FCAN
FINANCIAL COUNSELLORS' ASSOCIATION OF NSW INC

9th November, 2018

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

Re: Credit and financial services targeted at Australians at risk of financial hardship

The Financial Counsellors' Association of NSW (FCAN) welcomes the opportunity to respond to this Inquiry and share our experiences and concerns about credit and financial services targeted at vulnerable people in Australia.

FCAN was established in 1980 and is the peak membership body for Financial Counsellors in NSW. We represent and support 270 Financial Counsellors working as employees or volunteers in community organisations throughout the state.

We advocate for and assist vulnerable members of the community who are experiencing financial hardship. According to the ABS, *Household Expenditure Survey* released September 2017, 13% of Australian households are unable to raise $2,000 in a week for something important and 10% of households could not pay a gas or electricity bill on time in the past 12 months.

People can find themselves at risk of financial hardship due to a range of issues and life events such as:

- Reduction in income or lack of income due to job loss or downturn in trading conditions; being unemployed or underemployed; or on a pension
- being unable to work due to injury
- health issues
- location and lack of employment opportunities
- family commitments, caring responsibilities or a death in the family
- Being unable to access fair finance or choosing not to access fair finance
- Natural disasters such as drought, flood and bushfire
- Financial abuse, elder abuse and domestic family violence
- Relationship and family breakdowns
- Irresponsible lending
- Acting on advice that is not fit for them or making uninformed decisions about financial products and services not fit for them
- Lack of financial literacy
- Addictions such as gambling, drug, alcohol and shopping addictions
- Mental health and other health issues
- Housing and rental affordability
- Rising cost of health care, utilities, petrol and tolls
- Fines, charges and late fees
- Not having insurance, inadequate insurance or having inappropriate insurance
- Not understanding the terms and conditions of a contract
- Paying to get out of debt
- Providing financial support to spouses, partners, family and friends who are in financial difficulty
- Making uninformed financial decisions when in financial hardship because it can become all too hard, you don't know your options or where to get assistance
- Not accessing financial counselling

Stronger laws and regulatory frameworks are needed to protect vulnerable community members who are experiencing or at risk of financial hardship as a result of the credit and financial services detailed by this Inquiry.

Suite 602, 267-277 Castlereagh Street, Sydney NSW 2000
1300 914 408 (02) 9212 4481 admin@fcan.com.au
ABN 71 720 817 858
www.fcan.com.au

Response

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

(a) the impact on individuals, communities, and the broader financial system of the operations of:

(i) payday lenders and consumer lease providers,

Approximately one in every six people in Australia (16.9%) are severely or fully financial excluded *(Eight Years on the Fringe [2015][1])*. Financial exclusion occurs when people do not have access to mainstream financial products that are both affordable and suitable for their needs. For financially excluded people, payday loans and consumer leases can often be the only forms of finance they can access and rely on.

While readily available to vulnerable people, payday loans and consumer leases can be significantly more expensive than mainstream financial products and credit, from which people in hardship are typically excluded. Due to astronomically high interest rates and other fees charges associated with these products, people in financial hardship can become dependent on unsuitable products they simply cannot afford.

Financial Counsellors are also very concerned by an emerging trend in the consumer lease industry of leasing goods to vulnerable consumers under an ABN then denying that the Credit Code or Consumer law applies due to the purported "commercial nature" of the transaction.

> **'Recently I had an Aboriginal client on a Disability Support Pension referred to me from Emergency Relief who was needing food vouchers. This client had five payday loans and the repayments left him with little money for food and living expenses.' Graham R. Smith, Financial Counsellor, Newcastle**

A pattern of snowballing indebtedness from these high cost products is clearly present in the casework conducted by Financial Counsellors in NSW. Reforms and regulation of these products are urgently needed to ensure people in financial hardship are not forced or enticed into long term dependence on unsuitable, high cost financial products as their only means of access to finance.

The SACC recommendations announced in 2016 have yet to be legislated and the delay is causing people to be continually subject to irresponsible and unfair lending practices. We urge the Inquiry to recommend legislating the SACC reforms as per recommendations made in 2016.

(ii) unlicensed financial service providers including 'buy now, pay later' providers and short term credit providers,

Financial Counsellors are concerned that these providers can operate outside the National Credit Law, aren't obliged to comply with responsible lending requirements and aren't required to be members of an external dispute resolution scheme.

'Interest free' credit services, such as 'buy now, pay later' can increase the risk of people not being able to pay their debts due to the delayed payment obligation. Some consumers may never be able to afford the repayments, or due to life events, can no longer afford them when the payment date arrives.

These delayed payment schemes pose a particular risk to members of the community with consumer or "shopping" addiction issues where goods can be easily purchased on delayed payment terms.

It appears these services have a business model based on the collection of late fees. These products typically offer no flexibility on repayment dates to align with customer's pay dates, which leads to late fees and overdrawn fees.

There is also limited or simply no access to financial hardship relief such as debt waivers or payment arrangements nor adequate assessment of suitability of the product for the consumer. Problems can also arise for consumers when goods and services are returned or are faulty.

[1] Adams S, Marjolin A and Muir K. (2015). "Eight Years on the Fringe". Centre for Social Impact (CSI) – University of New South Wales.

Short term credit providers are another major concern for Financial Counsellors because consumers are using these products and services to pay off other debts and this can leave consumers worse off than if they negotiated a payment plan with the service provider they initially owed the debt to.

Case Study – Short term credit:

A Vietnam War veteran with significant mental health issues, reliant on the Disability Support Pension, applied online for a loan of $250 to assist with paying his winter electricity bill. He had never been in a position where he hadn't been able to pay his bills.

As soon as he received the money he realised he had no ability to repay the debt, for the same reasons he had no capacity to pay the initial electricity bill. In two weeks his debt increased from $250 to $435.

He saw a financial counsellor who got a copy of the contract which showed that details regarding capacity to repay had not been sought. It also showed an address in WA when he has always lived in NSW and a date of birth which was not his.

After negotiation, the lender agreed to waive all past and future interest and charges including the 12% charge for writing a letter indicating he was in arrears. They would not however waive the original debt and advised that he could pay it off at $5 per fortnight.

(iii) debt management firms, debt negotiators, credit repair agencies and personal budgeting services;

The ASIC Report *REP 465 Paying to get out of debt or clear your record: The promise of debt management firms*[2] identifies that there are "consumers who may be in significant financial hardship and in need of specialist assistance and advice to help them through a crisis."

REP 465 outlined that "anecdotal reports and case-work experience in Australia suggests that debt management firms can pose significant risks to some consumers. Concerns have been reported to ASIC by a diverse group including financial counsellors, credit providers, consumer legal centres and EDR schemes in financial services, telecommunications, energy and water."

REP 465 outlined those who reported, key concerns included "that debt management firms:

(a) charge high fees for services that provide little practical value to the consumer;
(b) provide inaccurate or inappropriate advice and services that can leave consumers worse off;
(c) have mis-sold services on the basis of misleading representations about the nature and effectiveness of the service; and
(d) have engaged in unfair and, in some cases, predatory conduct in relation to vulnerable consumers in financial hardship."

In our experience, Financial Counselling clients are often misled about the true nature and the implications of debt agreements, for example:

- that they are in fact an act of bankruptcy
- people do not understand the full cost of these arrangements
- people can sometimes owe significantly more to credit repair and debt management firms than the initial debt that led them to engage these services in the first place.

Case Study – Debt Agreement:

Client was a young woman referred to financial counselling from a homeless support service with approximately $22,000 in debts made up primarily of Payday loans $5000, Consumer Rental leases $10,000, Debt Collector $2,800 and rental arrears $2,500.

The client was receiving Centrelink benefits and had no real assets or savings. A Credit Repair/Debt Agreement firm had charged her $2,368 for a Part IX Debt Agreement. The client could not afford the Part IX Debt Agreement and defaulted without making a single payment. The client tried to go bankrupt, a much more appropriate solution, but this was rejected due to the Part IX DA being in place.

This client should have been offered bankruptcy as an option. The client was very angry that this company took advantage of her situation and tried to profit from it. The financial counsellor is currently assisting this client.

[2] https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-465-paying-to-get-out-of-debt-or-clear-your-record-the-promise-of-debt-management-firms/ Released 21 January 2016

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

In our experience, many of these service providers are businesses and investors who seek to profit from vulnerable consumer's exclusion from fair finance or lack of awareness about the fair finance options and free financial counselling services available to them.

Consumer lease companies should be removed from Centrepay. Centrepay's original purpose was to ensure that essential costs such as rent, electricity and water were paid and not to provide a payment collection service for non-essential, profit driven goods and services.

Legislating the 2016 Small Account Credit Contract recommendations will strengthen protections for people using payday loans and rent-to-buy contracts. The longer we wait, the more people are adversely affected. Once a person is trapped with high cost credit it is very difficult to escape. The single most important planned reform is capping the level of repayments on payday loans and rent-to-buy contracts at 10% of a person's net income.

We also recommend a comprehensive cap on all forms of credit to be defined as the Reserve Bank Cash Rate plus 30%. This will allow some flexibility for the cap to move with future interest rate changes. The comprehensive cap would stop unfair and unreasonable interest charges for all Australians and enable people in financial hardship or at risk of financial hardship to get on top of their repayments and not be caught in a debt cycle.

Unlicensed financial service providers including 'buy now, pay later' providers and short term credit providers should be expressly covered within the existing consumer credit regulatory framework. Thereby ensuring that these providers are mandated to follow responsible lending criteria, hardship obligations and industry acceptable Internal Dispute Resolution and External Dispute Resolution.

The Government needs to urgently strengthen the regulatory framework applying to debt management companies, credit repair agencies, debt negotiators, for profit budgeting services, bankruptcy advisors and debt agreement administrators.

(c) the present capacity and capability of the financial counselling sector to provide financial counselling services to financially stressed and distressed members of the community;

The demand for financial counselling services far exceeds current supply. There are 950 financial counsellors working either part time or full time throughout the country while there are more than 2.5 million people in Australia living in households of high financial stress[3]. There are areas in rural and regional NSW where there are no financial counselling services due to funding and logistical and operational constraints.

In the KPMG Report *Financial stress in Australian households* 18 April 2017[4], KPMG estimates around 10 to 15 percent of households (1.4 million of households) appear to be consistently unable to pay bills and debts as they fall due. The Report identifies households who live with entrenched disadvantage – unable to afford heating and meals, need to pawn possessions or require assistance from welfare organisations. These households represent about 3 to 5 percent of our Australian society.

The Government could assist with demands on the financial counselling sector by increasing the regulatory framework around credit and financial services targeted at Australians at risk of financial hardship.

Government could further assist people in financial hardship or at risk of financial hardship by increasing the capacity of the sector though additional, long term funding such as an ASIC fee model or major bank tax.

> **"We would like to provide financial counselling in areas currently not serviced but can't even provide enough hours in the funded areas. There are only so many hours in a day." Kempsey Neighbourhood Centre Financial Counselling Service**

The sheer number of clients presenting for financial counselling assistance with complex cases means that services are currently operating at or beyond their capacity for a sustainable provision of service.

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[3] https://www.financialcounsellingaustralia.org.au/getattachment/Corporate/Publications/financial-counselling-infographic.pdf
[4] https://assets.kpmg.com/content/dam/kpmg/au/pdf/2017/financial-stress-australian-households.pdf

Significantly increasing the number of funded positions would alleviate some of the stress on financial counsellors and reduce waiting times.

However it is crucial that along with increased funding, the government passes legislation that ensures high cost, unsuitable and predatory credit and financial services are no longer targeted at, or provided to vulnerable consumers at risk of financial hardship.

The combination of increased, long term funding for the sector along with legislative reform will ensure that the number of people seeking financial counselling will not continue to rise beyond the capacity of the sector, a worrying trend that is present today.

> **"We constantly have to find time to see people in desperate circumstances which means no lunch break or clocking up time in lieu to meet those needs as well as manage caseloads for those with pre- booked appointments and existing clients."**
> **Pauline Smith, Financial Counsellor, Taree**

Foreseeable impacts on the demand on financial counselling

Financial Counsellors are now seeing the knock on effects of the drought in regional areas. These include clients with reduced incomes and/or increased credit card bills and debts due to lack of seasonal work, reduced trading conditions and hours and decreasing income from farmers, farms or housing rentals. This will only increase as the financial effects of a drought on a community usually lasts 5 years or more.

The National Redress Scheme for survivors of institutional child sexual abuse recommended that survivors have access to financial counselling. This will be through existing Commonwealth funded financial counsellors. (i.e. no additional funding to be provided for these services). The Redress Scheme commenced in NSW on 1 July 2018 and will run for ten years. Without additional funding, this recommendation will place an immense burden on services already operating at capacity.

The Capability of the Sector

The capability of financial counsellors is continually maintained and developed through our minimum entry requirements, peer and professional supervision requirements, minimum continuing professional development and the Code of Ethical Practice for Financial Counsellors. The National Standards for Membership and Accreditation sets out these mandatory requirements and standards.

Financial counselling services are exempt from the licensing requirements for both an Australian Financial Services License and a Credit License. The financial counselling services that are exempt from licensing are counselling and advocacy services that help people in financial difficulty. Most financial counsellors work in community organisations, although some are employed by government. The services provided by financial counsellors are free, confidential and independent.

The conditions for these exemptions are that the Agency:

- Does not charge any fees or receive any remuneration arising from the financial counselling service; and
- Does not run, and is not associated with, a financial services business; and
- Ensures its staff do not provide any financial product advice outside the terms of the exemption; and
- Ensures its financial counsellors are a member of, or eligible for membership of, a financial counselling association; and
- Ensures its financial counsellors have appropriate training and adequate skills and knowledge.

The National Consumer Credit Protection Act 2009 (Cth) at section 160C imposes restrictions on the use of the terms financial counsellor, financial counselling, and any other term of similar meaning.

These restrictions are to protect consumers and ensure that the term "financial counsellor" is one that is recognised by many in the community as a free, independent, high quality assistance service. Vulnerable members of the community approach financial counsellors and place immense trust in them because of the robust integrity of the service within the community sector.

The purpose of the s160C restriction is to ensure Credit License holders who are not financial counsellors do not mislead people by representing their services as financial counselling.

(d) any other matters.

Debt collection agencies and debt buyers
The practices of debt collection agencies and debt buyers needs to be considered as part of the regulatory framework and legislation. Otherwise any new legislation and regulations for credit and financial services targeted at people at risk of financial hardship will not be effective if these services are able to outsource their debts to companies that aren't covered under the proposed tougher laws.

New fintec products to assist customers to pay their bills
As with the buy now pay later schemes that have emerged, there are new services in the market that pay customer's bills and then the customer repays the company in instalments. This is a bill factoring service where people outsource their debt to a later date and provide their personal details to an online third party. The Inquiry needs to recommend that these services be included in the regulatory framework.

If a person can't afford to pay a bill they should contact their service provider and request a payment plan or seek financial counselling.

Fintech marketplace
Financial Literacy programs are unable to cope with the rapid FinTec changes and the changing financial marketplace. It should be mandatory for new apps and services to contribute to Financial Literacy development.

In conclusion, there needs to be a Consumer Protection framework and regulations on all of the products and services detailed in our submission. Currently it is "Buyer Beware" and it is up to consumers to make informed decisions about these products and services.

Just because a product or service can be offered doesn't mean it should be offered.

Thank you again for the opportunity to submit our experiences and concerns with credit and financial services targeted at Australians at risk of financial hardship.

Signed,

Jo Parker
Executive Officer
Financial Counsellors' Association of NSW Inc.

Graham R. Smith
Chair
Financial Counsellors' Association of NSW Inc.