of free financial counsellor services, and decided not to consult them?	24%	17%
You weren't aware that you could have accessed free financial counsellor services	51%	63%
If you were aware that you could have accessed the free financial counsellor services it may have made a difference to your personal insolvency decision	19%	36%
If you were aware that you could have accessed the free financial counsellor services, it would not have altered your personal insolvency decision	32%	27%

⁴ <https://www.afsa.gov.au/statistics/personal-insolvency-practitioners-compliance-report>

If you require further information on this submission please do not hesitate to contact me or Paul Shaw, who can be contacted on [REDACTED]

Yours sincerely

Hamish McCormick
Chief Executive and Inspector-General in Bankruptcy