



Submission by
Care Inc. Financial Counselling Service &
The Consumer Law Centre of the ACT

In response to:

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

Care Inc. Financial Counselling Service (Care) has been the main provider of financial counselling and related services for low to moderate income and vulnerable consumers in the ACT since 1983. Care's core service activities include the provision of information, counselling and advocacy for consumers experiencing problems with credit and debt.

Care also provides a Community Development and Education program, gambling financial counselling as part of the ACT Gambling Counselling and Support Service (AGCSS) in partnership with lead agency Relationships Australia; makes policy comment on issues of importance to its client group and operates the ACT's first No Interest Loans Scheme which was established in 1997. Care also hosts the Consumer Law Centre (CLC) of the ACT. Across Care's service delivery programs, the agency responds to over 2,000 new requests for assistance every year.

Given the focus of our work, Care is acutely aware of the harm caused to our clients in financial hardship by payday lenders, consumer lease providers, buy now – pay later providers and debt management/repair firms. We therefore welcome the opportunity to provide comment on the Senate Inquiry into credit and financial services targeted at Australians at risk of financial hardship.

We regularly contribute our expertise to government and other consultations either as an individual agency or as part of a group of like-minded services. Some examples of where we have recently given input include:

- The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
- Review of the small amount credit contract laws & Interim Report
- Review of the Code of Banking Practice (joint)
- Small Amount Credit Contract and Consumer Lease Reforms (joint)
- The Life Insurance Code of Practice
- Review of the Financial System Dispute Resolution Framework (EDR)(joint); and
- various other areas on which we can represent the interests of our clients such as tenancy, welfare reform and telecommunications.

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

- (i) Payday lenders and consumer lease providers
- (ii) Unlicensed financial service providers including 'buy now, pay later' providers and short-term credit providers
- (iii) Debt Management firms, debt negotiators, credit repair agencies and personal budgeting services

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

As a financial counselling and legal service funded to work with low to moderate income earners, we assist clients who are experiencing a range of financial hardships, including clients struggling to make payments on Small Amount Credit Contracts (SACCs), consumer leases, buy now - pay later schemes and credit repair/management firms. Most clients that contact our service do so when they are unable to pay their debts as they fall due. Care's clients experience a range of circumstances that lead them to be in financial difficulty. For some it is long term chronic poverty where they have been existing for long periods on low incomes. For others there has been a change in circumstances such as illness, relationship breakdown or unemployment that impacts their finances and means they cannot pay their commitments as they fall due. Many clients also experience chronic physical illness or mental illness and a number identify as being survivors or trauma, including domestic violence and childhood trauma.

Care sees clients in some of the most "at risk" groups for financial difficulty and therefore vulnerable to accessing SACCs or 'payday loans', 'buy now, pay later" and consumer leases. This includes people with mental illness, sole parents (particularly women as sole parents), women (and their children) escaping domestic violence, aged people, gamblers, public housing tenants, prisoners, Aboriginal and Torres Strait Islander clients, and Culturally and Linguistically Diverse clients.

Despite clients' efforts to constantly juggle their finances to make the best of their limited resources, there are always going to be unexpected expenses. Clients seen at Care are borrowing from payday lenders, 'buy now, pay later" providers and consumer lease providers to fill a gap when they are desperate and have no savings, cannot access affordable credit options and don't have any family or friends to turn to. A list compiled from the financial counsellors as to the reasons clients say they borrow from payday lenders, 'buy now, pay later" providers and consumer lease providers includes: food, rent, medical and dental, children's needs (including clothing and school needs), travel interstate for family reasons, gambling, general household bills, household items (beds, lounges, TVs), Christmas expenses, car expenses including registration, to pay other creditors, pharmaceuticals and mobile phones.

Our interest in this Inquiry stems from the issues we observe being created by payday lenders, 'buy now, pay later" providers and consumer lease providers, particularly where a client has received several of these loans in succession. Far from being a resolution to the cash shortage vulnerable and low income consumers experience, a payday loan, consumer lease or multiple "buy now pay later" loans will almost always end up being a burden, drawing much needed money from the borrower and putting it into the pockets of the lenders, The result is often a borrower trapped into a repeat cycle of borrowing and financial dependency on the lender.

The consumers accessing these loans and schemes are already in financial hardship and therefore are the target market of payday lenders, 'buy now, pay later" providers and consumer lease providers, as they have nowhere else to turn. While we argue for the tightening of laws that restrict the SACC industry, consumer lease providers and buy now pay later providers; we are acutely aware of the need for alternative affordable forms of credit to be available to low income and vulnerable consumers. Care Inc. strongly supports the proposed reforms to small amount credit contracts (SACCs) and consumer

leases as addressed in our joint submission¹ on the Exposure Draft Bill.

We regard the need to protect vulnerable and low-income consumers as paramount and their interests should override the needs of a highly profitable industry that benefits from their often desperate clients' circumstances. Unlike mainstream lending where borrowers generally access money for lifestyle related products, in our experience borrowers with payday loans and consumer leases borrow for basic necessities and essentials. The vulnerable nature of borrowers who are highly stressed and desperate at the time of taking a payday loan or consumer lease, leads to questions about whether a borrower should have received the loan in the first place and what their ability to understand the contract was, when they took it out. There is reason to think that payday lenders and consumer lease providers could in fact be held to higher standards than mainstream lenders, given the vulnerable nature of the borrowers they deal with; this is particularly the case for repeat borrowers who risk becoming trapped in an unhealthy dependency on the lender. Further, these borrowers are likely to be highly vulnerable when accessing these financial products, as Mary and Bills cases below illustrates.

Case Study 1 – Mary* is from a CALD background, she contacted our service requiring assistance with the repayment of several household items on lease. She was on a very low income and a single parent and could not afford to buy the items outright. She was not aware of NILS loans. She approached a company offering household items and entered into contracts for four household items. She was under the impression that she would own the goods after the completion of the agreement. At the time she was on Centrelink benefits and already had several expenses being deducted from her Centrelink account (the client's Centrelink Income Statement alone showed a net fortnightly surplus of \$150 after Centrelink deductions). She contacted our service following a breakdown of one of the household items. The lessor was refusing to repair it because she was in arrears on the account; the debt, however, was continuing to accrue. Having reviewed the client's income and expenses at the time of entering the lease, it was apparent that she would have been unable to service the lease repayments. The client had not had use of the household item in over a year.

Case Study 2 – Bill* has an intellectual disability, he receives the Disability Support Pension. Bill had numerous small consumer leases for everyday items, such as a bed and vacuum. The consumer lease provider was able to access payments via Bill's Centrepay. This meant the consumer lease company was able to access Bill's DSP before he even received it. He wasn't left with much to live on. He had also purchased a car with a SACC, the car was undriveable, he decided he needed a better car. He turned to his SACC provider who refinanced him into another car which had very high kilometers. Eventually this car became useless as well. The client approached our service for some assistance to work out how to pay his debts. The financial counsellor was able to advocate on his behalf and extract him from his consumer leases and he returned the goods. He is still paying off his SACC, less fees and interest after advocacy assistance. Bill was able to access a No Interest Loan and now owns his own bed and vacuum cleaner.

¹ <https://policy.consumeraction.org.au/2017/11/06/submission-small-amount-credit-contract-and-consumer-lease-reforms/>

If the industry is to continue to extend credit to vulnerable and disadvantaged consumers such as Mary and Bill, there needs to be a strengthening of consumer protection laws. We recommend that consumer lease providers be removed from Centrepay. We agree with a comprehensive cap of 48% interest on all forms of credit, with a 10% protected earning amount for consumer leases and payday loans as very significant reforms that would provide much needed protections for vulnerable consumers. Care strongly recommends a general anti-avoidance provision to ensure that payday lenders and consumer lease providers do not engage in regulatory avoidance strategies and continually try to re-invent ways to trap vulnerable consumers into payday loans. We strongly oppose more lenient caps, which would cause ongoing financial exclusion and not address the harm that these products cause to consumers.

Within the last year Care Inc. has seen an increase of clients who have accessed more than one Afterpay and are struggling to make the repayments required. Afterpay may provide a convenient option for some people to spread payments over a period of time. However, the scheme encourages people with limited financial capacity to purchase goods that they cannot afford upfront, increasing the likelihood of future financial stress. Afterpay doesn't charge interest but it does charge late fees: \$10 penalty for consumers who miss the first fortnight repayment, then a further \$7 late fee if that instalment remains outstanding after one week. A consumer who misses all four instalments are subject to a total late fee of \$68 per transaction. Consumers accessing Afterpay cannot afford to purchase the product straight away, so there is already a situation of financial vulnerability. Most clients we see with Afterpay debts usually have other debts they are dealing with as well, such as payday loans, consumer leases, utility bills and credit card debt. Some clients will forgo essential living expenses in favour of paying their Afterpay, as Karen's case below illustrates.

Case Study 3 – Karen* came to Care Inc. as she had a few Afterpays that she couldn't afford to pay. Karen is a young single mother, she receives a Centrelink benefit. Karen said that Christmas was coming up and she really wanted to get some special things for her children as the last few Christmases she hadn't been able to give her children much. This year she saw that she could use Afterpay. She said she got a bit carried away but really thought she could afford to make the repayments. The financial counsellor discussed the options and looked at accessing hardship assistance, but because it would restrict her access to Afterpay in the future, she decided not to apply. Karen (and her children) went without other things so she could repay it, along with the late fees.

Care Inc. was encouraged to see that the Australian Securities and Investments Commission (ASIC) released a report² (August 2018) that recommends law reform in the "buy now, pay later" sector, the report outlines the Government's plan to broaden credit regulations so that it covers the buy now, pay later sector. Care Inc. agrees that unlicensed credit providers including 'buy now, pay later' providers and short-term credit providers should be regulated under existing credit laws, as the current regulation leaves people negatively impacted with no recourse. These unlicensed credit providers should participate by the same rules as other consumer credit providers including closing responsible lending

² <https://download.asic.gov.au/media/4849144/design-and-distribution-obligations-and-product-intervention-power-revised-exposure-draft-legislation-submission-by-asic.pdf>

loopholes, and proper IDR and EDR processes.

The CLC has assisted clients with matters relating to credit repair agencies. These agencies typically represent that they will, for large upfront fees, access the clients credit record and 'fix' it by 'erasing' default listings. However, due to legal restrictions, it is impossible for some default listings to be removed.³ In other cases, an inaccurate, incomplete or misleading default listing can be erased by the consumer themselves free of charge.⁴ Furthermore, access to one's own credit record is free.⁵ Taking advantage of the general public's lack of awareness of these rights, some credit repair agencies charge very high fees for a service that could be done by the consumer for free, or in other cases are unable to deliver the 'repairs' they offer.

Credit repair agencies present many problems for clients. Firstly, credit repair agencies typically charge very high 'up-front' fees in advance of any services being delivered or listings being changed or updated. These fees often cost more than the original debt which was the subject of the default listing, and therefore worsen consumers' financial situation. Relatedly, credit repair agencies charge very high fees for a service which could be provided by other organisations, or undertaken by the consumer themselves, for free. Under the Privacy Act 1988 (Cth), consumers can access a copy of their credit report for free every 12 months.⁶ Consumers can also contact creditors directly to update or remove erroneous, incomplete or misleading listings. Alternatively, updating or correcting a credit report can be done with the assistance of free industry ombudsman schemes or financial counsellors.

The combination of financial stress, general lack of understanding of credit law, and lack of knowledge of free alternatives means consumers are highly vulnerable to paying large sums of money to CRAs and getting very little in return. This often has the consequence of making consumers' financial position even worse, as outlined in Case Study 4 and 5. In this context, reform is critical.⁷

³ *Privacy Act 1988* (Cth) ss 20W, 20X.

⁴ *Privacy Act 1988* (Cth) ss 20S, 20T.

⁵ *Privacy Act 1988* (Cth) s 20R.

⁶ *Privacy Act 1988* (Cth) ss 20R

⁷ Addressing Credit Repair Agencies Using the Australian Consumer Law, Meg Wootten, A Report Submitted for LAWS4230 Law Internship, Australian National University, October 2016

Case study 4 - The CLC assisted a client settle a matter against a credit repair agency for services purportedly rendered to the client who at the time was in financial hardship and homeless. The client was sold the service under the misapprehension that the credit repair agency would “clear” his credit report and negotiate a settlement on the outstanding debts which were adversely listed. The client entered into the contract over the phone and was not properly appraised of the circumstances surrounding credit reporting or what the credit repair agency could actually do for him. He signed up to the service and authorised direct debit deductions from his account under the apprehension that the payments would be applied to his outstanding account balances. He came to the CLC following a referral from a financial counsellor who had identified that the client had actually not cleared any of the debts and that the payments, at this point reaching approximately \$2,500, had been paid to the credit repair agency. When the CLC took on the matter it discovered that the client’s credit report had not been “cleared” and that the credit repair agency had received around \$2,500 for doing nothing. None of his outstanding debts had been paid. The credit repair agency was pursuing him for money still owing under the contract he entered into with them. The CLC initially raised a dispute with the credit repair agency on behalf of the client and later the Credit Investment Ombudsman. The matter settled at the Ombudsman stage and the client received a full refund.

Case Study 5 - The CLC assisted a client from a CALD background who contacted a debt management firm after being refused credit on the basis of an unpaid debt. He was told to contact VEDA. The client contacted the debt management firm following a google search of ‘VEDA’ on the internet as the listing appeared at the top of the internet search. When he called he believed he was talking to a representative of VEDA. He asked for an updated credit report and sought the information urgently. At no time during the course of the conversation was he informed by the debt management staff that he was not talking to VEDA. Staff from the debt management firm told him they could assist and went through a whole lot of information with him over the phone. He did not realise the debt management firm was a private company and that he had other options to obtain his credit report. He was told he must pay \$990 plus GST upfront as a deposit for their services and was quickly read out the terms and conditions of the agreement. The client had difficulty understanding what was going on but did not question it as he thought it was mandatory. He informed the salesperson that he could not afford the fee and was told he could pay it by way of regular direct deposits.

A credit search was conducted and the client was informed that he had an outstanding debt with a telco. He was not aware of having been informed of a cooling off period at any time during the course of his conversation. The client then contacted the telco directly and paid the debt and asked for the listing to be removed. The debt management firm still pursued the client for \$2,200.

The CLC initially raised a dispute with the debt management firm on behalf of the client and later the Credit Investment Ombudsman. The matter settled at the Ombudsman stage and the debt management firm agreed to release the client of liability.

Care urgently supports the introduction of a robust regulatory framework to include:

- a. Licensing or authorisation by ASIC with a high bar for entry
 - b. Membership of the Australian Financial Complaints Authority as recommended by the Ramsay EDR Review (Government has accepted but not implemented)
 - c. Duty to act in client's best interests
 - d. Robust entry standards to ensure high quality advice from qualified and suitable staff
 - e. Ban upfront fees
 - f. Client money obligations
 - g. Require firms to inform people of free options that can assist, such as hardship programs, EDR and NDH
 - h. Debt Agreements: Recommendations as per Bankruptcy Amendment (Debt Agreement Reform) Act 2018 Legislative Instruments submission
2. New or changed recommendations
- a. Ban unsolicited sales
 - b. Require that arrangements are 'suitable' for clients
 - c. Apply product invention power (PIPs) or give regulator power to ban particular products or practices – agreed (if it can apply would be good).

TOR (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 and;

TOR (d): any other matters

Demand for Care's services is always high and for several years has outstripped resource capacity. Care operates the National Debt Helpline (NDH) in the ACT. This service operates on a triage model. Callers are provided with information over the telephone and those who can self-advocate can be referred to the NDH website for further information and resources. Callers who need further assistance will be offered a one off or ongoing casework appointment depending on need. The number of calls to the NDH has continually increased in the ACT and indeed across all states and territories since its inception in 2013.

Many of our client group have complex financial situations usually compounded by challenging life circumstances which can include domestic violence, mental health issues, addiction and loss of employment. The presence of so many high cost financial products and predatory lenders such as payday loans and consumer leases contribute to the complex financial lives of so many of our clients.

To adequately address the needs of clients, financial counsellors need to be highly skilled and knowledgeable. There is an urgent need for a greater investment in the financial counselling sector to address this need and ensure we can work effectively to improve the financial circumstances and longer term financial capability of people in financial difficulty.

Thank you for the opportunity to provide these comments.