

The Senate

Economics
References Committee

Credit and hardship: report of the Senate
inquiry into credit and financial products
targeted at Australians at risk of financial
hardship

February 2019

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Acronyms and Abbreviations

ACCC	Australian Competition and Consumer Commission
AFCA	Australian Financial Complaints Authority
AFIA	Australian Finance Industry Association
AFSA	Australian Financial Security Authority
ASIC	Australian Securities and Investments Commission
CHERPA	Consumer Household Equipment Rental Providers Association
NCPA	National Credit Providers Association
NDH	National Debt Helpline
NILS	No Interest Loans Scheme
SACC	Small Amount Credit Contract
Banking Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
Enhancements Act	<i>Consumer Credit Legislation Amendment (Enhancements) Act 2012</i>
National Credit Act	<i>National Consumer Credit Protections Act 2009</i>
National Credit Code	Schedule 1 to <i>National Consumer Credit Protections Act 2009</i>
SACC Bill	National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 [exposure draft]

Recommendations

Recommendation 1

1.12 The committee recommends that the government should have a strategy to raise the incomes of low income Australians. This strategy should, at a minimum, include protecting penalty rates and reviewing the adequacy of government payments including Newstart.

Recommendation 2

1.21 The committee recommends that the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 exposure draft released by Treasury be introduced, and passage facilitated by the government.

Recommendation 3

1.29 The committee recommends that the government provide additional funding to strengthen the capability of the Australian Securities and Investments Commission to police the small and medium credit contract sector and consumer leasing sector.

Recommendation 4

1.30 The committee recommends that the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission and the Australian Financial Complaints Authority undertake a review to assess what systems and mechanisms would counteract the chronic underreporting of malpractice and how best to allow consumers to make complaints about the behaviour of consumer lease and payday lending providers.

Recommendation 5

1.35 The committee recommends that Treasury undertake a review to identify necessary reforms to regulatory arrangements for medium amount credit contract products.

Recommendation 6

1.37 The government should implement Recommendation 1.7 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry removing point of sale exemptions from the *National Consumer Credit Protection Act 2009*.

Recommendation 7

1.41 The committee recommends that the *National Consumer Credit Protection Act 2009* be amended to contain strong anti-avoidance provisions that are capable of capturing both new, emergent credit-like products, and attempts to disguise the nature of existing credit products.

Recommendation 8

1.54 The committee recommends that the government implement a regulatory framework for all credit and debt management, repair and negotiation activities that are not currently licensed by the Australian Financial Security Authority, including:

- compulsory membership of the Australian Financial Complaints Authority, giving clients access to an External Dispute Resolution scheme;
- strict licensing or authorisation by the Australian Securities and Investments Commission or the Australian Financial Security Authority;
- prohibition of upfront fees for service;
- prescribed scale of costs;
- an obligation to act in the best interests of their clients; and
- banning unsolicited sales.

Recommendation 9

1.65 The committee recommends that the government consider, in consultation with the Australian Securities and Investments Commission, consumers and industry, what regulatory framework would be appropriate for the buy now pay later sector. This regulation should ensure that:

- before credit is extended, providers appropriately consider consumers' personal financial situations;
- consumers have access to internal and external dispute resolution mechanisms;
- providers offer hardship provisions;
- products are affordable and offer value for money; and
- consumers are properly informed, prior to entering into agreements, about their terms and conditions.

Recommendation 10

1.66 The committee recommends that the buy now pay later sector develop an industry code of practice.

Recommendation 11

1.68 The committee recommends that product intervention power currently proposed in the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 legislation be extended to cover buy now pay later products.

Recommendation 12

1.73 The committee recommends that the Australian Securities and Investments Commission review how financial products and services (including credit) are advertised and issue an updated regulatory guide to how credit products interact with consumers in an online environment.

Recommendation 13

1.82 The committee recommends that Centrepay should only be available to entities that can demonstrate historic and ongoing compliance with relevant regulations, and that provide products at a fair price and in a fair manner.

Recommendation 14

1.85 The committee recommends that the Department of Human Services develop the capability to review Centrepay data to identify clients who are at risk of serious financial hardship and develop appropriate interventions, such as referral to a financial counsellor.

Recommendation 15

1.93 The committee recommends that the government increase the funding available to financial counselling organisations to enable a substantial increase in the number of full time employed financial counsellors across the country. The funding should be directed to ensure there are sufficient financial counsellors available in areas of need, including regional Australia.

Recommendation 16

1.94 The committee recommends that the government increase the funding available to community and financial rights legal centres.

Recommendation 17

1.99 The committee recommends that future tenders for financial counselling be conducted in a manner and to a timetable that gives service providers confidence in the outcome, and allows them to continue their work without significant disruption.

Recommendation 18

1.104 The committee recommends that the government consider what tax and other incentives could be used to encourage mainstream credit providers to offer low interest products to vulnerable Australians.

Recommendation 19

1.105 The committee recommends that the No Income Loans Schemes and Step-Up grant programs should be expanded, with longer funding cycles that are aligned to the other grants in the Department of Social Services Financial Wellbeing and Capability funding stream.

Recommendation 20

1.106 The committee recommends that the government should actively promote the No Income Loans Schemes and Step Up programs through Centrelink offices, and other forums where there is contact with people at risk of financial hardship. The government should also consider whether information regarding these programs should be included alongside the information regarding the debt helpline on bills and other documents.

Chapter 1

Committee view

The committee's approach to this inquiry

1.1 This inquiry occurred against the backdrop of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The matters were referred to the committee in October of last year while the Banking Royal Commission was conducting public hearings, and we are now reporting shortly after the Commissioner, the Hon. Kenneth Hayne AC QC, has delivered his final report.

1.2 The Banking Royal Commission provided a long overdue forum for the public and policy makers to hear what had gone wrong in Australia's mainstream financial sector, and the impact that misconduct had on ordinary people's lives.

1.3 However, it only considered some of the ways in which ordinary Australians interact with financial products. The Banking Royal Commission did not contemplate marginal credit service providers such as payday lenders, consumer leases, and debt advice firms. Although many Australians do not interact with these products, they loom large in the financial lives of lower income Australians and dominate the casework of financial counsellors and credit lawyers.

1.4 This inquiry aimed to address this gap. There are obviously differences between the resources, time and powers available to a royal commission and a Senate inquiry. Nonetheless, this inquiry provided an opportunity to shine a light on the conduct of those who target credit products and services at Australians who are at risk of financial hardship.

1.5 Throughout the course of this inquiry the committee has been conscious that the financial products it examined are not all alike. Like all financial products, they exist on a spectrum of risk and potential harm. The business models (and business practices) of different providers also differ considerably. Some products, such as consumer leases and payday loans, are clearly targeted at low income Australians who do not have access to other credit products. The evidence before this committee (as well as the public record of regulatory actions) shows that there are real issues with the business models and business practices of providers in this sector. That is plainly different from the risk posed by other providers, such as those in the buy now pay later sector, whose products are marketed to a much broader range of Australians.

1.6 What these products all have in common, however, is the oversized risk they pose specifically to Australians in financial hardship. The committee heard from financial counsellors and credit lawyers about the financial troubles that affect too many vulnerable Australians. The work that the financial counsellors and credit lawyers do is important, and the committee takes their evidence very seriously.

The reality of financial hardship in Australia

1.7 The committee received moving evidence about what financial hardship looks like in Australia. Financial hardship impacts more than just a person's finances.

Sue and Bob live in Broadmeadows (20 km north of Melbourne's Central Business District), with their two children age 12 and 16.

Sue works full-time and earns \$1030 per week. Bob is on Newstart and receives around \$200 a fortnight. He is unable to work after he had a car accident while driving a company truck in September 2017 and injured his back. He is unable to work and not receiving WorkCover, as at the time of the accident, Bob was unlicensed.

Bob took out payday loans from MoneyMe, Wallet Wizard and Sunshine Loans to pay for the registration of their two cars, as well as covering utility bills and rent when money was tight. They could not afford the loans but were desperate because they didn't want to be evicted or disconnected. Repayments on the three loans is around \$550 per fortnight, with very high interest rates and fees meaning that they will be paying these loans for a significant period of time.

They have not sought support from family as they feel ashamed. Sue suffers from anxiety and Bob depression.

After paying rent and the loan repayments, the family is left with \$635 per week, well below the 2018 poverty line of \$742 a week disposable income.¹

1.8 This is not an isolated instance. Independent research found that 2.1 million Australians are under severe or high financial stress.² For low and middle income earners, this stress can have an immense impact on the ability to service day to day living expenses such as rent, bills and maintenance of household goods.

1.9 Some have tried to paint those in financial hardship as victims of their own poor decisions. The evidence to this inquiry does not support this. As we have heard repeatedly from financial counsellors and legal advice services across the country, the average story of financial hardship is not that of someone with tastes beyond their means. It is the story of someone who has found themselves in a spiral of debt because they cannot bridge the gap between their income and their basic needs, or save enough to absorb the ordinary financial shocks that strike family budgets.

1.10 The intractable maths of low income earners' family budgets pushes them towards the marginal credit products that were examined over the course of this inquiry—products such as payday loans, consumer leases and, in the end, debt management firms. Government can and should improve the terms under which these products are offered. Products that are targeted at Australians at risk of financial hardship should not be allowed to take advantage of their financial vulnerability.

1 UnitingCare, *Submission 49*, p. 12.

2 NAB and the Centre for Social Impact, *Financial Security and the influence of economic resources*, December 2018, <https://www.csi.edu.au/media/2018-Financial-Resilience-in-Australia.pdf> (accessed 19 February 2019), p. 6.

1.11 However, the longer term solution has to be found in (a) raising incomes and (b) expanding access to the mainstream financial products that offer better value to those who can afford them. Inclusion in Australia's financial system is critical for a successful and robust economy and social framework. Low income Australians should not be excluded from fair and appropriate access to financial services, and not be relegated to the use of high cost and potentially harmful products.

Recommendation 1

1.12 The committee recommends that the government should have a strategy to raise the incomes of low income Australians. This strategy should, at a minimum, include protecting penalty rates and reviewing the adequacy of government payments including Newstart.

Credit products targeted at Australians at risk of financial hardship

1.13 The worst case studies presented to this inquiry concerned marginal credit products such as payday loans and consumer leases.

1.14 Consumer leases ostensibly offer rented goods. The reality is consumers are often charged an inflated price to use the goods, and can pay the total cost of the goods multiple times during the course of the agreement:

Unlike other credit providers, there is absolutely no cap on the amount consumer lease providers can charge. An ASIC [Australian Securities and Investments Commission] report on the cost of consumer leases for household goods found a clothes dryer cost a Centrelink recipient the equivalent of an 884% interest rate.³

1.15 The situation worsens for those who cannot repay their debts on time, with the lessor able to repossess the goods. As the agreement is not seen as a loan, there are limited protections for the individual under the National Credit Code. Repossession can cause immense stress:

If the leased good is a car or an essential electrical item (like a fridge or washing machine), repossession can mean further costs like job loss, no stored food and visits to the laundromat.⁴

1.16 Despite being sold as quick and cheap credit, in reality payday loans are pushing people into a spiral of debt. Confusion around the operation of legislated caps has led to incredible rates of interest being charged to consumers.

Due to the generous fee caps, these loans typically attract comparison annual interest rates of between 112.1% and 407.6%. The vast majority of payday lenders charge the maximum amount permitted by legislation, as competition is generally ineffective in bringing down prices in this market.⁵

3 Consumer Action Law Centre, *Submission 37*, p. 6.

4 Financial Counselling Australia, *Submission 57*, p. 6.

5 Consumer Action Law Centre, *Submission 37*, p. 6.

1.17 Often these products appear not only to have been targeted at Australians in financial hardship—they seem to have been designed to take advantage of them. It is difficult to escape the conclusion that many providers' business models depend on vulnerable consumers who have limited awareness of other product options, limited negotiating power, and limited propensity to complain about improper or illegal behaviour.

1.18 This is not a revelation. Concern over high cost credit is a long standing one. The government commissioned a review of the Small Amount Credit Contract (SACC) industry in 2015. It found widespread problems throughout the industry. In relation to consumer leases it found that '...the current regulatory framework is not effective in promoting financial inclusion.'⁶ The exposure draft of legislation was developed in 2017 and Treasury undertook a consultation process in relation to it.⁷

1.19 There has been no apparent action since then. There has been media coverage of the internal government tensions that may have contributed to this delay. Irrespective of the cause of the inaction, its consequences have been clear.

Since the Government released the SACC Review report in April 2016, Digital Finance Analytics estimates that three million additional payday loans, worth an estimated \$1.85 billion, have been taken out. This has generated a net profit of about \$250 million for lenders. Around one fifth (about 332,000 households) were new payday borrowers.⁸

1.20 These providers have gone largely unchecked for too long. The delay in the introduction of the 2016 recommendations encapsulated in the exposure draft bill and the failure to pass the subsequently introduced private member's bill have allowed product providers to continue to offer products unsuitable to many of their consumers.

Recommendation 2

1.21 The committee recommends that the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 exposure draft released by Treasury be introduced, and passage facilitated by the government.

1.22 The passage of the SACC legislation would address some but not all of the known problems in the sector. The committee received evidence about a number of discrete issues that also require remedy. Those issues include:

- breaches of the existing regulatory framework;
- the use of blackmail security;
- the regulation of medium amount credit contracts;

6 The Treasury, *Review of the small amount credit contract laws, Final Report*, March 2016, p. 4, https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf, (accessed 5 December 2018).

7 The Treasury, *Small Amount Credit Contract and Consumer Lease Reforms*, <https://treasury.gov.au/consultation/c2017-t229374/> (accessed 21 February 2019).

8 Consumer Action Law Centre, *Submission 37*, p. 3.

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- the role of sales staff in offering credit; and
 - the need for effective anti-avoidance measures.

1.23 Each of these issues is addressed in turn below.

Noncompliance

1.24 The committee is concerned about ongoing noncompliance with the existing regulatory framework for consumer leases and payday loans. Although providers gave evidence that the issues in the sector were historic and not ongoing, that is not consistent with the case studies and experiences presented by financial counsellors and credit lawyers.

1.25 There are, for instance, real doubts about whether pay day lenders comply with responsible lending obligations. As one financial counsellor noted:

I see loans issued where there's clearly no capacity to repay that loan. A lady I met last month had 30 Cash Converters loans in the last four years. Three of those loans were issued after a Cash Converters loan had been defaulted and not repaid, and 17 of those loans had been issued when she had two or more loans in the previous 90 days, and that would indicate that she has an incapacity to meet that loan, particularly when you look at her bank statements that show several overdrafts...⁹

1.26 It has been suggested that lenders push borrowers to accept shorter contract terms despite this being against their interests:

It's about trying to get as many loans in as possible. The establishment fee is much higher than the monthly fee...also...a lot of the market is making its money on people falling into arrears and hardship, because it's the penalty fees where you actually make all the money. So, to try and push people into contracts that are very tough to service but that they don't fall over on is actually an optimal business model.¹⁰

1.27 The committee was provided with hundreds of examples of illegal behaviour in small and medium credit and consumer leasing, suggesting widespread non-compliance.

1.28 Greater scrutiny is needed as to how these products are sold, how they are policed and the recourse that consumers have to make complaints or inquire as to whether the product was inappropriately sold.

Recommendation 3

1.29 The committee recommends that the government provide additional funding to strengthen the capability of the Australian Securities and Investments

9 Mrs Sandra Blake, Financial Counsellor, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, p. 3.

10 Ms Corinne Proske, General Manager, Retail and Online, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 40.

Commission to police the small and medium credit contract sector and consumer leasing sector.

Recommendation 4

1.30 The committee recommends that the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission and the Australian Financial Complaints Authority undertake a review to assess what systems and mechanisms would counteract the chronic underreporting of malpractice and how best to allow consumers to make complaints about the behaviour of consumer lease and payday lending providers.

Blackmail security

1.31 The committee is concerned by evidence that some providers would secure a loan against an asset such as a car that is worth less than the value of the loan but is essential for the borrower to have. As Legal Aid Queensland noted, this form of security is:

... 'coercive': the pressure's on them to continue to pay it, because without it they don't get to work and they don't keep their job.¹¹

1.32 Lenders were able to circumvent restriction on blackmail securities by moving borrowers onto medium amount credit contracts:

There is a prohibition in the current code around blackmail securities, because in the past one of the things that was added as security to these types of loans was—I think the classic we had was a Bananas in Pyjamas doona cover. When the credit legislation became national, that was prohibited. What was not prohibited was the taking of security on medium amount credit loans. Blackmail securities were prohibited, but they still could take security. What we've seen is people wanting to take a medium amount loan, which is between \$2,001 and \$5,000. There are companies out there who are working out if somebody has a car. The car is usually worth significantly less than the value of the loan. They're securing it to try to make sure that that becomes the priority loan to be paid, because usually people, particularly in regional areas of Queensland where the public transport isn't as good, are needing that car to get to work, so they'll pay that loan first, to the exclusion of anything else.¹²

Medium amount credit contracts

1.33 The regulatory regimes for small and medium amount credit contracts differ significantly in key areas. Evidence was presented of providers moving clients from SACC products to medium amount credit contract products, where regulation in some matters is less onerous:

11 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 26.

12 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 26.

Mr Wood: A lot of the lenders out there are pushing the applicant to go above the \$2,000, because the regulations, in their opinion, are too tight on the small amount credit contract market. As Corinne said, over the last 12 to 18 months a number of lenders have stopped offering that product, and offer a line of credit because it's easier. It's less regulated, in their opinion. So they can get someone on the drip, basically, and they're just continually earning money that way.

ACTING CHAIR: As those businesses move into that market strategy, are they targeting particular demographics?

Mr Wood: It's the younger generation, if you look at their advertising. They're always down at the beach, they're relaxing, they're having a drink and stuff like that. It's very much targeted towards the younger generation.¹³

1.34 A consistent and robust regulatory framework is needed across these sectors to remove distortions between the different products and loan sizes.

Recommendation 5

1.35 The committee recommends that Treasury undertake a review to identify necessary reforms to regulatory arrangements for medium amount credit contract products.

Sales staff and credit

1.36 The role of frontline staff in promoting financial products in franchisee stores has the potential to lead to adverse consumer outcomes. There is no justification for retail dealers being carved out of the *National Consumer Credit Protection Act 2009*. Commissioner Hayne of the Banking Royal Commission made a recommendation in this regard.¹⁴ It should be adopted.

Recommendation 6

1.37 The government should implement Recommendation 1.7 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry removing point of sale exemptions from the *National Consumer Credit Protection Act 2009*.

Anti-avoidance

1.38 Witnesses told the committee that providers of pay day loans and consumer leases are structuring their businesses to avoid regulatory obligations:

In the situation of Cash Converters, when Queensland introduced capping legislation, the Cash Converters outlet went from acting as an agent for Cash Converters to a broker for the customer. So I think there are reasons to be concerned that providers do take a very close and careful look at the

13 Mr Richard Wood, Credit Manager, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 40.

14 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, vol. 1, pp. 86–87.

legislation and work out how they cannot be bound by it. I think a broad based and substantive anti-avoidance provision that is clearly directed at schemes or arrangements, something broader than contracts, is necessary.¹⁵

1.39 The committee accepts this evidence and considers that the entire consumer credit architecture would benefit from more robust anti-avoidance mechanisms.

1.40 It is possible that the product intervention powers previously considered by the Senate Economics Legislation Committee may provide regulators with sufficient powers to achieve this. Government should work with ASIC to monitor the use of the product intervention powers and determine whether they need to be supplemented further.¹⁶

Recommendation 7

1.41 The committee recommends that the *National Consumer Credit Protection Act 2009* be amended to contain strong anti-avoidance provisions that are capable of capturing both new, emergent credit-like products, and attempts to disguise the nature of existing credit products.

Financial services targeted at Australians at risk of financial hardship

1.42 Unregulated provision of debt and credit repair services poses significant risks to vulnerable Australians.

1.43 While regulated debt agreements can provide administrative support to those who are going through the process of bankruptcy, the emergence of unregulated predatory debt negotiation and debt management firms are impacting those in financially vulnerable situations

1.44 There is limited data available about the size of the industry because most operators do not require a licence. The Consumer Action Law Centre also observes:

Given the lack of regulation and oversight, it is difficult to maintain comprehensive information about this industry, with new practices and business models constantly emerging.¹⁷

1.45 Consumers are at risk of entering into agreements where the terms are not clear, often resulting in unexpected fees for service.

1.46 The Salvation Army reports a \$1600 set-up fee for a debt agreement that involved only one debt.¹⁸ Legal Aid Queensland offered the following example of a budgeting service:

15 Ms Miranda Nagy, Principal Lawyer, Maurice Blackburn Lawyers, *Committee Hansard*, 12 December 2018, p. 38.

16 Senate Economics Legislation Committee, *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 [Provisions]*, November 2018.

17 Consumer Action Law Centre, *Submission 37*, p. 22.

18 The Salvation Army, *Submission 9*, p. 12.

The client and her friend signed the contract at the meeting without the fees and obligations under the contract being properly explained. These fees included a \$45 charge to move their own money from the company's account back into their own accounts when they requested money for things such as paying car registration. The client was of the view that she and her friend had been pressured into signing a contract to purchase a product of no or little value to them. When she tried to withdraw from the contract, the budgeting service informed her that she was liable for a large establishment fee.¹⁹

1.47 The fee paid to the provider is often disproportionate to the service delivered and can leave consumers worse off. In many cases, the fees and contract structure are deliberately complex in order to mask the total cost of the service.

1.48 Financial Rights Legal Centre explained that debt negotiators often charge high fees for results which do not solve the consumer's problems:

We've seen quite a few that are a percentage of the amount saved. If you have \$150,000 in credit cards and they reduce it to \$70,000, they'll take 50 per cent, 40 per cent or 80 per cent of the saving or whatever it is...²⁰

1.49 Witnesses provided first hand evidence of firms making deliberate attempts to mislead consumers, or obscure the fees they will pay:

At this meeting, I was told there was a problem with their printer, so I couldn't receive a hard copy of the contract. I was made to digitally sign it on a tablet. I wasn't able to read it before I signed because it was over 40 pages long...At this meeting I again asked about the fees, and I was told there are only two sets of fees: a fee to set up the agreement to liaise with the creditors and a fee to use the budget. On checking the budget, I found there were other fees embedded there.²¹

1.50 Low financial literacy among consumers means many are unaware they are dealing with a for-profit entity. Individuals who are using these types of services could receive help from financial counsellors or community legal services; and, again at no cost, they can have an independent ombudsman scheme help resolve disputes with lenders, telecommunications and utilities providers.

1.51 The Australian Financial Complaints Authority (AFCA) suggested that debt management firms prey on consumers' ignorance of the system:

If consumers actually bring a financial hardship matter to AFCA then, whilst the matter is being considered by AFCA, the financial firm is not able to—is excluded from—enforcing that debt. Yet we see situations where debt management firms are actually charging fees, sometimes not

19 Legal Aid Queensland, *Submission 3*, p. 11.

20 Ms Karen Cox, Chief Executive Officer, Financial Rights Legal Centre, *Committee Hansard*, 12 December 2018, p. 27.

21 Henry, *Committee Hansard*, 12 December 2018, p. 24.

insignificant fees, to get the financial firm to stop the enforcement action...²²

1.52 While debt agreements are regulated by the *Bankruptcy Act 1966*, debt services more broadly are largely unregulated.

1.53 The committee is concerned that a regulatory vacuum risks leaving consumers exposed.

Recommendation 8

1.54 The committee recommends that the government implement a regulatory framework for all credit and debt management, repair and negotiation activities that are not currently licensed by the Australian Financial Security Authority, including:

- **compulsory membership of the Australian Financial Complaints Authority, giving clients access to an External Dispute Resolution scheme;**
- **strict licensing or authorisation by the Australian Securities and Investments Commission or the Australian Financial Security Authority;**
- **prohibition of upfront fees for service;**
- **prescribed scale of costs;**
- **an obligation to act in the best interests of their clients; and**
- **banning unsolicited sales.**

Other financial products

1.55 The buy now pay later sector is one of Australia's fintech growth stories. Not only does the sector now account for a considerable proportion of consumer credit, but this credit is being taken up by new and young customers who have limited previous experience of managing credit.

1.56 This growth has largely outstripped the regulatory response.

1.57 Unlike other credit providers, these products are not covered by the *National Consumer Credit Protection Act 2009* (the National Credit Act) and providers have no obligation to undertake credit checks or appropriate measures to ensure their product is appropriate for the consumer's personal circumstances.

1.58 The committee considers that this regulatory gap should be filled.

1.59 Many Australians can use buy now pay later products with limited financial risk. It seems likely that, as providers have suggested, many people use their products as a budgeting tool. It is less likely, however, that the 23 per cent of people paying their buy now pay later account with a credit card are using the service for

22 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 9.

budgeting.²³ It is almost certainly not the case that individuals with multiple payday loans are using buy now pay later products to budget.

1.60 The evidence from financial counsellors and credit lawyers suggests that there is a real risk for a cohort of vulnerable Australians arising from adding buy now pay later products to a mix of other credit products. For people in a debt spiral responsible actions, even some protective design features, can lead to unintended consequences. The committee heard, for instance, that some individuals prioritise buy now pay later repayments over other forms of credit specifically to avoid being cut off from the service for missing payments.

1.61 There is also a unique risk that arises by virtue of the age and financial experience of the buy now pay later customer base. Eighty-five per cent of customers of one provider, Afterpay, use a direct debit card, and have a limited credit file.²⁴ For many people, a buy now pay later product is their first credit product. We should ensure that experience is a positive one.

1.62 The evidence by buy now pay later providers ZipCo and Afterpay to this committee suggested that both were alive to these risks and willing to strengthen the regulatory framework that applies to the sector. As Afterpay noted:

We are confident the right regulatory balance can be struck for new products such as Afterpay to ensure customers get the best outcomes with the best protections.²⁵

1.63 There is no guarantee, however, that future entrants to the sector will take a similar approach.

1.64 There is a clear role for regulators in ensuring that buy now pay later is subject to proper regulation that will provide consumers with the same protections they would enjoy with respect to products with a similar risk profile.

Recommendation 9

1.65 The committee recommends that the government consider, in consultation with the Australian Securities and Investments Commission, consumers and industry, what regulatory framework would be appropriate for the buy now pay later sector. This regulation should ensure that:

- **before credit is extended, providers appropriately consider consumers' personal financial situations;**
- **consumers have access to internal and external dispute resolution mechanisms;**

23 ASIC, *Report 600: Review of buy now pay later arrangements*, November 2018, p.12, <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-600-review-of-buy-now-pay-later-arrangements/> (accessed 20 February 2019).

24 Mr Nick Molnar, Chief Executive Officer and Co-Founder, Afterpay, *Committee Hansard*, 22 January 2019, p. 13.

25 Mr Nick Molnar, Chief Executive Officer and Co-Founder, Afterpay, *Committee Hansard*, 22 January 2019, p. 9.

- **providers offer hardship provisions;**
- **products are affordable and offer value for money; and**
- **consumers are properly informed, prior to entering into agreements, about their terms and conditions.**

Recommendation 10

1.66 The committee recommends that the buy now pay later sector develop an industry code of practice.

1.67 It is important that government get the regulatory settings working for consumers. Currently, ASIC does not have the powers to intervene as new products emerge in the market and make interventions if a financial product such as buy now pay later is not fit for purpose. Key players in the sector have agreed that a product intervention power would strengthen the regulatory regime for consumers.

Recommendation 11

1.68 The committee recommends that product intervention power currently proposed in the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 legislation be extended to cover buy now pay later products.

Online and digital marketing of financial products

1.69 The products examined over the course of this inquiry do not exist in isolation. The interactions between consumers and the providers have become more complex as digital technology develops.

1.70 The committee recognises that the delivery method for financial products has changed since the advent of online and digital marketing. Consumers are increasingly at risk of targeting by providers through methods that create an imbalance between the consumer and the credit provider. For those who are financially vulnerable this is of particular risk.

1.71 Dr Paul Harrison of Deakin University provided evidence as to how providers are able to target those who are most likely to use these financial products:

This is because the provider has significant data analytic capacity, they are able to adapt their offer as it virtually follows and tests consumer responses and, through technology such as neural networking, is able to anticipate consumer responses and intervene to lead the consumer to make choices that suit business.²⁶

1.72 This form of advertising allows providers to target products to individuals for whom the product may not be suitable or to whom the features of the product are not transparent. In an age of continuous digital innovation, regulatory guidance should be updated in order to ensure consumers are protected.

26 Dr Paul Harrison, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, pp. 1–5.

Recommendation 12

1.73 The committee recommends that the Australian Securities and Investments Commission review how financial products and services (including credit) are advertised and issue an updated regulatory guide to how credit products interact with consumers in an online environment.

Centrepay

1.74 Centrepay is a government billing and budgeting tool for Centrelink recipients. It is intended to benefit Centrelink recipients.

1.75 The Department of Human Services provided evidence of the quantum of consumer leases used through Centrepay payment system:

...out of the \$2.6 billion in 2018 run through Centrepay, \$255.5 million ran through consumer leases—so, about 9.8 per cent.²⁷

1.76 The benefit to consumer lease providers of being registered through Centrelink is clear: automatic deductions reduce the default rate for companies, while also allowing them to continue to charge the consumer for products well above the cost of the product. Thorn Group, the parent company of Radio Rentals, noted that 52 per cent of Thorn Group's consumer leasing customers paid via Centrepay.

1.77 The benefits to recipients are less clear. ASIC noted that although Centrepay lowered the risk of default on rental payments, the companies still charged Centrepay customers more. Because Centrepay customers are on lower incomes, the terms of their loans are longer, which also increases the final cost.²⁸

1.78 The committee understands that the purpose of Centrepay is to support recipients with payment of their expenses. Given the expensive nature of consumer lease products, the use of this service is not in line with the purpose of Centrepay. The payment structure of consumer leases can cost consumers more in the long run and further entrench individuals in a spiral of debt.

1.79 As the Salvation Army observed:

This appears contrary to the original principles of Centrepay, which we understand were to help people on low incomes with money management. In our experience a consumer lease payment is more likely to cause money management issues.²⁹

1.80 Far from helping Centrelink recipients budget, Centrepay deductions for consumer leases can impact an individual's ability to pay for essential goods:

Financial Rights speak to many consumers who call us because they cannot afford essential expenses such as rent and energy. It is only upon delving

27 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 21.

28 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 24 January 2019, p. 13.

29 The Salvation Army, *Submission 9*, p. 9.

into their financial situation that we discover a significant proportion of their Centrepay payments are being diverted to pay consumer leases.³⁰

1.81 The impact is particularly severe on marginalised groups:

Remote Aboriginal communities have been targeted by payday lending and consumer lease companies through the use of Centrelink's Centrepay system.³¹

Recommendation 13

1.82 The committee recommends that Centrepay should only be available to entities that can demonstrate historic and ongoing compliance with relevant regulations, and that provide products at a fair price and in a fair manner.

1.83 Centrepay is administered with little acknowledgement of the impact that these products can have on consumers. While the Department of Human Services acknowledges the impact of consumer lease products, they do not take into account the potential for hardship through the use of Centrepay.

We do compliance audits on businesses to make sure that the customer is giving consent before entering into the Centrepay arrangement. We check to make sure that what the company is charging-the payment matches the contract they've got. But we're not a regulator, so we don't regulate whether, for example, they're in that circumstance.³²

1.84 The department indicated that product providers were only removed from the system in limited circumstances including if ASIC had taken action to remove a product licence.

The responsible lending obligations are really where the Centrelink action would come in. ASIC obviously will make a range of decisions. They may remove licences but they may not. So it may be that they find some behaviour in the organisation, the organisation remediates that behaviour and ASIC don't find any further behaviour. Then we wouldn't necessarily remove them from Centrepay for that, because there is action underway from the regulator to ensure that the business is complying.³³

Recommendation 14

1.85 The committee recommends that the Department of Human Services develop the capability to review Centrepay data to identify clients who are at risk of serious financial hardship and develop appropriate interventions, such as referral to a financial counsellor.

30 Financial Rights Legal Centre, *Submission 31*, p. 12.

31 Financial Rights Legal Centre, *Submission 31*, p. 13.

32 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 22.

33 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 23.

The need to support and expand financial counselling services

1.86 The committee recognises the important work of financial counsellors offering a free service to assist financially stressed households to manage their debts and avoid further financial hardship.

1.87 During the course of the inquiry financial counsellors provided evidence of the scale and impact of predatory financial products on their clients.

1.88 Financial Counselling Hunter Valley Project provided evidence that showed the impact of pay day loans on an individual's livelihood.

These vulnerable consumers tend to develop relationships with payday lenders and develop a reliance on this type of credit usually to their detriment. While payday loans result in a short-term increase in funds, in the following months the person's financial position worsens.³⁴

1.89 While financial counsellors across the country are delivering for their clients, the demand for services is increasing without the adequate resources or trained financial counsellors to meet demand.

1.90 Financial Counselling Australia highlighted that the demand for services is exceeding supply and is leading to many clients being turned away.

This means that roughly 60% of people seeking assistance were able to be accommodated and 40% were not. Another way of putting this is that for every five who seek financial counselling, three people are able to access it and two are turned away.³⁵

1.91 There is broad unmet need through the community for services. These services have real impact on the lives and finances of families. Funding for these services needs to be expanded.

1.92 The government response to tackling the effect of debt on consumers must include both a regulatory regime for providers and appropriate support for those impacted by provider conduct.

Recommendation 15

1.93 The committee recommends that the government increase the funding available to financial counselling organisations to enable a substantial increase in the number of full time employed financial counsellors across the country. The funding should be directed to ensure there are sufficient financial counsellors available in areas of need, including regional Australia.

Recommendation 16

1.94 The committee recommends that the government increase the funding available to community and financial rights legal centres.

34 Financial Counselling Hunter Valley Project, *Submission 2*, p. 1.

35 Financial Counselling Australia, *Supplementary submission 57.1*, p. 14.

1.95 The committee recognises that financial counselling services are impacted by inconsistent funding processes.

1.96 Financial Counselling Australia argued for both adequacy in funding and consistency in the funding allocation process.

The continued theme is that funding for financial counselling is almost always under threat. There is example after example of where governments either cut funding completely or reduce it substantially. Some State governments have defunded services in one budget and then reinstated it again one or two budgets (or more) later, once they've realised the original decision was short-sighted.³⁶

1.97 The uncertainty in the sector makes it difficult for agencies to plan for and manage their services. Recent tender processes have continued to be implemented in a chaotic manner and to the detriment of those who are relying on financial counselling support.

1.98 Financial Rights Legal Centre and Consumer Action Law Centre highlighted their concerns with the recent tender process on the National Debt Helpline:

...we consider the DSS tender process that has occurred this year suffered from serious flaws, and the outcome of the process will negatively impact the effective NDH service model. While the full outcomes of the tender process have not been made public, Consumer Action Law Centre and Financial Rights Legal Centre were informed in late October that our applications were unsuccessful.³⁷

Recommendation 17

1.99 The committee recommends that future tenders for financial counselling be conducted in a manner and to a timetable that gives service providers confidence in the outcome, and allows them to continue their work without significant disruption.

Alternative financial products for financially stressed Australians

1.100 The committee considers the failure of trust in small amount credit providers to provide appropriate and affordable credit as an indictment on the poor practice in the sector. Excessive interest applied to, and predatory behaviour targeted at, vulnerable people is forcing consumers into spiralling debt.

1.101 The committee received evidence of alternative means of providing credit to those in need of financing through microfinance such as No Interest Loans Schemes (NILS) and Step-Up loans, which offer small loans at low interest. These products offer a fairer alternative to pay day loans and consumer leases. To date, the government has provided limited support to these credit facilities which could have far reaching benefits for financially stressed Australians in need of credit.

36 Financial Counselling Australia, *Supplementary submission 57.1*, p 9.

37 Consumer Action Law Centre and Financial Rights Legal Centre, *Submission 42*, p. 3.

1.102 Good Shepherd Microfinance highlights the benefits of NILS:

No Interest Loan Scheme (NILS) offers people on low incomes safe, fair and affordable loans for fridges, washing machines and furniture, as well as education and medical expenses. Loans up to \$1,500 are available from 178 community organisation at 628 locations across Australia. In the 2017-2018 financial year 27,392 NILS loans were written.³⁸

1.103 The provision of microfinance and low and no interest loans has scope for expansion in Australia. The government should explore the scalability and delivery potential of such programs.

Recommendation 18

1.104 The committee recommends that the government consider what tax and other incentives could be used to encourage mainstream credit providers to offer low interest products to vulnerable Australians.

Recommendation 19

1.105 The committee recommends that the No Income Loans Schemes and Step-Up grant programs should be expanded, with longer funding cycles that are aligned to the other grants in the Department of Social Services Financial Wellbeing and Capability funding stream.

Recommendation 20

1.106 The committee recommends that the government should actively promote the No Income Loans Schemes and Step Up programs through Centrelink offices, and other forums where there is contact with people at risk of financial hardship. The government should also consider whether information regarding these programs should be included alongside the information regarding the debt helpline on bills and other documents.

38 Good Shepherd Microfinance, *Submission 50*, p. 1.

Chapter 2

Background

2.1 On 17 October 2018, the Senate referred an inquiry into the Credit and financial services targeted at Australians at risk of financial hardship to the Senate Economics References Committee for inquiry and report by 22 February 2019.

2.2 The terms of reference for the inquiry are:

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,
 - (ii) unlicensed financial service providers including ‘buy now, pay later’ providers and short term credit providers, and
 - (iii) debt management firms, debt negotiators, credit repair agencies and personal budgeting services;
- (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;
- (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
- (d) any other matters.

Conduct of the inquiry

2.3 In accordance with its usual processes, the committee advertised the inquiry on its website, and wrote to relevant organisations to draw attention to the inquiry and invite written submissions.

2.4 The committee received 69 submissions as well as additional information and answers to questions taken on notice, which are listed at Appendix 1.

2.5 The committee held three public hearings: in Melbourne on 12 December 2018, in Brisbane on 22 January 2019, and in Canberra on 24 January 2019. The names of witnesses who appeared at the hearings are listed at Appendix 2.

2.6 Please note that references in this report to the Committee Hansard are to the Proof Hansard. Page numbers may vary between the Proof and Official Hansard transcripts.

Structure of this report

2.7 The remainder of this chapter gives some background to the problems involved with small amount credit and financial services, and some description of the legal and organisational environment.

- Chapter 3 discusses payday loans and consumer leases; this chapter also discusses general issues such as advertising, and some specific elements of regulation, which are equally relevant to matters dealt with in later chapters.
- Chapter 4 looks at debt management, debt negotiation and credit repair firms.
- Chapter 5 looks at the buy now pay later market.
- Chapter 6 looks at the provision of options that people in financial stress can take, including the financial counselling sector, microfinance, enforcement of existing laws by government bodies, and recourse to the Australian Financial Complaints Authority (AFCA).

Background to the inquiry

Financial exclusion and financial hardship

2.8 For some years there has been a growing awareness of financial exclusion and its impact on vulnerable people. A series of reports by the Centre for Social Impact for the National Australia Bank has examined the phenomenon and attempted to quantify its influence.¹ The following definition is used in these reports:

Financial exclusion exists where individuals lack access to appropriate and affordable financial services and products—the key services and products are a transaction account, general insurance and a moderate amount of credit.

2.9 Twelve finance industry bodies, including the big four banks, Suncorp and Good Shepherd Microfinance, collaborated to launch a Financial Inclusion Action Plan in 2016, largely because:

...those impacted [experience] poorer social, health and financial outcomes. The financially excluded are also more vulnerable to exploitation and predatory practices from pay day lenders.²

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- 1 NAB and the Centre for Social Impact, *Measuring financial exclusion in Australia*: May 2011, https://financialcapability.gov.au/files/nab-financial-exclusion-report_final.pdf; May 2012, https://www.csi.edu.au/media/uploads/Measuring_Financial_Exclusion_in_Australia_-_May_2012.pdf; April 2014 <https://www.nab.com.au/content/dam/nabrwd/documents/reports/financial/2014-measuring-financial-exclusion-in-australia.pdf> (all accessed 31 January 2019); *Financial Security and the influence of economic resources*, December 2018, <https://www.csi.edu.au/media/2018-Financial-Resilience-in-Australia.pdf> (accessed 19 February 2019).
 - 2 D Blakey (HESTA Superannuation Fund), 'We should all do more to combat financial exclusion', *Investment Magazine*, 25 November 2016, <https://www.investmentmagazine.com.au/2016/11/we-should-all-do-more-to-combat-financial-exclusion/> (accessed 31 January 2019).

2.10 The problem of financial exclusion appears to be increasing. Big banks and other financial institutions have been withdrawing small scale services because of the cost of provision.³ In 2014, the Centre for Social Impact estimated that more than three million, or nearly 17 per cent of the adult population, were totally or partly financially excluded.⁴

2.11 The Department of Social Services lists some of the consequences of financial exclusion:

- the limited ability to smooth lumpy or unexpected expenditure, leading to poor outcomes (such as families having to go without food or disconnection from essential utilities);
- an increased use of sub-prime lenders with high costs and punitive terms and conditions;
- being drawn into cycles of borrowing and increased over-indebtedness
- a limited opportunity to build up positive credit histories to allow the transition to mainstream services; and
- decreased financial capability.⁵

2.12 As a result, according to the Department of Social Services:

In the absence of appropriate alternatives, the small amount loan market (or 'payday lending'), consumer leasing and other 'buy now, pay-later' markets have grown to meet this demand.⁶

2.13 Stagnant wages and underemployment mean that household budgets are more stretched. The increased cost of housing has contributed to financial stress. A representative of the Department of Social Services noted:

Some consumers who may be vulnerable to using small amount credit contacts have a profile of broad financial disadvantage, low income, low financial literacy and very few mainstream alternatives.⁷

2.14 The volume of debt owed to lenders of small amounts appears to be increasing. It is difficult to find current data; however a 2015 Australian Centre for

3 Department of Social Services, *Submission 63*, p. 3. But Treasury notes that the large banks still provide small amount credit, but they are not classified as SACCs when they are offered by an authorised deposit-taking institution. See Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 24 January 2019, p. 31.

4 Centre for Social Impact, *Measuring financial exclusion in Australia* April 2014 <https://www.nab.com.au/content/dam/nabrwd/documents/reports/financial/2014-measuring-financial-exclusion-in-australia.pdf> (accessed 31 January 2019).

5 Department of Social Services, *Submission 63*, p. 3.

6 Department of Social Services, *Submission 63*, p. 3.

7 Ms Elizabeth Heferen-Webb, Deputy Secretary, Department of Social Services, *Committee Hansard*, 24 January 2019, p. 19.

Financial Studies research paper estimated that there had been a twenty-fold increase in demand for short term, small amount loans in the previous 10 years. It estimated that over a million Australians took out a small amount credit contract (SACC)-type loan in 2012.⁸ Another study, by Gillian North, notes that the rate of growth in this type of credit between 2005 and 2015 exceeded those of other credit products.⁹

2.15 The Australian Financial Security Agency (AFSA) points to a growth in the proportion of SACCs and similar debts in the total debts of personal bankruptcies and insolvencies.¹⁰ In 2017–18:

Bankrupts owed a median of \$1,200 to payday lenders. 1,891 bankrupt estates included debts to payday lenders, which is around 17 per cent of bankrupt estates. Debt agreement debtors owed a median of \$950 to payday lenders, and that occurred in around 40 per cent of debt agreements.¹¹

2.16 Both the Tasmanian Council of Social Service and Anglicare Tasmania quote North's figure of 22 per cent of Tasmanian households using SACC loans in 2015.¹² North points out that the level of borrower households by state appears to correspond to the average household income by state: in particular Tasmania has the lowest average household income and the highest use of these loans.¹³

2.17 This growth is not just in terms of volume or value. The market has also grown in terms of product variation, including a strong online presence.¹⁴ The Salvation Army has found that payday loans are featuring more in their casework:

Over [the last 10 years] the number of clients we had who accessed them moved from six per cent to 13 per cent—more than doubled over that period—and the amount of debt that was outstanding tripled over that same period.¹⁵

8 M Banks, A de Silva and R Russell, *Trends in the Australian small loan market (payday lending)*, Australian Centre for Financial Studies, October 2015, p. 5, <https://australiancentre.com.au/wp-content/uploads/2015/10/Commissioned-paper-Trends-in-the-Australian-small-loan-market.pdf> (accessed 5 December 2018).

9 G North, Small Amount Credit Contract Reforms in Australia: Household Survey Evidence and Analysis, *Journal of Banking and Finance Law and Practice* 203, 2016, p. 7.

10 Australian Financial Security Agency (AFSA), *Submission 4*, p. 3.

11 Mr David Bergman, National Manager, Insolvency and Trustee Services, Australian Financial Security Authority, *Committee Hansard*, 24 January 2019, p. 3.

12 TasCOSS, *Submission 5*, p. 3; Anglicare Tasmania, *Submission 7*, p. 4.

13 G North, Small Amount Credit Contract Reforms in Australia: Household Survey Evidence and Analysis, p.13.

14 M Banks, A de Silva and R Russell, *Trends in the Australian small loan market (payday lending)*, p. 5.

15 Mr Tony Devlin, National Manager, Moneycare Program, The Salvation Army, *Committee Hansard*, 22 January 2019, p. 21.

2.18 Meanwhile, there appears to be a generational shift away from credit cards to other forms of credit, particularly buy now pay later products.¹⁶ Younger consumers may be incurring higher levels of debt than previously.¹⁷

2.19 However, old problems also persist:

Credit card debt is still by far the No. 1 form of presenting debt that we have with people coming to our service. It always has been. It is the most concerning type of debt that we deal with. It has been and certainly still is. It's interesting you comment about the older demographic because it is true. We've noticed quite a change in our research over the last 10 years. That over-55-year-old age group has more and more credit card debt and they are still in rental accommodation longer than they have been in the past.¹⁸

2.20 Recently, high-profile legal cases, like a class action against Cash Converters, have revealed unconscionable conduct by several firms and considerable detriment to users of credit and financial products.¹⁹

Regulation and research

2.21 There have been several moves to protect consumers by regulating the sector.

Legislation

2.22 Commencing in 2010, the *National Consumer Credit Protection Act 2009* (the National Credit Act), and Schedule 1 to that act (the National Credit Code), improved protection for borrowers and included measures to deter predatory lending practices.

2.23 Following the introduction of the National Credit Act, the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (the Enhancements Act) created additional protections for vulnerable consumers in the small amount lending sector. Among other measures, the Act required lenders to examine the financial situation of the borrower; it limited total repayments to 20 per cent of income; and it capped costs at a 20 per cent establishment fee plus 4 per cent a month. It also set out circumstances in which a loan would be presumed to be unsuitable, such as that the client is already in default on other loans.

2.24 The *Bankruptcy Legislation (Debt Agreement Reform) Act 2018* commences in June 2019. It extends the powers of the Inspector-General in Bankruptcy to supervise debt agreement administrators, among other reforms to the system.

16 Mr Larry Diamond, Co-Founder and Chief Executive Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 9; Mr Nick Molnar, Chief Executive Officer and Co-Founder, Afterpay, *Committee Hansard*, 22 January 2019, p. 10.

17 Mr Tony Devlin, National Manager, Moneycare Program, The Salvation Army, *Committee Hansard*, 22 January 2019, p. 21.

18 Mr Tony Devlin, National Manager, Moneycare Program, The Salvation Army, *Committee Hansard*, 22 January 2019, p. 24.

19 See for example D Chau, *Cash Converters settles class action for \$16.4 million*, ABC News, 22 October 2018, [https://www.abc.net.au/news/2018-10-22/cash-converters-settles-class-action-\\$16.4-million/10403750](https://www.abc.net.au/news/2018-10-22/cash-converters-settles-class-action-$16.4-million/10403750) (accessed 31 January 2019).

2.25 The Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018, which is currently before the Parliament, would cover some, but not necessarily all, of the products discussed below. The bill creates an obligation for designers and distributors of certain financial products to define a target market and ensure that the product is marketed only within that market. It gives the Australian Securities and Investments Commission (ASIC) the power to withdraw a product temporarily from the market where it sees the prospect of consumer harm from the product.

2.26 There have been calls to extend the bill to all products regulated under the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) and the National Credit Act. This would mean that the design and distribution obligations and product intervention powers would cover credit products, buy now pay later products, and products that are substitutes for products regulated under the Corporations Act and the National Credit Act. These obligations would complement the responsible lending obligations and the obligations on financial advisers to act in the best interests of the customer (which apply to individuals rather than products). A broader coverage would mean that the bill was simpler and therefore more easily enforced.²⁰ It was, however, noted that the bill had been drafted so that it was easy to add products to the regime by regulation.²¹

2.27 There were also calls for the definition of a target market to include specification of non-target groups. This might be particularly important for Australians at risk of financial hardship.²² ASIC also argued that it should be given standing under the regime to seek compensation for consumers who are not party to legal proceedings. This would be consistent with existing provisions in the ASIC Act. Again, such a provision might be of particular relevance for vulnerable consumers.²³

2.28 The government has introduced a bill amending the *Competition and Consumer Act 2010* to establish an Open Banking regime which creates a consumer data right, which will enable consumers to have access to data businesses hold on

20 Senate Economics Legislation Committee, *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 [Provisions]*, November 2018, pp. 8–10.

21 Senate Economics Legislation Committee, *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 [Provisions]*, November 2018, p. 12; see also Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 24 January 2019, p. 32.

22 Senate Economics Legislation Committee, *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 [Provisions]*, November 2018, p. 13.

23 Senate Economics Legislation Committee, *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 [Provisions]*, November 2018, p. 16.

them, and will enable sellers of credit products to check the indebtedness of applicants for credit.²⁴

2.29 In 2015 the government commissioned a review of small amount credit contracts and consumer leases, as required by the National Credit Act. In March 2016, Treasury published its *Review of the small amount credit contract laws*.²⁵ The report focused on the notion of financial exclusion. Among its recommendations were:

- For small amount credit contracts (SACCs)
 - reduction in the cap on the total amount of all SACC repayments from 20 per cent to 10 per cent of the consumer's after-tax income;
 - equal repayments over the life of the loan, and where this requirement is not met, a maximum annual percentage rate of 48 per cent;²⁶
 - creation of a national SACC database;
 - prohibition of fees after early repayment of a debt;
 - prohibition of unsolicited offers to current or previous customers, and of payments for referrals made to another SACC provider; and
 - default fees that are limited to the actual costs arising from a default, to a maximum of \$10 a week.
- For consumer leases:
 - a cap on the total amount of the payments for leasing a household item, calculated at the base price plus 4 per cent of the base price for each month of the lease, with a maximum of 48 months;
 - a base price that is no higher than the recommended retail price;
 - any costs added on should be included in the cap (except delivery);
 - a cap on all consumer lease payments of 10 per cent of net income;
 - early termination fees based on a reasonable estimate of costs to the lessor; and
 - a ban on unsolicited marketing of consumer leases.

2.30 In November 2016, the government announced its response to the review, and supported in part or in full 21 of the 24 recommendations. Treasury met with industry

24 Treasury Laws Amendment (Consumer Data Right) Bill 2019.

25 The Treasury, *Review of the small amount credit contract laws*, March 2016, https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf, (accessed 5 December 2018).

26 SACC providers can currently charge a maximum establishment fee of 20 per cent of the adjusted credit amount (cash in hand to the consumer) and a monthly fee of a maximum of 4 per cent of the adjusted credit amount. The 4 per cent monthly fee is charged on the initial amount not on a diminishing balance as with an interest rate, so it is greater than an annual percentage rate of 48 per cent.

players, particularly in the consumer leasing sector, in the months after that announcement.²⁷

2.31 In October–November 2017 the Treasury conducted consultations on an exposure draft of the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 (the SACC Bill), the government's response to the SACC Review. The exposure draft accepted many of the recommendations listed above. It also introduced broad anti-avoidance provisions and strengthened penalties for failure to comply.²⁸

2.32 Treasury officials indicated that the government is considering feedback on the exposure draft bill and would wait for the final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry before introducing legislation.²⁹ The final report of the Commission has now been tabled in Parliament.

2.33 A bill using the text of the exposure draft bill was presented by Labor (in February 2018) and by Ms Cathy McGowan MP (in October 2018).

Work by the Australian Securities and Investments Commission

2.34 ASIC has undertaken work in this area since the passage of the National Credit Act.

- March 2015 Report 426 *Payday lenders and the new small amount lending provisions*³⁰

This report reviewed the response of the payday lending industry to the provisions of the *Consumer Credit Legislation Amendment (Enhancements) Act 2012*.

- September 2015 Report 447 *Cost of consumer leases for household goods*³¹

This report found (p. 4) that over the term of a consumer lease, the consumer will pay significantly more than the retail price of the goods and be charged more than a lender is permitted to charge under a small amount credit contract. Further, different lessors charged significantly different amounts for the same goods, and the same lessor would charge significantly different

27 Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 24 January 2019, p. 30.

28 The Treasury, *Small Amount Credit Contract and Consumer Lease Reforms*, <https://treasury.gov.au/consultation/c2017-t229374/> (accessed 5 December 2018).

29 Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 24 January 2019, p. 29.

30 ASIC, Report 426 *Payday lenders and the new small amount lending provisions*, <https://download.asic.gov.au/media/3038267/rep-426-published-17-march-2015.pdf> (accessed 1 February 2019).

31 ASIC, Report 447 *Cost of consumer leases for household goods*, <https://download.asic.gov.au/media/3350956/rep-447-published-11-september-2015.pdf> (accessed 1 February 2019).

amounts for the same goods for different customer segments. In both instances, the consumers that are more likely to pay the higher amounts are Centrelink recipients.

- January 2016 Report 465 *Paying to get out of debt or clear your record: The promise of debt management firms*³²

This report found (p. 7) that debt management firms might offer multiple services to the same customer, or refer them to related firms (including lenders). Their fees were often high and often not transparent, so that it was difficult for customers to know what they are paying. Often they were charged before services were provided. The firms rarely referred consumers to free, alternative sources of help—such as financial counsellors, consumer law services or ombudsman schemes—or advised consumers they could resolve the problem themselves at no cost.

- November 2018 Report 600 *Review of buy now pay later arrangements*³³

This report noted (pp. 9–15) that 'buy now pay later' is a rapidly growing industry and the firms operating in it have a variety of business models. In particular, they vary as to the proportion of revenue extracted from merchant fees, missed payment fees and other customer charges. Users of the services tend to be young, and may be led to overcommit themselves. The responsible lending obligations in the National Credit Act do not apply to buy now pay later arrangements. In ASIC's view, many of the contracts included potentially unfair conditions, such as allowing the provider to unilaterally vary the contract.

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

2.35 During the last year, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has heard horror stories of the poor behaviour of financial institutions in terms of predatory marketing, unconscionable lending, and targeting of the vulnerable. It has also heard of the catastrophic effects such conduct can have on ordinary people. While most of the products examined in this inquiry were outside the ambit of the Banking Royal Commission, there is every reason to believe that the same misconduct, or worse, prevails in the market for small credit products.

2.36 The final report of the Banking Royal Commission was released on 4 February 2019. It noted that the inquiry which led to the establishment of AFCA

32 ASIC, Report 465 *Paying to get out of debt or clear your record: The promise of debt management firms*, <https://download.asic.gov.au/media/3515432/rep465-published-21-january-2016.pdf> (accessed 1 February 2019).

33 ASIC, Report 600 *Review of buy now pay later arrangements*, <https://download.asic.gov.au/media/4947835/rep600-published-28-11-2018.pdf> (accessed 1 February 2019)

also recommended the establishment of a compensation scheme of last resort,³⁴ and recommends that such a scheme be implemented.³⁵ It discusses the 'responsible lending' provisions of the National Credit Act and concludes that the legislation is adequate. It emphasises the 'desirability of predictable and stable funding' for financial counselling and legal aid services. It proposed the exemption of retail dealers from the operation of the National Credit Act 2009 be abolished. And it makes remarks about fees for no service which may have some relevance to the debt repair industry.³⁶

Organisations relevant to people in financial difficulties

2.37 There are several sources of very small loans at low or no interest. These microfinance services generally use finance provided by banks as a community service, and have some of their administrative costs provided by the Department of Social Services. There are several different models, with different conditions as to the purpose of loans and the requirements borrowers have to meet. Administration of these programs is resource intensive.³⁷

2.38 Financial counselling services are operated by various professional and charitable organisations, many of which have made submissions to this inquiry. Eleven of these organisations are funded by the Department of Social Services.³⁸ There is also a Commonwealth supported financial counselling Helpline.³⁹

2.39 Department of Human Services (DHS) administers the payments system for social services payments through Centrelink. It provides some supplementary assistance in specific cases of hardship. It also administers Centrepay. Centrepay is a voluntary bill-paying service for Centrelink customers. It helps customers to manage their expenses by providing customers with the option of making regular deductions directly from their welfare payments to businesses. Centrepay is free for customers, while businesses are charged a fee to recover Centrepay operating costs.⁴⁰

2.40 The Australian Financial Complaints Authority (AFCA) was formed in 2018 by an amalgamation of the Financial Ombudsman Service, the Credit and Investments Ombudsman, and the Superannuation Complaints Tribunal. Its function, according to

34 The Treasury, *Review into External Dispute Resolution and Complaints Framework*, 2016–17, <https://treasury.gov.au/review/review-into-dispute-resolution-and-complaints-framework/> (accessed 21 February 2019).

35 The Prime Minister has indicated that the government will establish such a scheme: see M Grattan, 'Compensation scheme to follow Hayne's indictment of financial sector', *The Conversation*, 4 February 2019, <https://theconversation.com/compensation-scheme-to-follow-haynes-indictment-of-financial-sector-110981> (accessed 14 February 2019).

36 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, vol. 1, p. 483, pp. 52–60, pp. 490–493, p. 134.

37 Department of Social Services, *Submission 63*, p. 5.

38 Ms Elizabeth Hefren-Webb, Deputy Secretary, *Committee Hansard*, 24 January 2019, p. 19.

39 Department of Social Services, *Submission 63*, p. 5.

40 Department of Human Services, *Centrepay*, <https://www.humanservices.gov.au/individuals/services/centrelink/centrepay> (accessed 4 February 2019).

its website, is to 'provide consumers and small businesses with fair, free and independent dispute resolution for financial complaints'. It also has responsibilities to identify and resolve systemic issues and it reports serious contraventions to the relevant regulator.⁴¹

2.41 AFCA is not a government agency. It is established under the Corporations Act, and its decisions can be binding.

2.42 AFCA hears complaints only about member bodies. Membership of AFCA is a condition of holding an Australian Credit Licence or an Australian Financial Services Licence. Unlicensed bodies are not required to join, although some choose to so that they have access to an external dispute resolution scheme. In particular, credit repair agencies are not required to be members of AFCA.

2.43 AFSA is an executive agency in the Attorney-General's portfolio. It administers the *Bankruptcy Act 1966*. AFSA's chief executive officer is the Inspector-General in Bankruptcy, who has powers to regulate bankruptcy trustees and debt agreement administrators. AFSA's purpose is to maintain confidence in Australia's personal insolvency and personal property securities systems.⁴²

2.44 AFSA does not regulate debt management firms, debt negotiators, credit repair agencies and personal budgeting services.

2.45 AFSA assesses the performance of personal insolvency practitioners, with a particular focus on untrustworthy advisers. Such advisers are often unregulated. AFSA engages in some public education activities including warning of the dangers of using untrustworthy advisers.

2.46 ASIC is Australia's national consumer credit regulator, with oversight of lenders, consumer lease providers and brokers who offer consumer credit products to Australians. It administers the National Credit Act and National Credit Code. It would have considerably enhanced powers if the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018, which is currently in the Parliament, and the SACC Bill, of which an exposure draft has been circulated, were passed.

2.47 ASIC has an enforcement role, and also a program to improve financial literacy. As mentioned above, it has published a number of papers on sectors of the industry, including payday lenders, consumer leases, debt management firms and buy now pay later schemes.

41 Australian Financial Complaints Authority, *About AFCA: what we do*, <https://www.afca.org.au/about-afca/> (accessed 4 February 2019).

42 Australian Financial Security Authority, *About us*, <https://www.afsa.gov.au/> (accessed 4 February 2019).

Chapter 3

Payday loans and consumer leases

3.1 ASIC notes that payday loans and consumer leases are functionally similar, but that they operate very differently.¹

3.2 Payday loans are loans of up to \$2,000 for a period of 16 days to 12 months. There are legislated caps on the fees that can be charged by payday lenders an establishment fee of 20 per cent of the amount borrowed and a monthly fee of 4 per cent of the amount borrowed.²

3.3 Regulated consumer leases are contracts for goods (hired wholly or predominantly for personal, domestic or household purposes) for longer than 4 months where the consumer does not have a right or obligation to purchase the goods; and the total amount payable exceeds the cash price.³

Payday loans

3.4 Payday lenders prefer to have their product distinguished from consumer leases, although the two are often conflated. Payday loans are more closely regulated than consumer leases.⁴

3.5 Most payday loans are small amount credit contracts (SACCs). SACCs are loans to consumers, where the credit provider is not an Authorised Deposit-taking Institution, of up to \$2,000 where the term of the contract is between 16 days and 12 months. This is set out in section 5 of the *National Consumer Credit Protection Act 2009* (the National Credit Act). The National Credit Act does not apply to any loans (including SACCs) to businesses. Loans for a term of 15 days or less are prohibited.

3.6 Research for the National Credit Providers Association (NCPA) finds that the market for SACCs is dominated by Cash Converters, Money3 and Nimble, who make up an estimated 70 per cent of the industry's revenue.

3.7 NCPA notes that the number of SACC loans approved has fallen since *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (the Enhancements Act), the provisions of which were summarised in the previous chapter, was passed in 2012. In 2016–17, 1.4 million applications for SACCs were received by payday lenders of which 39 per cent were approved. This compares with nearly 2 million applications with a 67 per cent approval rate in 2014–15. However, the fall of 57 per cent in the number of loans approved was not matched by the fall in the

1 ASIC, *Submission 21*, p. 8.

2 Consumer Action Law Centre, *Submission 37*, p. 6.

3 The Treasury, *Review of the Small Amount Credit Contract Laws*, March 2016, fn 2, p. 1, https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf (accessed 5 February 2019).

4 National Credit Providers Association, *Submission 51*, p. 4.

amount lent. In 2014–15 it was \$667 million, and in 2016–17 it was \$538.5 million, a fall of less than 20 per cent.⁵ Thus the average loan size rose from \$502 to \$948.

3.8 It is difficult to interpret these figures. It is possible that the presumption, included in the Enhancement Act, of unsuitability if a consumer has had two or more SACCs in the previous 90 days led to fewer, bigger loans.

3.9 NCPA's figures show that 81 per cent of SACC consumers were employed, up from 64 per cent in 2014–15. They had an average of 1.66 loans each. The proportion of repayments met was also 81 per cent.

3.10 At least one witness thought there was no definitive data:

One of the key issues we've had in entering this market and working with this is that there is a lack of transparency in data to actually understand the performance. There are also incredibly creative accounting treatments for how you do defaults, arrears and all the rest. There's no consistency.⁶

3.11 The Finance Industry Delegation observes:

Banks and other larger financial institutions (ADIs) ceased offering SACCs over a decade ago and no other credible and lawful third party source has emerged as an alternative to the current SACC lenders, as a real borrowing alternative.⁷

3.12 One submitter suggested that the sector is now so tightly regulated that it is impossible to function profitably:

We say we [Moneybox Loans Pty Ltd] were a lender because we no longer operate as a lender and have surrendered our credit licence...as we simply could not make a profit trading under the overwhelming compliance regime and draconian pricing restrictions. The death knell for us was when ASIC removed its class order which exempted direct debit fees from the SACC pricing caps – we simply could no longer operate and make a profit.⁸

3.13 The industry figures quoted above do not include operators in this commercial space who are not SACC lenders. The National Credit Code applies where;

- the lender is in the business of providing credit;
- a charge is made for providing the credit;
- the debtor is a natural person or strata corporation; and
- the credit is provided:
 - for personal, domestic or household purposes, or

5 National Credit Providers Association, *Submission 51*, p. 15.

6 Ms Corinne Proske, General Manager, Retail and Online, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2019, pp. 40–41.

7 Finance Industry Delegation, *Submission 41*, p. 3.

8 Moneybox Loans Pty Ltd, *Submission 27*, p. 1.

- to purchase, renovate or improve residential property for investment purposes, or to refinance credit previously provided for this purpose.

3.14 Credit with a term of less than 62 days is not covered by the National Credit Code.⁹

3.15 The Consumer Action Law Centre expressed concern about other firms that are not covered by the National Credit Act, usually because, technically, they do not charge interest. Importantly, this means that they are not subject to responsible lending obligations, and they do not have to provide hardship arrangements.

3.16 There are several ways such arrangements can work. In deferred bill payment business models, customers provide copies of their bills which are paid by the company. Customers then pay back the money in four instalments. Other 'emergency cash' businesses are elaborately structured to fall within the short-term credit exemption. Pawnbrokers are subject to state based regulation, and so do not have to be members of the Australian Financial Complaints Authority (AFCA). In Victoria there are no caps on pawnbrokers' fees.¹⁰

3.17 A representative of ASIC also suggested that:

...there are...firms within the sector that try and avoid complying with the obligation by structuring their business models in a way that would seek to exploit potential loopholes in the legislation.¹¹

3.18 ASIC describes the 'book up' system used in many indigenous communities for purchasing day to day necessities. It often involves the customer leaving their debit card at the store, and the store using the debit card and PIN to reduce the debt as funds become available. While the system can function to everyone's advantage, it is open to abuse, and in particular, because of the lack of documentation, to the ratcheting up of debt.¹²

3.19 One company that appears to have structured its operations specifically to avoid regulation is Cigno, which is mentioned in several submissions. The National Credit Providers Association describe Cigno Loans' business model as follows:

Cigno Loans (previously Teleloans Pty Ltd) specialise in emergency cash lending. Due to some of the characteristics of these loans such as their size and term, people label them as SACC's, however Cigno's product is very different.

Gold Silver Standard Finance Pty Ltd is the lender whilst Cigno is the service provider that 'manages' the account. Therefore, there are two lots of

9 ASIC, *National Credit Code*, <https://asic.gov.au/regulatory-resources/credit/credit-general-conduct-obligations/national-credit-code/> (accessed 4 February 2019).

10 Consumer Action Law Centre, *Submission 37*, pp. 15–19.

11 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 24 January 2019, p. 12.

12 ASIC, *Submission 21*, pp. 25–26.

fees from both the lender and the service provider. This means that Cigno can charge their customers fees that well exceed the legal fee cap on SACC products...

...examples show consumers paying back almost 3 times the amount borrowed.¹³

3.20 Financial Counselling Hunter Valley Project Inc also expressed concern:

Some payday loans are not covered by the National Consumer Credit Code this means they are not members of an External Dispute Resolution Scheme i.e. Cigna Loans.¹⁴

3.21 Cigno was invited to attend a committee hearing as a witness but did not respond to the committee's attempts to make contact with them.

Consumer leases

3.22 According to the Treasury review of the Small Amount Credit Contract laws, regulated consumer leases are comparable to SACCs.¹⁵

3.23 AFCA expressed concern about regulation of consumer leases:

In relation to consumer leases: unlike lenders, the provisions of consumer leases are not subject to any restrictions or controls on prices, and that does mean that they can often charge much more than would ever be permitted under a loan to buy the goods. That's notwithstanding the functional similarity between the products. This is a concern to us.¹⁶

3.24 The industry association, the Consumer Household Equipment Rental Providers Association (CHERPA), was formed '...in response to the unscrupulous practices we witnessed from some in the consumer leasing industry.' It represents 40 per cent of the industry, and its members subscribe to a code of conduct.¹⁷

3.25 The Australian Finance Industry Association represents a further 'major component' of the consumer leasing market: Thorn Group (Radio Rentals), Flexigroup and Walker Stores.¹⁸

3.26 The value of the leasing industry for electronic goods and household appliances in Australia was estimated in 2014 to be \$570 million.¹⁹

13 National Credit Providers Association, *Submission 51*, p. 19.

14 Financial Counselling Hunter Valley Project Inc, *Submission 2*, [p. 2].

15 The Treasury, *Review of the Small Amount Credit Contract Laws*, March 2016, fn 2, p. 1, https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf (accessed 5 February 2019).

16 Mr David Locke, Chief Ombudsman and Chief Executive Officer, Australian Financial Complaints Authority, *Committee Hansard*, 24 January 2019, p. 2.

17 Consumer Household Equipment Rental Providers Association, *Submission 25*, p. 2.

18 Australian Finance Industry Association, *Submission 8*, [p. 1].

3.27 The logic of leasing major household consumer items is plausible:

Consumer leasing...provides a manner for consumers to acquire household appliances in a way that is affordable and flexible...

Many items of household equipment are not affordable to purchase up-front for a large number of consumers. Washing machines large enough to wash clothes and linen for a family, and home computers for study and household management, amongst other items, can be too expensive for an initial outlay...Consumer leasing provides Australians the option to acquire goods without an upfront outlay or a debt falling due all at once – regular monthly payments of affordable amounts can work better with household budgets.

Consumer leasing also ensures that households do not take on the risk of goods breaking down...with the risk being absorbed by the lessor. It also gives the customer the option to update, upgrade, or purchase equipment during and at the end of the lease. Further, delivery, installation, and maintenance services are included in leases, meaning consumer leasing is hassle free.²⁰

3.28 A witness emphasised the services offered with leasing:

Consumer leases have a major role to play within the retail market. Many people who can't otherwise access household goods can do so through our service. Consumer leases give benefits to consumers, such as delivery, installation, demonstration, repair, service, upgrade and replacement. We support our customers when goods are broken, stolen or damaged. This is an important difference compared to a credit contract, which is simply a financial arrangement with no ongoing obligation for the credit provider to continue to support the customer.²¹

3.29 Consumer leases are subject to responsible lending obligations: the provider must assess whether the consumer can afford the payments, and the product must meet the consumer's requirements and objectives. However, there is no cap on the maximum cost of a consumer lease. Normally, the consumer will eventually pay more than the cash value of the goods.²² Concern was also expressed that because the product is not a loan, it is not subject to provisions restricting repeated loans; and it may not be included in insolvency arrangements, so that collection activity can continue even after a customer files for bankruptcy.²³

19 ASIC, *Report 447: Cost of consumer leases for household goods*, September 2015, p. 11, <https://download.asic.gov.au/media/3350956/rep-447-published-11-september-2015.pdf> (accessed 11 February 2019).

20 Consumer Household Equipment Rental Providers Association, *Submission 25*, p. 2.

21 Mr Tim Luce, Chief Executive Officer, Thorn Group Limited, *Committee Hansard*, 22 January 2019, p. 41.

22 ASIC, *Report 447: Cost of consumer leases for household goods*, p. 11.

23 Mr Benjamin Paris, Personal Insolvency Professionals Association, *Committee Hansard*, 12 December 2018, p. 47.

3.30 ASIC's submission notes that many low-income consumers make their lease payments through Centrepay, a service by which payments are directly deducted from the consumer's Centrelink payment. Unlike SACCs, consumer leases are not subject to controls on prices and charges.²⁴

3.31 Consumer Credit Legal Service (WA) Inc observes that:

Consumer leases tend to attract a similar demographic to payday loans – low-income earners from low socio-economic backgrounds who are usually the recipients of Centrelink benefits.²⁵

3.32 Perhaps because they have to date been regulated differently from payday loans, consumer leases attracted a lot of comment in submissions to this inquiry.

Impact on consumers

3.33 An attachment to the NCPA submission, written by an academic with experience in financial counselling, lists the reasons consumers seek payday loans:

- Mainstream lenders no longer provide small amount, short term loans;
- Customers often experience financial exclusion from other forms of credit (e.g. credit cards);
- A SACC loan provides customers with the credit they require in a relatively quick timeframe;
- Clear repayment dates (often short term, meaning the customer is freed from debt quicker than other forms of credit); and,
- A reluctance of customers to seek assistance from charitable organisations.²⁶

3.34 However, Financial Counselling Australia noted that:

Like all credit, the whole purpose of any credit contract has got to be to leave you in a better financial position, and we just see the opposite too often...Our experience in the financial counselling sector would be that the majority lead to more financial hardship rather than alleviate it...I have not seen an instance where a payday loan has been helpful to a client.²⁷

3.35 A Legal Aid lawyer expressed a similar view:

Typically, we see those clients end up in a financially worse and, often, legally worse position as a result of taking up any one of these products.²⁸

24 ASIC, *Submission 21*, p. 8.

25 Consumer Credit Legal Service (WA) Inc, *Submission 20*, p. 7.

26 National Credit Providers Association, *Submission 51*, attachment 2, p. 2.

27 Ms Fiona Guthrie, Chief Executive Officer, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, p. 5.

28 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 25.

3.36 Submitters from the community sector suggest that payday loans are too easy to access. For example:

Our casework experience indicates that pay day loans and consumer leases are far too easy to access (digital access has grown rapidly) with few barriers to qualify. They put people already in hardship into worse positions. People take them out as they are easy to obtain and view them as a way to deal with a financial issue immediately.²⁹

3.37 They say that loans are often over short periods with unaffordably high repayments, which means consumers may seek another loan to meet the repayments and thus get into a debt cycle.³⁰ A witness enlarged on this idea:

The industry often claims that the loans are necessary because people get hit with one-off emergencies—they need to replace whitegoods; they need to move urgently; they might even experience domestic violence, and therefore those loans are absolutely essential to meet those purposes. When we look at our clients' actual experiences, in the vast majority of cases they're not the things they're paying for—they're actually just meeting a cash shortfall, so they can't pay their rent, they can't buy their food or they can't pay their electricity bills. Quite often, that shortfall is fuelled by loans they're already paying, so they will then go and get another loan to meet the next lot of essential expenses and partially to pay off that first loan.³¹

3.38 Many submissions and witnesses spoke of the personal impacts of indebtedness. Mr Tony Devlin, of the Salvation Army's Moneycare Program, said:

He was talking about suiciding. I don't know the numbers, but, sadly, a reasonably high proportion of the people we work with have suicidal ideation. A large number of people have very serious mental health issues. Financial hardship causes great stress, anxiety and sometimes suicidality for people. I think it's the number one reason for relationship breakdown in Australia.³²

3.39 Consumer and community groups were, if anything, even more critical of consumer leases than of payday loans. They asserted that consumer leases resulted in consumers paying many times the value of the goods but they did not in the end own the goods³³—which some consumers did not understand at the outset.³⁴ There are few

29 Salvation Army, *Submission 9*, p. 8.

30 Good Shepherd Microfinance, *Submission 50*, [p. 2].

31 Ms Karen Cox, Chief Executive Officer, Financial Rights Legal Centre, *Committee Hansard*, 12 December 2018, p. 31.

32 Mr Tony Devlin, National Manager, Moneycare Program, Salvation Army Australia, *Committee Hansard*, 22 January 2019, p. 22.

33 Legal Aid Queensland, *Submission 3*, p. 4.

34 Care Inc, *Submission 11*, p. 3; Legal Aid Queensland, *Submission 3*, p. 4.

limitations on cost or contract length, and companies use aggressive marketing tactics and a lack of transparency.³⁵

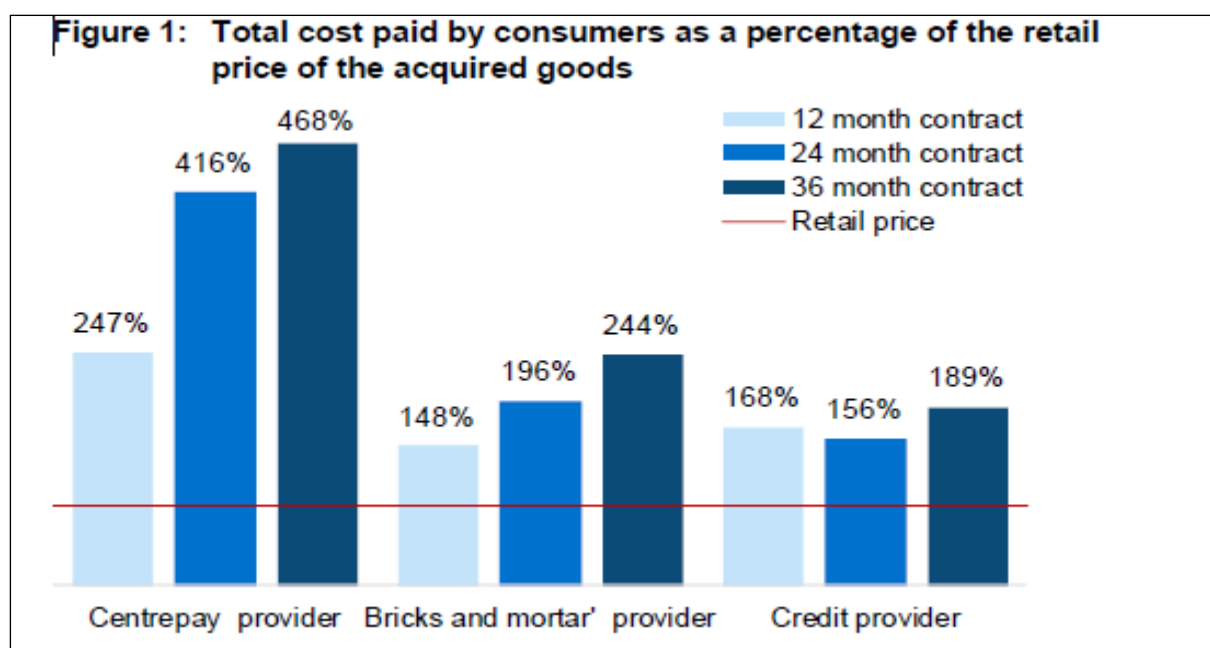
3.40 The Mentone Community Assistance and Information Bureau Inc found that:

The prime elements of such rental contracts that concern those who are or have been in [them] are essentially the following:

The exorbitant amounts that some clients can eventually pay for items that retail at prices multiple times below the eventual cost; and

The ongoing deductions from Centrelink accounts...³⁶

3.41 ASIC reports that competition does not seem to drive down prices in the sector. Different providers charged significantly different amounts for the same goods, and the same lessor would charge significantly different amounts for the same goods for different customer segments. In both instances, the consumers that are more likely to pay the higher amounts are Centrelink recipients.³⁷



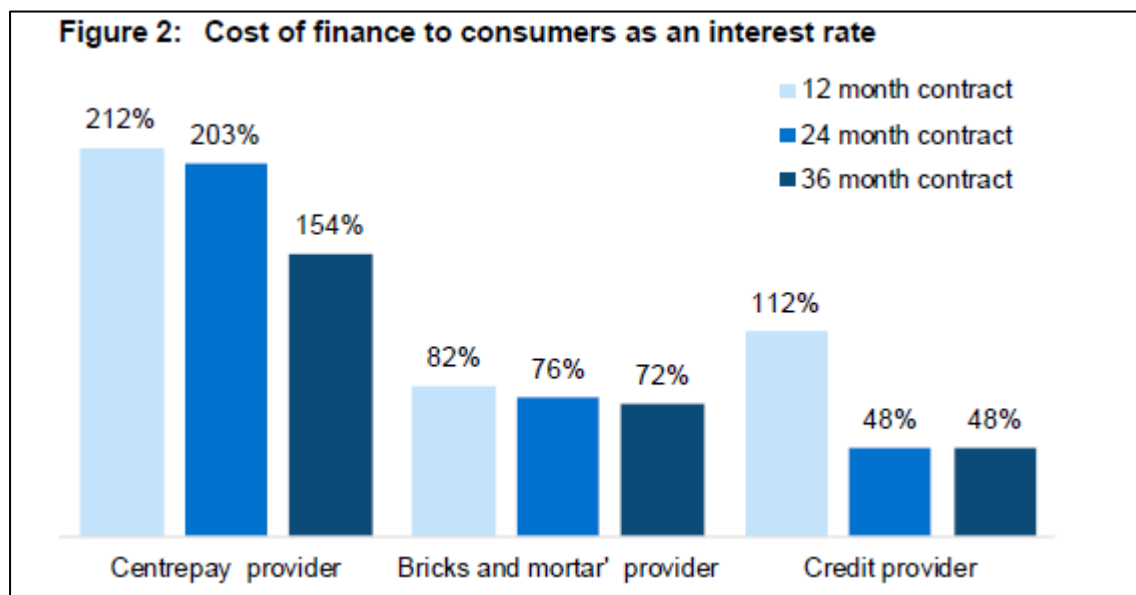
Source: ASIC, *Submission 21*, p. 10

35 Good Shepherd Microfinance, *Submission 50*, [p. 3].

36 Mentone Community Assistance and Information Bureau Inc, *Submission 35*, p. 2.

37 ASIC, *Submission 21*, p. 9.

3.42 ASIC also found that over the term of a consumer lease, the consumer will pay significantly more than the retail price of the goods and be charged more than a lender is permitted to charge under a small amount credit contract:³⁸



Source: ASIC, *Submission 21*, p. 10

3.43 The impacts of indebtedness are increasingly being felt by younger people. The average age of customers of Good Shepherd Microfinance is 32.³⁹ Mr Devlin of the Salvation Army noted:

In the payday lender area we did some recent research on our Moneycare database—over the last 10 years up till the end of the last financial year—and we found that the 15- to 20-year-old group made up 20 per cent of the people using those products or was the biggest group of any group using them. Over that same time the number of clients we had who accessed them moved from six per cent to 13 per cent—more than doubled over that period—and the amount of debt that was outstanding tripled over that same period...⁴⁰

38 ASIC, *Submission 21*, p. 9; see also ASIC, *Cost of consumer leases for household goods*, September 2015, p. 4.

39 Mr Richard Wood, Credit Manager, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 40.

40 Mr Tony Devlin, National Manager, Moneycare Program, Salvation Army Australia, *Committee Hansard*, 22 January 2019, p. 21.

Conduct of providers

3.44 NCPA notes that there is a high level of compliance in the industry, with a very small number of sanctions issued by ASIC.⁴¹ There were 110 complaints that went to external dispute resolution, which was 0.02 per cent of the loans involved.⁴²

Marketing and consumer behaviour

3.45 Several contributors to the inquiry gave evidence as to the vulnerability of people who are financially excluded. The Salvation Army put it thus:

Behavioral science tells us that people in crisis experience cognitive overload, which impacts their decision making and focus. Their focus is on meeting their pressing need and their decisions in times of crisis can and often does put them in a worse financial position in the longer term... when people are in crisis they will do whatever they need to do to survive. People need to find a way to pay the rent so they don't get evicted. They need to find a way to pay the car loan to stop repossession. They need to find a way to pay the bigger than expected electricity bill to keep the lights on. They need to find a way to repair the car to get to work. They will access whatever finance they can to get through that week.⁴³

3.46 Mr Paul Holmes of Legal Aid Queensland framed the issue in economic terms:

What we have is buyers who feel that they have no choice but to take up the [credit] product. So what you end up with is almost a very flat type of demand curve, in the traditional economic sense. In a lot of these areas, what you see on the supply side is that there's almost no price competition that would be indicative of a functioning market.

Typically, what we also see is that there's a large power imbalance.⁴⁴

3.47 The actual price of the credit may not be the highest priority:

What we find, particularly with payday loans and with consumer leases as well, is that the cost of the product is very low regard; it is about obtaining the funds to do whatever is needed...⁴⁵

3.48 Mr Holmes agreed with this, when asked if price was a factor for clients making their decisions about financial products:

I would say almost never, and the reality of why I say 'almost never' is because, with the type of client we typically see, it's about finding a way of paying a bill that's due in two days.⁴⁶

41 National Credit Providers Association, *Submission 51*, p. 5.

42 National Credit Providers Association, *Submission 51*, p. 15.

43 The Salvation Army Australia, *Submission 9*, p. 8.

44 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection) Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 25.

45 Mr Tony Devlin, National Manager, Moneycare Program, The Salvation Army Australia, *Committee Hansard*, 22 January 2019, p. 21.

3.49 Dr Paul Harrison of Deakin University discussed the issues in detail in a hearing for the inquiry. His assumption is that:

...businesses aren't necessarily in the business of consumer wellbeing; they're in the business of making profit and selling their product.

3.50 He emphasised 'decision making asymmetry', a psychological power imbalance between the credit provider and the consumer:

This is because the provider has significant data analytic capacity, they are able to adapt their offer as it virtually follows and tests consumer responses and, through technology such as neural networking, is able to anticipate consumer responses and intervene to lead the consumer to make choices that suit business.

3.51 He noted that once a consumer had decided to buy something, it was in the seller's interest to make achieving that 'goal' as fast as possible. Online shopping enabled products to be 'clumped' with finance, so the process of acquiring a desirable object was bundled with getting the credit to buy it. There was little reflection by the consumer:

...the critical issue is the speed with which consumers move through the online environment as opposed to, perhaps, a bricks-and-mortar or traditional face-to-face context...⁴⁷

3.52 Online marketing also enables closer targeting, and it also means that it is harder for the consumer to ignore the advertising:

...digital marketing means that there is a substantial amount of funds being spent on targeting customers. I think it becomes very difficult to put a lot of the onus back on the borrower, because the information is coming up in their feed, whether it's Facebook or wherever, at the point in time when they're potentially vulnerable.⁴⁸

3.53 In particular, marketing targets the young:

...It's the younger generation, if you look at their advertising. They're always down at the beach, they're relaxing, they're having a drink and stuff like that. It's very much targeted towards the younger generation...⁴⁹

3.54 Payday loans are aggressively marketed, so that people use them instead of more suitable alternatives such as financial counselling or low interest loan schemes.⁵⁰

46 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection) Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 25.

47 Dr Paul Harrison, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, pp. 1–5.

48 Ms Corinne Proske, General Manager, Retail and Online, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 39.

49 Mr Richard Wood, Credit Manager, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 40.

50 Consumer Action Law Centre, *Submission 37*, p. 7.

ASIC noted that lenders invite consumers to take out new loans when they detect fluctuations in their income or when an existing loan is due to be repaid.⁵¹ Ms Karen Cox, of the Financial Rights Legal Centre, suggested that payday lenders will on-sell the details of people whom they have rejected for loans.⁵²

3.55 The Queensland Council of Social Service noted that payday loans and consumer lease businesses were concentrated in areas of higher unemployment, large proportions of single-parent families, and low gross income. The companies targeted areas of social and economic disadvantage.⁵³

Practices of lenders

3.56 Many submissions gave concrete examples and case studies of poor conduct by lenders. For example, the Tasmanian Council of Social Service asserts that Cigno provided a loan to a person assessed as having gambling issues.⁵⁴ An individual submitter, 'Ian', says:

My Son Jesse was approved 3 loans for 200.00 [by Cigno] while on Centrelink payments and suffering Schizophrenia and in a residential drug rehab program. His entire Centrelink money was assigned to the rehab. He has no employment history, or assets...They say they charge no interest. Instead the charge large admin, and loan origination fees. And the default fees are unreasonably high.⁵⁵

3.57 Even when lenders are regulated, compliance with responsible lending obligations is lacking.⁵⁶ In particular, lenders do not inquire thoroughly as to the circumstances of the customer, they do not check the accuracy of income and expense figures provided to them, and even where they obtain three months bank statements as required by law they do not analyse them properly.⁵⁷

3.58 The Consumer Credit Legal Service (WA) Inc gave an example:

Trish obtained multiple payday loans, ranging from \$250 to \$1,300, comprising 24 separate advances from one lender between March 2010 and July 2016. She had also obtained a home loan, a personal loan and other bank loans that she was unable to service. Our review and assessment of Trish's various loan applications reveals that Trish's need for payday loans was fuelled by her inability to service other unsuitable debt.

51 ASIC, *Submission 21*, p. 17.

52 Ms Karen Cox, Chief Executive Officer, Financial Rights Legal Centre, *Committee Hansard*, 12 December 2018, p. 28.

53 Ms Rose McGrath, Senior Policy Officer, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, pp. 30–31.

54 Tasmanian Council of Social Service, *Submission 5*, p. 4.

55 *Submission 46*, p. 1.

56 Good Shepherd Microfinance, *Submission 50*, [p. 2].

57 Legal Aid Queensland, *Submission 3*, p. 2.

...Trish's bank loans were unsuitable, no sensible assessment could have determined that the eight payday loans she obtained subsequent to the home loan were suitable, given that they post-dated and helped to service those unsuitable bank loans.⁵⁸

3.59 Financial Counselling Australia also cited specific cases:

I see loans issued where there's clearly no capacity to repay that loan. A lady I met last month had 30 Cash Converters loans in the last four years. Three of those loans were issued after a Cash Converters loan had been defaulted and not repaid, and 17 of those loans had been issued when she had two or more loans in the previous 90 days, and that would indicate that she has an incapacity to meet that loan, particularly when you look at her bank statements that show several overdrafts...⁵⁹

3.60 Legal Aid Queensland pointed to unacceptable practices such as securing a loan against an asset such as a car that is worth less than the value of the loan but is essential for the borrower to have. This creates a way of ensuring that the repayments get top priority:

...I call it 'coercive': the pressure's on them to continue to pay it, because without it they don't get to work and they don't keep their job.⁶⁰

3.61 Lenders also use direct debits that apply immediately after Centrelink payments are placed in the consumer's account.⁶¹

3.62 Good Shepherd Microfinance had seen instances where lenders pushed applicants to ask for a loan over \$2000, because the conditions on SACCs are tighter than those on medium amount credit contracts.⁶² They also engaged in other practices not conducive to consumer welfare:

It's about trying to get as many loans in as possible. The establishment fee is much higher than the monthly fee...also...a lot of the market is making its money on people falling into arrears and hardship, because it's the penalty fees where you actually make all the money. So, to try and push people into contracts that are very tough to service but that they don't fall over on is actually an optimal business model.⁶³

58 Ms Roberta Grealish, Senior Solicitor, Consumer Credit Legal Service (WA) Inc, *Committee Hansard*, 12 December 2018, p. 22.

59 Mrs Sandra Blake, Financial Counsellor, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, p. 3.

60 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 26.

61 Legal Aid Queensland, *Submission 3*, pp. 3–4.

62 Mr Richard Wood, Credit Manager, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 40.

63 Ms Corinne Proske, General Manager, Retail and Online, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 40.

3.63 The consumer leasing industry recognises that there is bad behaviour in the industry:

It is beyond contention that there are some rogue operators in the consumer leasing industry. These unscrupulous businesses have preyed on vulnerable consumers, causing financial hardship for lower socioeconomic Australians and bringing the industry into disrepute.⁶⁴

3.64 During the hearing, Mr Steven King, the President of CHERPA elaborated:

We have found that with some of our clients suppliers have supplied them with goods to the amount of seven or eight times the value of the goods, which disturbs us greatly. We've found that some people have been loaded up well over what our code of conduct ensures is 20 per cent...⁶⁵

3.65 Submissions used case studies to illustrate poor behaviour on the part of consumer leasing companies, including bullying and invasive practices.⁶⁶ They (along with payday lenders) have been accused of targeting indigenous communities.⁶⁷ ASIC's finding that they regularly charge Centrelink customers more suggests that they are taking advantage of their vulnerability.⁶⁸

3.66 ASIC has also noted that consumers in remote communities throughout Australia, who are particularly vulnerable because they have few options when buying household goods, limited understanding and experience with credit and consumer lease products, and often limited English comprehension, have been targeted, especially by consumer lease providers:

ASIC has publicly reported on instances of consumer lessors entering remote communities and engaging in poor practices such as offering inducements to a senior or respected community member to obtain introductions to individuals in the community so that they can make as many sales as possible. In our submission, ASIC provided examples of exploitative behaviours seen on Palm Island, and by operators such as Zaaam Rentals and Local Appliance Rentals.⁶⁹

3.67 Several contributors to the inquiry pointed to the lack of transparency in consumer leasing contracts, and noted that consumers responded only to the

64 Consumer Household Equipment Rental Providers Association, *Submission 25*, p. 5.

65 Mr Steven King, President, Consumer Household Equipment Rental Providers Association, *Committee Hansard*, 12 December 2018, p. 15.

66 For example, Salvation Army, *Submission 9*, p. 9.

67 Consumer Action Law Centre, *Submission 37*, p. 9.

68 ASIC, *Submission 21*, p. 12.

69 ASIC, answer to question on notice no. 4, 1 February 2019.

affordability of fortnightly payments.⁷⁰ The Mentone Community Assistance and Information Bureau expressed concern about:

The ongoing deductions from Centrelink accounts when items should nominally have been paid for and the deductions ceased. It would seem that unless these deductions are formally ceased, they continue ad infinitum. The terms and conditions that allow the above to occur are not readily apparent to those signing up for such arrangements.⁷¹

3.68 A witness suggested that the tactics of lenders are sometimes aimed at ensuring that borrowers cannot seek help:

...once the financial counsellor got involved, the lender then contacted the person in quite an intimidatory way...

...And what happens then is that really the clients have some remedies. They can take that dispute around that intimidation to an external dispute resolution scheme and possibly get compensation. But they can be so intimidated and worried that they won't pursue their rights so it can be quite an effective strategy...⁷²

3.69 Industry witnesses insisted that the honest players in the industry were cautious in their lending and respectful of their customers. One pointed out:

Our customers are the lifeblood of our business and, if reputable providers such as Cash Converters do not provide these services, we question who will.⁷³

3.70 Another pointed out that many of the horror stories are not from the regulated SACC sector, detailing examples from submissions to the inquiry. He said later, 'Particularly in the regulatory environment, there are very few real stories that I've seen in the submissions from the SACC industry...'⁷⁴

3.71 His colleague added:

CoreData, an independent research firm, collates factual information on the industry each year, and their stats suggest that contacts with lenders from organisations such as Financial Counsellors Australia run at about four in 10,000 loans...

70 For example, Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 24 January 2019, p. 13.

71 Mentone Community Assistance and Information Bureau Incorporated, *Submission 35*, p. 2.

72 Ms Fiona Guthrie, Chief Executive Officer, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, pp.3–4.

73 Mr Sam Budiselik, Interim Chief Executive Officer, Cash Converters International Ltd, *Committee Hansard*, 12 December 2018, p. 7.

74 Mr Robert Bryant, Chairman, National Credit Providers Association, *Committee Hansard*, 12 December 2018, p. 15, p. 18.

...the SACC approval rates for 2016 and 2017 were only 39 per cent so, as you can see, 61 per cent of consumers were deemed to be ineligible and were, in essence, turned away from a SACC loan.⁷⁵

3.72 Similarly, the consumer lease industry association asserted that its members operated conscientiously:

Could I just say that anyone who can't afford our products doesn't get our products. It's that simple with responsible lending. Only one in four clients get through the process. It's a rigorous process for people to get through the system and be able to lease a product.⁷⁶

3.73 Representatives of Thorn Group detailed the company's methods for credit assessment, and also for checking that an item is appropriate for the customer.⁷⁷

3.74 But when asked directly if there were any consumer lease organisations that provided a genuine and valuable service, a representative of the Queensland Council of Social Service responded bluntly: 'Not that we've come across'.⁷⁸

Centrepay

3.75 Perhaps the greatest concern in the community group submissions was that consumer lease companies had access to Centrepay, a government bill paying service for Centrelink recipients.⁷⁹ As one submission observed:

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.⁸⁰

3.76 Similarly, AFCA voiced its reservations:

The team who work in financial hardship do raise concerns...[about]...the issue of direct payments going from Centrelink through to these providers, which actually does take priority over other debts which actually may be more important in terms of the livelihood and wellbeing of the family.⁸¹

3.77 The Department of Human Services, which administers Centrepay, explained that anyone on a Centrelink payment can use Centrepay. There is a strict framework

75 Mr Michael Rudd, Director, National Credit Providers Association, *Committee Hansard*, 12 December 2018, p. 18.

76 Mr Steven King, President, CHERPA, *Committee Hansard*, 12 December 2018, p.17.

77 Mr Tim Luce, Chief Executive Officer, and Mr Peter Forsberg, Chief Financial Officer, Thorn Group, *Committee Hansard*, 22 January 2019, p. 44.

78 Ms Carly Hyde, Policy Lead, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, p. 32.

79 Salvation Army, *Submission 9*, p. 9; Care Inc, *Submission 11*, p. 3; Consumer Action Law Centre, *Submission 37*, pp. 10–11; see also ASIC, *Submission 21*, p. 8.

80 Financial Counsellors Association of NSW Inc, *Submission 13*, p. 4; Consumer Action Law Centre, *Submission 37*, pp. 10–11.

81 Mr David Locke, Chief Ombudsman and Chief Executive Officer, Australian Financial Complaints Authority, *Committee Hansard*, 24 January 2019, p. 2.

around which merchants can access Centrepay, including legal and professional, utilities, rent or other accommodation, household (which includes most consumer leases), education, some limited financial products, health costs, travel, transport and some social and recreational things. Each merchant is approved individually.

All up, we have around 14,600 merchants approved for Centrepay nationally. As at the end of December, around 638,718 of our customers use Centrepay, with around 26 million transactions and deductions a year. The total value through Centrepay was \$6.2 billion in 2018.⁸²

3.78 There is no limit on the proportion of income that can be paid out through Centrepay, because a person could be using the service to pay a large proportion of their household expenses. Payday lending and buy now pay later products are not part of Centrepay. Approximately 10 per cent of payments made through Centrepay were for consumer leases.⁸³

3.79 Mr Tim Luce of Thorn Group noted that 52 per cent of Thorn Group's consumer leasing customers paid via Centrepay. He said that, while Centrepay did reduce default and administration costs for the company, the overall default rates for Centrepay customers were about the same as those not on Centrepay.⁸⁴ His colleague pointed out that if customers used direct debit, they would be charged fees in the case of late payment, whereas they were not with Centrepay.⁸⁵

3.80 The Department of Human Services does not itself police providers under Centrepay, relying on the regulation of consumer leases to protect its clients:

In terms of the more regulatory aspect of it, I think the debate about whether prices are fair et cetera essentially falls back on the regulatory environment that exists for the provider.⁸⁶

3.81 It is a condition of access to Centrepay that providers are part of the appropriate regulatory framework, so if ASIC has taken away a company's financial licence it will be excluded—and, apparently, only then:

ASIC obviously will make a range of decisions. They may remove licences but they may not. So it may be that they find some behaviour in the organisation, the organisation remediates that behaviour and ASIC don't find any further behaviour. Then we wouldn't necessarily remove them from Centrepay for that, because there is action underway from the

82 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 21.

83 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, pp. 20–21.

84 Mr Tim Luce, Chief Executive Officer, Thorn Group, *Committee Hansard*, 22 January 2019, p. 43.

85 Mr Peter Forsberg, Chief Financial Officer, Thorn Group, *Committee Hansard*, 22 January 2019, p. 43.

86 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 21.

regulator to ensure that the business is complying. But if the business is not licensed and ASIC has taken that action then, yes, we would remove them from Centrepay.⁸⁷

3.82 If the Department of Human Services does become aware of abuse, it relies to a great extent on ASIC's regulatory enforcement:

Our staff will have contact with the various legal aid centres and financial counsellors, and if we have particular concerns about a provider then absolutely we will launch our compliance activity against that provider. If the nature of those is around, say, responsible lending and those types of matters, then either the financial counsellor would refer it to ASIC or we would, so it would be somewhere between us and ASIC that would then investigate depending on the nature of the allegation.⁸⁸

3.83 The Department does compliance audits to check that the customer is giving informed consent, but does not otherwise scrutinise their financial situation, and in particular their level of indebtedness.⁸⁹

3.84 A witness told the December hearing:

In relation to Centrepay why not use direct debit?...The fact that Centrepay becomes the preferred method tells you something about the way this industry [consumer leasing] is operating...There's an ASIC report into this industry from a couple of years ago that shows interest rates up to 884 per cent.⁹⁰

3.85 ASIC noted that although Centrepay lowered the risk of default on rental payments, the companies still charged Centrepay customers more.⁹¹ Because Centrepay customers are on lower incomes, the terms of their loans are longer, which also increases the final cost.⁹²

3.86 There was concern about the lack of visibility of Centrepay payments:

There is a high degree of inertia, therefore, because it's not a meaningful amount of money once you sign up to these contracts. In circumstances where some consumer leases have indefinite terms or essentially operate indefinitely, that creates a real problem because lack of visibility, inertia

87 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 23.

88 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 23.

89 Mr Gavin Matthews, General Manager, Older Australians, Department of Human Services, *Committee Hansard*, 24 January 2019, p. 22.

90 Ms Fiona Guthrie, Chief Executive Officer, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, p. 5.

91 ASIC, *Submission 21*, p. 12.

92 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 24 January 2019, p. 13.

and indefinite terms mean that people keep on paying and paying and paying when they should not be.⁹³

3.87 However, a representative of CHERPA protested that customers are not helpless:

Centrepay is a bill-paying service for the client, run by the client... We don't put clients into financial stress. If we do responsible lending, they can afford all the other things that they're supposed to have at the same time. Yes, it is a benefit to us to receive that payment before anyone else. We don't deny that for one minute, but we're not in control of it.⁹⁴

3.88 Similarly, Mr Luce of Thorn Group noted that customers kept control:

I would first like to address the misconceptions about Centrepay as a payment mechanism. Lessors do not have access to a customer's Centrepay account. That remains within the total control of the customer. Importantly, Centrepay deductions are not a payment guarantee, as customers can, and often do, choose to stop Centrepay deductions.⁹⁵

3.89 The Salvation Army agreed with the general aims of Centrepay but did not like the outcomes it produced:

I definitely think companies are abusing that system. Centrepay we set up under really good principles to be a money management tool to help people put aside funds for real essentials like rent and utilities so they can have those covered by choice and live on the remainder but over the years we've seen all sorts of other things go on like consumer leases so people don't have that discretion so much...⁹⁶

Nature and adequacy of current regulatory arrangements

Current regulation

3.90 The current regulatory arrangements (which are described in Chapter 2 above) rely on a responsible lending framework.

3.91 The National Credit Act and the National Credit Code provide a number of protections for consumers who borrow money for personal, domestic or household needs. Credit providers must hold an Australian credit licence and have policies and procedures as to how they comply with the law. They must also have no-cost dispute

93 Ms Miranda Nagy, Principal Lawyer, Maurice Blackburn Lawyers, *Committee Hansard*, 12 December 2018, p. 36.

94 Mr Steven King, President, Consumer Household Equipment Rental Providers Association, *Committee Hansard*, 12 December 2018, p. 20.

95 Mr Tim Luce, Chief Executive Officer, Thorn Group, *Committee Hansard*, 22 January 2019, p. 41.

96 Mr Tony Devlin, National Manager, Moneycare Program, The Salvation Army Australia, *Committee Hansard*, 22 January 2019, p. 22.

resolution schemes, both in-house and external, the latter requirement in effect meaning membership of the Australian Financial Complaints Authority.⁹⁷

3.92 The Enhancements Act specifically addressed payday loans. Among other provisions, it created a presumption of unsuitability, if the consumer is already in default on another small loan, or has had two or more small loans in the last 90 days; capped fees and charges; and required lenders to consider the borrower's account statements for the last 90 days.

Changes included in current draft legislation

3.93 It is not controversial that further regulation of the sector is needed. The circulation of the exposure draft of the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 (the SACC Bill), the Government's response to the SACC Review, is evidence that the Government once believed that action was necessary.

3.94 Many of the perceived shortcomings in current regulation would be addressed by the SACC Bill, in conjunction with the Treasury Laws Amendment (Design and Distribution and Product Intervention Powers) Bill 2018 which is currently before the Parliament.

3.95 With regard to SACCs, the SACC Bill would:

- remove the rebuttable presumption that a SACC is unsuitable if the consumer entered into two or more SACCs in the last 90 days, or is in default under a SACC;
- require SACCs to have equal repayments spread over equal intervals;
- prevent SACC providers from charging monthly fees in respect of the residual term of the contract where the contract has been paid out in full early by the consumer; and
- prevent SACC providers from making unsolicited credit invitations and offers to current and previous SACC consumers.⁹⁸

3.96 With regard to consumer leases, the SACC Bill would:

- impose a cap on lease payments that applies to all consumer leases (referred to as the 'cap on costs');
- improve affordability of consumer leases by:
- introduce obligations for lessors of household goods to obtain and consider 90 days of bank statements before entering into a lease with a consumer; and

97 ASIC, *Payday lenders and the new small amount lending provisions*, Report 426, March 2015, pp. 4–5, <https://www.asic.gov.au/media/3038267/rep-426-published-17-march-2015.pdf> (accessed 12 February 2019).

98 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 Exposure Draft Explanatory Materials, p. 9.

- prohibit lessors of household goods from entering into leases that do not meet certain requirements prescribed by the Credit Regulations (referred to as the 'protected earnings amount');
- prohibit door-to-door selling of consumer leases for household goods; and
- require lessors of household goods to disclose the base price of the goods and the difference between the total payments and the base price.⁹⁹

3.97 For both categories of credit products, the SACC Bill would:

- place restrictions on the use or disclosure of account statements that are received in connection with a SACC or consumer lease;
- require providers to document their assessment that a SACC or consumer lease for household goods is not unsuitable for a consumer;
- require lessors to provide consumers with a warning statement to assist them in making a decision whether to enter into a consumer lease for household goods; and
- explicitly identify family violence as a reasonable cause of financial hardship.¹⁰⁰

3.98 The SACC Bill would also introduce broad anti-avoidance measures:

- a prohibition on business model avoidance schemes that are designed to prevent a contract being a SACC or consumer lease regulated under the Credit Act;
- a prohibition on internal avoidance schemes that are designed to avoid the application of a provision of the Credit Act that applies only to a SACC or consumer lease; and
- the regulation of indefinite-term consumer leases under the Credit Act.¹⁰¹

3.99 Separately, the Credit Regulations would be amended:

The existing protected earnings amount for SACCs will be extended to cover all consumers and the portion of income that can be devoted to SACC repayments will be 10 per cent of a consumer's net income. Currently the SACC protected earnings amount only applies to persons who receive 50 per cent or more of their income from Centrelink and the portion of income is 20 per cent of gross income.

A new protected earnings amount will be introduced for consumer leases for household goods, whereby lessors cannot enter into a contract that

99 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 Exposure Draft Explanatory Materials, p. 25.

100 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 Exposure Draft Explanatory Materials, p. 41.

101 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 Exposure Draft Explanatory Materials, p. 49.

would require a consumer to pay more than 10 per cent of their income in rental payments under consumer leases for household goods. Under the protected earnings amount, the total rental payments (including under the proposed lease) cannot exceed 10 per cent of net income in each payment period.¹⁰²

Other proposed changes

3.100 In the case of unlicensed products ASIC notes that it can take action against providers only for breaches of the ASIC Act, that is, for misleading or deceptive or unconscionable conduct. It recommends that the product intervention power contained in the legislation currently before the Parliament¹⁰³ be extended to all products regulated by the ASIC Act. This would include the buy now, pay later products, debt management products, and 'book-up' arrangements.¹⁰⁴ The government has already announced its intention to extend the new product intervention power to short term credit by regulation.¹⁰⁵

3.101 More generally, ASIC noted:

We also see a need for further powers to address more complex and emerging areas of concern and for ASIC to have a flexible toolkit to address the selling and marketing of unsuitable financial products and services to consumers.¹⁰⁶

3.102 AFCA argued that the legislation should include a general obligation to treat customers fairly. It declared:

Instead of providing for separate functional activities, we believe conduct regulation should be more clearly based on the fair treatment of consumers at all stages of what is an increasingly integrated product design, origination and distribution system...

AFCA considers that threatening consumers fairly should be made a standalone and enforceable standard for financial services entities and individuals working for them.¹⁰⁷

3.103 The Australian Financial Security Authority endorsed AFCA's view.¹⁰⁸

102 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 Exposure Draft Explanatory Materials, p. 7.

103 The Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018.

104 ASIC, *Submission 21*, pp. 20–21, p. 26, p. 30.

105 ASIC, *Submission 21*, p. 23.

106 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 24 January 2019, p. 12.

107 AFCA, *Submission 58*, p. 4.

108 AFSA, *Committee Hansard*, 24 January 2019, p. 4.

3.104 The Consumer Action Law Centre called for the extension of the National Credit Act to cover buy now, pay later providers, short term credit providers and pawnbrokers.¹⁰⁹

3.105 Dr Paul Harrison called for a slowing down of the process of obtaining credit for a purchase 'through something akin to a double opt-in process'. He also wanted to force credit providers to conduct due diligence on their products in relation to consumer detriment prior to release and require them to release their findings for scrutiny (which might be met by the Design and Distribution Obligation).

3.106 Dr Harrison also recommended making it practically and psychologically easier to withdraw from debt agreements if they can show they did not understand the terms and conditions of the agreement prior to signing.¹¹⁰

Views on proposed changes

3.107 Many submissions called for the SACC Bill to be passed, with several noting that a long time had passed since its drafting, and in particular since the ASIC reports detailing problems with the industry (see Chapter 2).¹¹¹

3.108 The Australian Finance Industry Association supported it, with relatively minor reservations.¹¹² CHERPA also supported it, but suggested a change in the cap on costs and argued that the case had not been made for the Protected Earnings Amount of 10 per cent of net income, and that the present 20 per cent cap is working.¹¹³

3.109 Mr Robert Bryant, the Chairman of NCPA, who had argued that many of the poor outcomes attributed to his sector were actually to do with non-SACC products, applauded extension of the SACC regime to consumer leases: 'That will solve our problems'.¹¹⁴

3.110 The NCPA argued that extending the Protected Earnings Amount to all borrowers (rather than the present scope, those who receive 50 per cent or more of their gross income from social security) would cause working Australians, who are responsible for 81 per cent of small loans, to be financially excluded. NCPA also

109 Consumer Action Law Centre, *Submission 37*, p. 5.

110 Dr Paul Harrison, , *Committee Hansard*, 22 January 2019, p. 1.

111 For example, Anglicare Tasmania, *Submission 7*, p. 6; Salvation Army, *Submission 9*, p. 5; Care Inc, *Submission 11*, pp. 2–3; Financial Counsellors Association of NSW Inc, *Submission 13*, p. 2, p. 4; ASIC, *Submission 21*, p. 4; Queensland Council of Social Service, *Submission 15*, p. 14; Consumer Action Law Centre, *Submission 37*, p. 5; Legal Aid Queensland, *Submission 3*, p. 13; UnitingCare Australia, *Submission 49*, p. 6.

112 The Australian Finance Industry Association, *Submission 8*, p. 3-4.

113 CHERPA, *Submission 251*. pp. 4–6.

114 Mr Robert Bryant, Chairman, National Credit Providers Association, *Committee Hansard*, 12 December 2018, p. 17.

argued against reducing the cap to 10 per cent. It was concerned that the ban on unsolicited offers would give an advantage to unregulated lenders.¹¹⁵

Compliance with, and enforcement of, current regulation

3.111 Regulation is only as good as compliance with it and enforcement of it. Improved legislation will not improve outcomes if it is not complied with.

3.112 Lenders claim that they operate within the responsible lending requirements of the National Credit Act and the Enhancements Act. These require them to inspect bank statements and make reasonable inquiries to check that the loan is suitable, that the borrower is able to meet the repayments, and that total credit repayments will not exceed 20 per cent of the borrower's income.¹¹⁶ But if that were the case, it is unlikely that many of the problems reported above would have occurred.

3.113 ASIC points to a good deal of enforcement activity. In particular, it noted that the performance of two firms which had operated under enforceable undertakings, Thorn and Flexigroup, had improved their practices and met their undertakings.¹¹⁷ On the other hand, Cash Converters, which had restructured its business model partly as a result of legal action, was still accused of recalcitrance:

Just last month we sent a group complaint to ASIC alleging breaches of the National Credit Act by Cash Converters, all of which involve loans over the last 18 months... In one example, our client told us they had 20 payday loans for Cash Converters in a 12-month period, including eight at once.¹¹⁸

3.114 Ms Miranda Nagy of Maurice Blackburn Lawyers was not convinced that enforcement was effective, because regulators preferred negotiation, and did not litigate:

Firstly, regulators charged with enforcing protective laws, such as the national consumer credit legislation, have too often preferred negotiating outcomes rather than taking action to vindicate breaches...

If regulators don't have the resources to litigate and are unlikely to litigate, then credit and consumer lease providers are entitled to see the regulator as not carrying a big stick but, rather, a party to sit down and do a deal with...¹¹⁹

115 National Credit Providers Association, *Submission 51*, pp. 16–19; see also evidence of Mr Michael Rudd, Director, National Credit Providers Association, *Committee Hansard*, 12 December 2018, pp.19–20.

116 See, for example, the evidence of Mr Sam Budiselik, Interim Chief Executive Officer, Cash Converters International Ltd, *Committee Hansard*, 12 December 2018, pp. 7–10.

117 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 24 January 2019, p. 13.

118 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 12 December 2018, p. 23.

119 Ms Miranda Nagy, Principal Lawyer, Maurice Blackburn Lawyers, *Committee Hansard*, 12 December 2018, p. 33.

Chapter 4

Debt management

Market participants and products

4.1 There are a number of regulated and unregulated services provided in the debt management sector. They include:

- personal budgeting services
- debt negotiators
- debt agreement managers and
- credit repair agencies.

The details of each are set out below.

4.2 According to ASIC's submission:

The term 'debt management firms' refers to businesses that offer a range of services to consumers in financial hardship, including:

- developing and managing budgets;
- negotiating with creditors, including lenders, telecommunications companies, utilities companies or debt collectors;
- advising and arranging formal debt agreements under Pt IX of the Bankruptcy Act 1966 (Bankruptcy Act); and
- 'cleaning', 'fixing', 'repairing', 'removing or 'washing away' default listings or other information on credit reports.¹

4.3 The first two of these functions replicate what financial counsellors do. This will be dealt with in chapter 6.

4.4 Debt agreement management is a more formal process. A debt agreement is in fact an insolvency, which is overseen by the Inspector-General in Bankruptcy, who is the chief executive of the Australian Financial Security Authority (AFSA).

4.5 A debt agreement is a proposal to pay a percentage of the debt. It is usually submitted by a registered debt agreement administrator, to the official receiver, and is put to a vote of creditors. If it is accepted then the debt agreement is made. Debt agreements now account for around 47 per cent of all personal insolvency administrations.²

4.6 Credit repair involves clearing negative information from credit reports so that a consumer is more likely to get access to credit or other services in the future. These firms operate by challenging credit default listings and making complaints on behalf

1 ASIC, *Submission 21*, p. 27.

2 Mr David Bergman, National Manager, Insolvency and Trustee services, Australian Financial Security Authority, *Committee Hansard*, 24 January 2019, p. 3.

of consumers to external dispute resolution (EDR) schemes.³ As ASIC points out, consumers can access their credit report themselves and challenge an incorrect listing at no cost.⁴

4.7 Debt buyers and debt collectors are not a subject of this inquiry. Debt buyers purchase unpaid debts from creditors at a discount. Debt collectors work for creditors to chase repayments when they have not occurred as scheduled.

4.8 ASIC observes that some firms in this sector offer a mix, or all, of these services. ASIC notes that there is not much data available about the size of the industry because most operators do not require a licence.⁵ The Consumer Action Law Centre also observes:

Given the lack of regulation and oversight, it is difficult to maintain comprehensive information about this industry, with new practices and business models constantly emerging.⁶

4.9 However, the Australian Financial Complaints Authority (AFCA) has noted an increase in recent years of debt management firms working with consumers who are contacting AFCA as well.⁷ AFSA notes that the use of debt agreements has increased markedly as a proportion of personal insolvencies, from less than a quarter 10 years ago to nearly half now.⁸

Impact on consumers

4.10 Community groups suggest that indebted people grasp at any prospect of being helped out of their debt and often do not understand the services being offered or the charges they will incur. Some do not understand that they are dealing with a for-profit entity.⁹

4.11 On the evidence provided to the committee in submissions and public hearings, these services rarely improve a consumer's financial position. The charges for the debt management services increase their debt, and often consumers are referred to inappropriate remedies which may be expensive and cause lasting damage. The committee heard many case studies to this effect.

3 ASIC, *Report 426 Paying to get out of debt or clear your record: the promise of debt management firms*, January 2016, p. 4, <https://download.asic.gov.au/media/3515432/rep465-published-21-january-2016.pdf> (accessed 14 February 2019).

4 ASIC, *Submission 21*, p. 28.

5 ASIC, *Report 426 Paying to get out of debt or clear your record: the promise of debt management firms*, January 2016, p. 5.

6 Consumer Action Law Centre, *Submission 37*, p. 22.

7 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

8 Mr David Bergman, National Manager, Insolvency and Trustee services, Australian Financial Security Authority, *Committee Hansard*, 24 January 2019, p. 3.

9 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

4.12 Debt managers and debt negotiators are accused of charging large fees for minimal services (some of which are compulsorily provided free to consumers), and failing to tell consumers of free alternatives such as legal aid, or community financial counselling, or contacting a utility company and negotiating an extension of time to pay. Often the fees are not transparent.¹⁰

4.13 The Salvation Army reports a \$1600 set-up fee for a debt agreement that involved only one debt. Legal Aid Queensland offered the following example of a budgeting service:

The client and her friend signed the contract at the meeting without the fees and obligations under the contract being properly explained. These fees included a \$45 charge to move their own money from the company's account back into their own accounts when they requested money for things such as paying car registration. The client was of the view that she and her friend had been pressured into signing a contract to purchase a product of no or little value to them. When she tried to withdraw from the contract, the budgeting service informed her that she was liable for a large establishment fee.¹¹

4.14 Debt negotiators often charge high fees for results which do not solve the consumer's problems:

We've seen quite a few that are a percentage of the amount saved. If you have \$150,000 in credit cards and they reduce it to \$70,000, they'll take 50 per cent, 40 per cent or 80 per cent of the saving or whatever it is...¹²

4.15 Community groups say that debt managers often offer inappropriate products. For example, they may offer a repayment plan that is unaffordable. Consumer Action Law Centre recounts a case:

...the MyBudget representative put together a budget for Claire. It was only at the end of the meeting that MyBudget told her that there would be additional monthly costs....

Claire ran into problems with the budget set up by MyBudget. The MyBudget representative had estimated her credit card repayments to be 2% of her balance. When Claire questioned the representative about this figure, they told her that they had been doing this a long time and they knew. However, her credit card minimum payments were \$65 higher than MyBudget had budgeted for. Claire said when she realised this, MyBudget said, the extra money will need to come from somewhere else but MyBudget did not specify which part of the budget it would come from.

10 See, for example, Good Shepherd Microfinance, *Submission 50*, [p. 6]; Salvation Army, *Submission 9* pp. 12–16; Legal Aid Queensland *Submission 3*, pp. 11–12; Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

11 Legal Aid Queensland *Submission 3*, p. 11.

12 Ms Karen Cox, Chief Executive Officer, Financial Rights Legal Centre, *Committee Hansard*, 12 December 2018, p. 27.

Claire says she had to pay this amount from her personal allowance, which she needed for groceries, which was only \$100 each week. MyBudget had not accounted for other essential expenses, like her car insurance...

After a few weeks, Claire also realised that she would not be able to reduce her debt or save money if she continued to pay the monthly fees to MyBudget and requested MyBudget to cancel the contract. MyBudget told her she needed to go to a website link to cancel the agreement, which took them several days to send. When she received the link and tried to cancel the contract, MyBudget told her that she was required to give a notice period of 28 days. Claire tells us she still had to pay \$790 for the establishment fee.

4.16 Another example was cited at the committee's Melbourne hearing:

An example from our casework is somebody who had a range of expenses, one of which was child care; that was not given priority. The child was subsequently taken out of child care because the fees weren't paid, and that person could no longer work because they had to care for the child. So these consequences can go on.¹³

4.17 The most egregious examples of inappropriate advice were those which advised consumers to enter into a debt agreement. Often the consumer does not understand the full implications of such an agreement—they often believe it is a debt consolidation loan¹⁴—or it may not be a necessary step. The Salvation Army presented this case study on a debt agreement service:

An elderly couple presented to Moneycare stating they had both entered into a debt agreement in March 2017. They advised when talking to the debt agreement service, no other debt reduction options had been mentioned.

The husband worked casually and his wife was on a low income. At the time the debt agreement was entered into, they had \$20,000 arrears on their mortgage. Previous to the debt agreement the husband had been out of work for a long time due to an accident. During this time, he had accessed all his superannuation under hardship to pay down debt - over \$80,000. The house was repossessed in December 2017, and when sold in August 2018 left them with a shortfall of \$90,000.

On assessment, it was clear the debt agreement was not a suitable option because they were servicing a secured home loan that was in arrears. Not being able to keep a secured loan up-to-date is a warning of likely entrenched financial hardship. The debt agreement was not sustainable as the joint income was neither sufficient nor reliable. Being in a debt agreement further exacerbated this couples stress and anxiety as it did not

13 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 12 December 2018, p. 26.

14 Salvation Army, *Submission 9*, p. 12; Consumer Action Law Centre, *Submission 37*, p. 26.

fully resolve their financial problems and the transition to bankruptcy was not something they were expecting.¹⁵

4.18 Many witnesses believed that debt management firms do not act in the best interests of their clients:

They go to see a debt management firm. The firm have made all sorts of promises up-front about how everything will be fine and they're going to fix everything, and often the first thing they say is, 'Please stop paying your creditors; instead you pay that money to us.' That money may be paid to them as being saved up towards their up-front fees, or it could be to put together a fighting fund to negotiate with, but the result of it is always that the client is then pressured by their creditors because they've stopped paying, and sometimes that goes on for six or eight months, because that's how long it takes for people to accumulate enough money to pay the up-front fee. What happens over that time is that the person becomes quite frantic. At the beginning they may have been asking the right questions, but, by the time they get to the point where they're under severe pressure, it's them writing to say: 'Have you put that thing together yet? Has it gone through? Has it gone through?' So it's a very interesting dynamic. I have seen so many people sucked in by it that I find it hard to believe it's not a very common behavioural trait where, no matter what we say people should do, this is what people will do in practice. They are very vulnerable in those circumstances.¹⁶

4.19 ASIC points out that consumers can, at no cost, receive help from financial counsellors or community legal services; and, again at no cost, they can have an independent ombudsman scheme help resolve disputes with lenders, telecommunications and utilities providers.¹⁷

Conduct of providers

4.20 ASIC's view is that:

The business models of debt management firms create a risk of abuse or exploitative conduct, particularly where:

- consumers are charged fees irrespective of the quality of the services provided by the debt management firm; and
- consumers do not need these services because of the availability of free alternatives.¹⁸

4.21 Sometimes there seem to be deliberate attempts to mislead consumers, or at least obscure the fees they will pay:

15 Salvation Army, *Submission 9*, p. 13.

16 Ms Karen Cox, Chief Executive Officer, Financial Rights Legal Centre, *Committee Hansard*, 12 December 2018, p. 32.

17 ASIC, *Submission 21*, p. 28.

18 ASIC, *Submission 21*, p. 27.

At this meeting, I was told there was a problem with their printer, so I couldn't receive a hard copy of the contract. I was made to digitally sign it on a tablet. I wasn't able to read it before I signed because it was over 40 pages long...At this meeting I again asked about the fees, and I was told there are only two sets of fees: a fee to set up the agreement to liaise with the creditors and a fee to use the budget. On checking the budget, I found there were other fees embedded there.¹⁹

4.22 Credit repair firms tend to use the industry dispute resolution schemes, and the creditor pays for each lodgement. AFCA noted that debt management firms charged 'sometimes not insignificant fees' to get financial firms to cease enforcement action, when in fact what they do is pass the matter to AFCA. The consumer could have come to AFCA in the first place for no cost.²⁰

4.23 AFCA suggested that debt management firms prey on consumers' ignorance of the system:

If consumers actually bring a financial hardship matter to AFCA then, whilst the matter is being considered by AFCA, the financial firm is not able to—is excluded from—enforcing that debt. Yet we see situations where debt management firms are actually charging fees, sometimes not insignificant fees, to get the financial firm to stop the enforcement action...²¹

4.24 AFSA observes that debt management firms may have a conflict of interest:

Several of the larger players for registered debt agreement administrators have a larger business with a larger offering to consumers, and debt agreement firms will be a part of that broader offering that they provide.²²

4.25 AFSA's submission gives an example, referred by the Consumer Action Law Centre, of a debtor who wanted to obtain his credit file. He 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.

It was only with the help of the Consumer Action Law Centre that the debtor could extricate himself.²³

19 Henry, *Committee Hansard*, 12 December 2018, p. 24.

20 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 9.

21 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 9.

22 Mr Paul Shaw, National Manager, Regulation and Enforcement, Australian Financial Security Authority, *Committee Hansard*, 24 January 2019, p. 7.

23 AFSA, *Submission 4*, p. 3.

4.26 Credit repair agencies in particular are accused of over-promising and under-delivering, at a high cost to the consumer:

We're definitely seeing debt management firms offering cleaning, fixing, repairing, washing away of default listings on credit reports, which consumers can do themselves. And we're seeing fees charged, sometimes concerning levels of fees charged, with regard to some of these sorts of services as well. The issues that we are most concerned about really are the charging of high up-front fees for services that provide little or no value.... Poor, inappropriate services...can leave consumers worse off in terms of actually negotiating a settlement.²⁴

4.27 Credit repair agencies have also been accused of taking fees for no service:

...They don't have enough money to pay for the service up-front, so they enter into a direct debit arrangement, and the money starts coming out of their account. Often no action will be taken, because the company is waiting for enough money to accumulate for the up-front fee to be paid. In the meantime, life goes on, and quite often these people will find out that actually this isn't the way to go, or they just won't have enough money and they'll stop paying, and then we see them sued down the track. In a couple of their cases, we've seen that the money demanded by the lawyers later on is between \$4,000 and \$6,000.²⁵

4.28 There are limited circumstances in which a default can be removed from a credit record, and those can be pursued free of charge.²⁶ The committee was told:

Many times the default listings and credit listings on people's reports are actually listed properly, appropriately, and they can't be removed. So, even with the assistance of a credit repair provider, the ultimate service isn't delivered.²⁷

4.29 ASIC suggests that many debt management firms market their services to consumers in financial hardship as an appealing way to transfer responsibility for their difficulties to a third party.²⁸

4.30 AFSA monitors the advertising of debt agreement administrators and it too observes that they market to people in financial difficulty and offer 'a form of welcome relief'.²⁹ The Consumer Action Law Centre made the same point:

24 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 9.

25 Ms Karen Cox, Chief Executive Officer, Financial Rights Legal Centre, *Committee Hansard*, 12 December 2018, p. 26.

26 Legal Aid Queensland, *Submission 3*, p. 11.

27 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 12 December 2018, p. 25.

28 ASIC, *Submission 21*, p. 28.

29 AFSA, *Submission 4*, p. 3.

A key [method] is online advertising. If you were to type 'debt help' into Google, the key listings up-front will, unfortunately, not necessarily direct you to a free and independent financial counsellor but will direct you to a debt management firm...³⁰

4.31 The Financial Rights Legal Centre had noted predatory behaviour using sophisticated technology:

I've even heard of people having used the screen-scraping technology that payday lenders used to pass on information about when accounts are empty so that people are at their most vulnerable when they get the advertising...payday lenders will on-sell the details of people who they've rejected for loans...³¹

Nature and adequacy of the current regulatory arrangements

Current regulation

4.32 AFCA observed that:

In areas such as the debt management firms, where there is no code of conduct, there is almost no framework there.³²

4.33 Most operators in the industry are not required to be licensed. Nor are they:

... required to satisfy threshold requirements (such as 'fit or proper' persons tests), satisfy competence standards, meet conduct or disclosure obligations, manage conflicts of interest or belong to an EDR scheme to resolve consumer complaints.³³

4.34 A consumer advocate put it colloquially:

...Debt vultures and credit repair firms do not fall under any regulatory framework, and staff who work at these firms are not required to meet any training or professional or ethical obligations.³⁴

4.35 If a debt management firm also provides credit, this aspect of its operations is regulated under the National Credit Act, as described in the chapter on payday loans.

4.36 Debt agreement administrators are regulated by the Personal Insolvency Regulator (AFSA) under the *Bankruptcy Act 1966*.

30 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 12 December 2018, p. 27.

31 Ms Karen Cox, Chief Executive Officer, Financial Rights Legal Centre, *Committee Hansard*, 12 December 2018, p. 27, p. 28.

32 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 7.

33 ASIC, *Report 426 Paying to get out of debt or clear your record: the promise of debt management firms*, January 2016, p. 5.

34 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 12 December 2018, p. 23.

Changes under way

4.37 The *Bankruptcy Legislation (Debt Agreement Reform) Act 2018* commences in June this year. It includes a number of changes which are aimed at ensuring that the only proposals given to debtors are affordable, sustainable and protect those for whom a debt agreement may result in greater hardship. Debt agreements would generally be limited to three years unless the debtor owns or has an equitable interest in their principal place of residence. There will be a new test to compare the debtor's payments against their income, which is setting up a more rigorous affordability test, and there will be an additional discretion for the official receiver to reject a proposal where the circumstances show that it would cause the debtor hardship.³⁵

4.38 It also includes some significant regulatory changes. Registration as a debt agreement administrator will be made mandatory, allowing for an enhanced oversight of the industry by the Inspector-General in Bankruptcy. Further, the Inspector-General's powers will be extended to enable investigation of the conduct of a registered debt agreement administrator to include conduct prior to the signing of a debt agreement proposal. This will facilitate investigation into administrators who may inappropriately influence debtors who are considering entering a debt agreement. The law reform will also enable industry-wide conditions to be established for registered administrators.³⁶

Other proposed changes

4.39 The Consumer Action Law Centre recommended that debt managers and credit repair firms be regulated more robustly, either by being brought under the National Credit Act or with stand-alone legislation. Such regulation should include a licensing regime, with membership of AFCA, a ban on upfront fees, and a duty to act in the client's best interests.³⁷

4.40 ASIC supported the extension of the product intervention power (in legislation before the Parliament at time of writing³⁸) to all products covered by the definition of 'financial services' under the ASIC Act. However, this would mean that PIP would apply to some, but not all, debt management services. Some services come under the provisions of the Australian Consumer Law, regulated by the Australian Competition and Consumer Commission (ACCC). The government could consider extending the power beyond the ASIC Act to cover all debt management services.

4.41 ASIC considers that the flexibility provided by the product intervention power makes it a better solution than a licensing regime. It notes that it is questionable

35 Mr David Bergman, National Manager, Insolvency and Trustee Services, Australian Financial Security Authority, *Committee Hansard*, 24 January 2019, p. 3.

36 Mr Paul Shaw, National Manager, Regulation and Enforcement, Australian Financial Security Authority, *Committee Hansard*, 24 January 2019, p. 3.

37 Consumer Action Law Centre, *Submission 37*, p. 5, p. 33.

38 Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018.

whether having many of the services available, even by licensed providers, is desirable, given the existence of free alternatives.³⁹

4.42 The proposal for a general requirement of fairness proposed by AFCA and discussed in Chapter 3 is also relevant here. That is, AFCA considers that treating consumers fairly should be made a standalone and enforceable standard for financial services entities and individuals working for them.⁴⁰

Compliance with, and enforcement of, current regulation

4.43 Consumer groups noted that they had successfully used Ombudsman services in this space⁴¹. There has also been litigation by ASIC, and litigation sponsored by consumer groups, but that is expensive and time consuming.⁴²

4.44 The marketing and advertising of debt agreements continues to be of concern to AFSA. In 2017–18, 165 advertisements relating to debt agreements were subject to detailed assessment by AFSA, with correction, action and/or removal of content occurring in 79 instances. Three registered debt agreement administrators and one adviser were referred by AFSA to ASIC for potential enforcement action for misleading and deceptive conduct in 2017–18.

4.45 AFSA has concern about untrustworthy advisers who operate in the insolvency sector. Such people are seen by AFSA insolvency practitioners and stakeholders as a key threat to the integrity of the insolvency sector, and these concerns are reflected in the submission to this committee from the professional association the Australian Restructuring Insolvency and Turnaround Association.⁴³

39 ASIC, qon 1, Additional Information, 5 February 2019.

40 AFCA, *Submission 58*, p. 4.

41 For example, Legal Aid Queensland, *Submission 3*, p. 13.

42 Consumer Action Law Centre, *Submission 37*, p. 5, pp. 30–32.

43 Mr Paul Shaw, National Manager, Regulation and Enforcement, Australian Financial Security Authority, *Committee Hansard*, 24 January 2019, p. 3; Australian Restructuring Insolvency and Turnaround Association, *Submission 12*, p. 1.

Chapter 5

Buy now pay later

Market participants and products

5.1 Buy now pay later products are relatively new to the market. They allow a consumer to buy and receive goods and services immediately, but pay for them over a specified period. The industry has expanded rapidly recently. The number of consumers using these products increased from 400,000 to approximately two million between 2015 and 2018.¹ Good Shepherd Microfinance estimates that 30 per cent of applicants for their microfinance loans are repaying such a debt.²

5.2 The newness of the industry is shown by ASIC's finding that 70 per cent of users said they used a buy now pay later arrangement for the first time in the last 12 months. Users tend to be young: 60 per cent are 18–34 years old. There were more female than male users.³

5.3 Buy now pay later companies employ a variety of business models.

5.4 One of the fastest growing companies, Afterpay, refers to its product as a 'budgeting tool', and specifically states that it is not a line of credit. It does not charge interest or account keeping fees. It charges merchants for the use of the service, and it levies late fees. It says that the late fees are capped, and are, in fact, less than the cost to the company of late payments. Most of its revenue is from merchant fees.⁴

5.5 Zip Pay similarly does not charge interest. It does charge an account keeping fee. It notes that its business model and market are very different from those of small amount credit contract (SACC) providers, and that it '...absolutely [does] not target consumers at risk of financial hardship'.⁵ ZipMoney is quoted as having 800,000 clients and conducting two million transactions last year.⁶

5.6 Flexigroup, the parent company of buy now pay later product Certegy Ezi-Pay, said that for Certegy, 63 per cent of revenue comes from merchant fee income, while less than two per cent was from late or default fees. Certegy deals with bigger transactions than the other buy now pay later operators: almost half of its revenue is from sales of solar panels or other home improvements.⁷

1 ASIC *Review of buy now pay later arrangements, Report 600*, December 2018, p. 17.

2 Good Shepherd Microfinance, *Submission 50*, [p. 4].

3 ASIC *Review of buy now pay later arrangements, Report 600*, December 2018, p. 25.

4 Afterpay, *Submission 26*, pp. 4–5.

5 Zip Co Ltd, *Submission 18*, [p. 2].

6 Mr Richard Wood, Credit Manager, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 41.

7 Ms Rebecca James, Chief Executive Officer, Flexigroup Limited, *Committee Hansard*, 22 January 2019, pp. 34–5.

5.7 Buy now pay later schemes are seen as an alternative to credit cards by young consumers:

...there has been a huge amount of coverage of credit, and the dangers of credit, over the last 10 years as well, so there's a kind of slowing down of the normalising of credit. Ultimately, people still want to consume and so they're looking for alternative ways to consume.

...It's just that, for younger people, it's part of their experience; they're more familiar with it; it makes more sense to them than, say, a line of credit or a credit card.⁸

5.8 The National Online Retailers Association (NORA) sees these schemes as an improvement on the traditional 'layby' model. They offer huge benefits to the industry, particularly through the reduction or absorption of Card Not Present fraud—which is possible when buyers give credit card details, for example online or by phone or email, and do not present their card.⁹ The industry sees such innovation as crucial in delivering greater financial control and easing cost-of-living pressures for consumers over the long term.¹⁰

5.9 The companies use modern technology to provide a service that is easy to use and fast. Zip.co and Afterpay both spoke about their algorithms, which enable them to investigate consumers' financial circumstances and test their eligibility for funds:

We're able to provide an automatic result based on our analysis of all of those data points that I touched on. Our algorithm is assessing that information in real-time and, in fact, we're actually consuming more data than a traditional credit provider would for an application of a credit card or home loan.¹¹

5.10 ASIC agreed that this could work:

...because the responsible lending obligations are about the particular consumer who's applying for credit, it is possible, through technology, for a credit provider to use technology to obtain information about that consumer, whether that's bank account transaction information or other information that's available electronically, and feed that information into an algorithm in order to make a lending decision, so long as the information is about that consumer and is relevant to the lending decision and the credit provider's taken reasonable steps to obtain the relevant information. So, yes,

8 Dr Paul Harrison, Director, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, p. 5, p. 6.

9 National Online Retailers Association (NORA), *Submission 19*, p. 1.

10 Mr Larry Diamond, Co-Founder and Chief Executive Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 9.

11 Mr Peter Gray, Co-Founder and Chief Operations Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 12; also Mr Nick Molnar, Chief Executive Officer and Co-Founder, Afterpay, *Committee Hansard*, 22 January 2019, p. 11.

it is possible for algorithms to form part of decision processes that lenders use...¹²

5.11 But Mr Paul Holmes of Legal Aid Queensland was sceptical of such automation of judgements:

I can't speak for the buy-now pay-later algorithm yet, but my experience of the payday lending industry is they've been using algorithms to interrogate data and assess debt for a number of years now, and it hasn't improved their ability to lend responsibly or lend appropriately. So I'm personally going to take a bit of convincing that just having a fancy algorithm is enough to assess the individual circumstances of an individual person...¹³

Credit or not credit?

5.12 There was some debate about whether buy now pay later schemes are a form of credit. They do not charge interest to the customer, which is an element of the definition of credit under the National Credit Act. They are different from credit cards, which provide a source of funds for unspecified purposes. Each debt is applied to a specific product, which is provided directly to the customer at the time of purchase. Buy now pay later companies pay the merchant the advertised cost of the product and the customer pays the product off in a series of instalments with no interest incurred.

5.13 ASIC was equivocal about whether they are a form of credit. They do not meet the definition under the National Credit Act, but they are credit as defined in the ASIC Act:

If you're thinking of credit in the ordinary everyday understanding of what credit is, then we would say it is a form of credit because it enables consumers to pay for goods over time and, by postponing the payment of goods, you're effectively being given a form of credit in the ordinary sense of the word.¹⁴

5.14 Buy now pay later companies were also divided. Zip.co said:

We wholeheartedly support ASIC's position that buy now pay later is a form of credit...¹⁵

5.15 However, Afterpay said:

We've never been defined as credit when it comes to the national credit code nor do we rely on an exemption as confirmed by ASIC. We never charge interest.¹⁶

12 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, ASIC, *Committee Hansard*, 24 January 2019, p. 15.

13 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 27.

14 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, ASIC, *Committee Hansard*, 24 January 2019, p. 14.

15 Mr Larry Diamond, Co-Founder and Chief Executive Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 10.

5.16 Good Shepherd Microfinance was impatient of the fine points of debate, and believed that buy now pay later is a form of credit:

...a business lets you buy something without paying for it immediately, it sends you a payment schedule listing payment amounts and due dates. It then advises you that it'll charge you a late fee if a payment's missed and ultimately, if required, passes it on to their collection agency. To the average Australian that is a credit product and, as such, should be treated as one.¹⁷

Impact on consumers

5.17 The ASIC study of buy now pay later products reported that users found that the products allowed them to spend more than they otherwise would and to buy things they otherwise might not have. It expressed concern that these products may pose a risk of overcommitment to some consumers and sometimes cause inflated prices for consumer goods. It noted that one in six consumers reported difficulty in meeting payments. It pointed out that there was a particular danger in the 23 per cent of cases where consumers used credit cards to pay these debts, thus incurring substantial interest charges. It noted that over 40 per cent of users had incomes of under \$40,000, and of this group, almost 40 per cent were either students or in part-time work.¹⁸

5.18 Many submissions refer to cases of consumers who have got into trouble with multiple buy now pay later contracts, often having multiple contracts or using these contracts alongside other SACCs.¹⁹ Good Shepherd Microfinance reported that the majority of applicants for microfinance have multiple buy now pay later accounts with various providers (along with SACCs).²⁰ An extreme example was:

One loan applicant recently provided us with a 90 day bank statement containing 288 buy-now pay-later transactions totalling \$5,600. This case study demonstrates the large amount of credit that can be accessed with no verification of income, credit check or assessment of capacity to repay.²¹

5.19 Care Inc reported that it was seeing an increase in the number of clients with more than one buy now pay later debt who were struggling to make repayments:

16 Mr Nick Molnar, Chief Executive Officer and Co-Founder, Afterpay, *Committee Hansard*, 22 January 2019, p. 10.

17 Mr Richard Wood, Credit Manager, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 38.

18 ASIC, *Review of buy now pay later arrangements: Report 600*, November 2018, pp. 10–12.

19 See, for example, Consumer Credit Law Centre SA, *Submission 33*, pp. 6–7; [name withheld] *Submission 45*, p. 1; [name withheld] *Submission 48*, p.1; National Credit Providers Association, *Submission 51*, p. 20.

20 Mr Richard Wood, Credit Manager, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 41.

21 Good Shepherd Microfinance, *Submission 50*, [p. 5].

The scheme encourages people with limited financial capacity to purchase goods that they cannot afford upfront, increasing the likelihood of future financial stress.²²

5.20 Buy now pay later products are also emerging as a cause of insolvency:

And obviously buy now, pay later schemes are an emerging issue with some kind of buy now, pay later funding present in more than 20 per cent of insolvencies.²³

5.21 The provider companies insist that they take a lot of care to ensure that consumers do not overcommit themselves:

In fact, we refuse 30 per cent of purchasers and 50 per cent of first-time purchasers based on our algorithms and consumers' history. Be late one payment, we suspend your account and you can't buy anything else through Afterpay until you've come good.²⁴

5.22 They point out that the rate of customers having negative effects from buy now pay later commitments (one in six) is similar to the rate in the credit card sector.²⁵

5.23 Mr Paul Holmes from Queensland Legal Aid pointed out that there may be an artificial lowering of the reported defaults under buy now pay later schemes. Because it is not regulated as credit it does not have hardship provisions. A customer who has multiple credit products is likely to seek the hardship provisions of other products, and pay the buy now pay later account first:

So what you end up having is a cost shifting of the hardship...part of the reason the default rates are very low is people are paying that first and often...[because] they've got hardship over here from these other regulated products.²⁶

5.24 Dr Paul Harrison pointed out that the newness of the product and the ease of access was attracting young people:

This new form...of offering money to people is very new to everybody...There are public social norms now around: 'Avoid credit,' whereas there is not a lot going on about: 'Avoid getting into difficulty with a buy-now-pay-later type of approach.'... It's also more difficult to get credit...So, for a young person who has not got a strong credit rating or who hasn't had a lot of experience with credit, this is much easier to transact.²⁷

22 Care Inc, *Submission 11*, p. 4.

23 Mr Benjamin Paris, Non-Executive Director, Personal Insolvency Professionals Association, *Committee Hansard*, 12 December 2018, p. 47.

24 Mr Nick Molnar, Chief Executive Officer and Co-Founder, Afterpay, *Committee Hansard*, 22 January 2019, p. 11.

25 Mr Larry Diamond, Co-Founder and Chief Executive Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 9.

26 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 27.

27 Dr Paul Harrison, Director, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, pp. 6–7.

Conduct of providers

5.25 There were questions raised about the companies' insistence that their algorithms prevented overcommitment by consumers and the evidence from a number of other sources of very many consumers with multiple buy now pay later debts which they could not service, often in conjunction with other credit products. Clearly, more needs to be done to ensure consumers are protected, and company algorithms alone are not sufficient.

5.26 Criticisms of the behaviour of individual providers of buy now pay later were relatively rare. There was more concern about the nature of the product: in particular, that it allowed people to consume on impulse.

5.27 Dr Paul Harrison's analysis of consumer decision making is discussed in Chapter 3. He emphasised that 'the goal is to get consumers to make the decision as quickly as possible'. In recent years shopping has gone on line, and the technology has been speeded up.²⁸

5.28 Further, with buy now pay later, the purchase and the paying for it have been bundled into one product to ensure the impulse is acted on immediately:

...there's a halo effect that occurs when...consumers see a product that they want to buy and see the ease with which [they're] able to get credit or some kind of financial assistance in that moment.

5.29 Consumers in such situations do not stop and think that there are two different products and one might be better purchased elsewhere.²⁹

5.30 While consumers are responsible for their own behaviour, when problems are widespread it is necessary to look for systemic causes. In particular, the targeting of buy now pay later products to young people does raise some questions:

I think we are seeing too much evidence in our applications to suggest that many consumers are actually already vulnerable by the time we're seeing them. I agree. The borrower does have some responsibility but when the borrower is 18 and trying to pay rent, are they capable of making those decisions which have potentially a decade's worth of impact?³⁰

Nature and adequacy of the current regulatory arrangements

Current regulation

5.31 Representatives of ASIC explained current regulation:

Buy now pay later products are generally not credit under the National Consumer Credit Protection Act because that Act defines consumer credit in a particular way and has exemptions for arrangements that meet certain

28 Dr Paul Harrison, Director, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, pp. 2–3.

29 Dr Paul Harrison, Director, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, p. 3.

30 Ms Corinne Proske, General Manager, Retail and Online, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 42.

criteria. Buy-now pay later-products generally fall within the exemptions that exist in that piece of legislation. However, buy now pay later products are credit as defined in the ASIC Act, and the ASIC Act contains the general consumer protection provisions that exist, including prohibitions against misleading or deceptive conduct and unconscionable conduct.³¹

5.32 ASIC noted that because they are not subject to the responsible lending obligations, buy now pay later operators are not required to consider the income or existing debts of customers. This means that they can offer finance to consumers who cannot afford to repay; and that a consumer who is in default can still get credit from another provider.³²

5.33 AFCA pointed out the same anomaly:

Responsible lending laws do not apply to these arrangements, and this, we believe, does cause real difficulty. We believe that some form of affordability assessment should be undertaken and consumers of these services should have the ability, as many other consumers do, to bring matters to us as the ombudsman if they feel that they've been treated unfairly.³³

5.34 Choice also noted that a quarter of Afterpay's income in the last financial year was from late fees, and suggested that such lenders should be subject to responsible lending obligations.³⁴

Changes under way

5.35 The legislation providing for Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 is currently before the Parliament. ASIC argues for the extension of the product intervention power to the buy now pay later sector, rather than bringing the sector into the National Credit Act. Representative of ASIC commented:

We think that the extension of product intervention powers to this sector will enable us to intervene and require things to be done in a much more targeted and more effective way because it will allow us to address the potential consumer harm more directly...³⁵

5.36 It would also be flexible:

The product intervention power, as currently drafted, would allow...an entity-specific intervention, where it was just that entity with their product that was the issue. But, if the problem was sector wide or even a broader

31 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, ASIC, *Committee Hansard*, 24 January 2019, p. 13.

32 ASIC, *Submission 21*, p. 19.

33 Mr David Locke, Chief Ombudsman and Chief Executive Officer, Australian Financial Complaints Authority, *Committee Hansard*, 24 January 2019, p. 2.

34 Choice, *Submission 22*, p. 2.

35 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, ASIC, *Committee Hansard*, 24 January 2019, p. 15.

group that's still not sector wide but a broader group, the intervention can be on that broader basis.³⁶

5.37 Treasury noted that the bill was structured to allow further products to be brought in easily.³⁷

5.38 The government has also introduced amendments to the *Competition and Consumer Act 2010* which would create a consumer data right and will enable sellers of credit products to check the indebtedness of applicants for credit. This was welcomed by the industry.³⁸

Other proposed changes

5.39 The Consumer Action Law Centre and Choice called for buy now, pay later providers to be brought into the scope of the National Credit Act.³⁹ Mr Paul Holmes of Legal Aid Queensland agreed:

...all of these products should be treated in the same way, because they have the ability to have the same adverse impact.⁴⁰

5.40 Zip.co called for:

...a sector-specific regulatory regime centred on three key pillars around responsibility, transparency and customer support: one, where we see minimum standards for up-front due diligence to ensure customers can afford the repayments; two, that customers understand what they are signing up for; and, three, that hardship safeguards are in place to help customers should their financial circumstances change.⁴¹

5.41 This would be close to, but not identical with, coverage under the National Credit Act:

It's very close to full, responsible lending compliance. I think our view of regulation for the sector should be fit for purpose for the products it's regulating, so we would advocate for a scaled-down version of responsible lending. In fact, we would advocate income verification and caps on the amount of repayment that it could take up of a consumer's income.⁴²

36 Mr Greg Kirk, Senior Executive Leader, Strategy Group, ASIC, *Committee Hansard*, 24 January 2019, p. 15.

37 Ms Kate O'Rourke, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 24 January 2019, p. 32.

38 Mr Peter Gray, Co-Founder and Chief Operations Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 16; Mr Anthony Eisen, Executive Chairman and Co-Founder, Afterpay, *Committee Hansard*, 22 January 2019, p. 15.

39 Consumer Action Law Centre, *Submission 37*, p. 5; Choice, *Submission 22*, p.2.

40 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 27.

41 Mr Larry Diamond, Co-Founder and Chief Executive Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 10.

42 Mr Peter Gray, Co-Founder and Chief Operations Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 12.

5.42 Afterpay also did not want the industry to come under the National Credit Act, and instead supports the extension of the product intervention power:

...it is easier to regulate Afterpay like traditional credit products, but that is a blunt and simple solution to a more complex issue—and one that risks stifling innovation...traditional protections and traditional regulation does not deliver positive customer outcomes...Afterpay has publicly supported reforms that would see ASIC's intervention powers extend to cover the buy-now pay-later sector and create a regulatory framework for different business models within the same industry...

In addition to this...we would seek [regulation] so we can better share information around positive and negative behaviours of our users and understand when people are using multiple products and appropriately.⁴³

5.43 However, Zip.co asserted that compliance with the National Credit Act:

...would have a very minimal impact on our day-to-day operation. We're already undertaking the majority of the things we would need to do to comply with the National Credit Code.⁴⁴

5.44 Certegy would be affected if the SACC cap were to be imposed on buy now pay later products, because it tended to fund more expensive products:

Yes. I don't necessarily think that limiting a cap on the amount that can be borrowed will address the concerns that are raised throughout the committee. In particular, again, the fit-for-purpose nature of this product is for consumers who would like to buy items for their home or essential items and choose a product that assists with their budgeting arrangements, instead of putting that particular purchase on a credit card.⁴⁵

5.45 Dr Paul Harrison argued that slowing down the process of online purchasing and paying was important. He did not believe a cooling down requirement would work, because that took effect only after the decision had been made and acted on. Rather, he advocated regulation requiring a 'double opt-in', where the consumer had to make two decisions, separated in time.⁴⁶

43 Mr Nick Molnar, Chief Executive Officer and Co-Founder, Afterpay, *Committee Hansard*, 22 January 2019, p. 11.

44 Mr Peter Gray, Co-Founder and Chief Operations Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 15.

45 Ms Rebecca James, Chief Executive Officer, Flexigroup Limited, *Committee Hansard*, 22 January 2019, p. 34.

46 Dr Paul Harrison, Director, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, p. 2.

Chapter 6

Alternatives for consumers in financial difficulties

6.1 This chapter looks at what schemes exist to assist consumers with credit complaints or financial hardship. It also examines products that could act as alternatives to high cost credit options considered earlier in the report.

The Australian Financial Complaints Authority

6.2 The Australian Financial Complaints Authority's (AFCA's) role is to 'provide consumers and small businesses with fair, free and independent dispute resolution for financial complaints'. It also has responsibilities to identify and resolve systemic issues and it reports serious contraventions to the relevant regulator.¹

6.3 AFCA can hear complaints only about member companies. Membership is a condition of holding a financial licence, so many small amount credit contract (SACC) providers are covered. Complaints can be about such matters as allowing consumers to overcommit themselves, because this could involve a breach of the responsible lending obligations. So, potentially, it can be of great assistance to consumers.

6.4 It is not compulsory for buy now pay later operators to be members of AFCA, although eight of them, including the biggest ones, have voluntarily become members.²

6.5 AFCA does not cover most debt management functions.

6.6 AFCA hears complaints about specific transactions rather than examining a consumer's total financial situation, except where that is relevant to an investigation. Many consumers would struggle to be able to access its services.³

6.7 Still, as a free service, AFCA performs a useful function:

...for many consumers who are in financial hardship it is simply not a realistic option for them to ever be able to go to court and litigate. It's really by bringing matters through to an independent ombudsman service that is free for them—that is actually the only remedy that many people have other than going to the financial firm itself.⁴

1 Australian Financial Complaints Authority, *About AFCA: what we do*, <https://www.afca.org.au/about-afca/> (accessed 4 February 2019).

2 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

3 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

4 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

Financial counselling

The usefulness of financial counselling

6.8 The committee received considerable evidence regarding the effectiveness of financial counselling.

6.9 The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry noted that:

...financial services laws will always involve a measure of complexity. Asymmetry of knowledge and power will always be present. Accordingly, there will likely always be a clear need for disadvantaged consumers to be able to access financial and legal assistance in order to be able to deal with disputes with financial services entities with some chance of equality of arms.⁵

6.10 The committee received contributions from financial counselling organisations which were providing a range of services, from assistance with budgeting through personal support to legal representation. Occasionally services will refer clients from one service, for example budgeting, to another, like a legal service if it appears there has been improper conduct by a lender. For example, the Consumer Credit Legal Service describes itself as working collaboratively with financial counsellors.⁶ In this chapter, unless otherwise indicated, all the services are treated as a single group.

6.11 The Salvation Army submission presented evidence on the usefulness of financial counselling, referencing a number of studies. For example, one study quoted showed a positive impact on debt resolution, wellbeing, financial capability and advocacy; while another found:

...that Moneycare has helped community members in addressing their financial hardships, building financial resilience, improving their mental health, and their overall wellbeing and spirituality. Seventy-nine percent of respondents reported improvement in their financial resilience and 67% reported improvement in their mental health within the first three months of connection with Moneycare.⁷

6.12 The Consumer Action Law Centre also reported positive evaluations carried out by the University of Melbourne.⁸

6.13 The Royal Commission pointed out that financial counselling was not confined to service for individuals:

The legal assistance sector and financial counselling bodies are also recognised by ASIC as playing an important broader role in the financial

5 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, vol. 1, pp. 491–2.

6 Ms Roberts Grealish, Senior Solicitor, Consumer Credit Legal Service (WA) Inc, *Committee Hansard*, 12 December 2018, p. 22.

7 Salvation Army, *Submission 9*, pp. 5–6.

8 Consumer Action Law Centre, *Submission 37*, p. 36.

services sector, for example by bringing issues to the attention of the regulator or providing a balancing consumer voice in policy development.⁹

6.14 Financial counselling is highly skilled, resource intensive work. A witness referred to a case which had involved at least 100 hours of 'solicitor represented' work.¹⁰ Care Inc said there was an urgent need for a greater investment in the training and skills of financial counsellors:

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.¹¹

Extent of unmet demand for financial counselling

6.15 Several submissions suggested there was unmet demand for financial counselling. Several forecast increasing demand with the increasing use of short term, high interest credit products. Most called for greater resources. In many cases those calls were linked to calls for better regulation of credit in order to reduce demand.¹²

6.16 Financial Counselling Australia reported that they had recorded 582 turn-aways since July this year [i.e. to December 2018]:

We did an unmet needs survey as part of our submission for this inquiry, and that showed, for the services that were able to collect this data, that, for every five people who came to see a financial counsellor, three could get assisted and two were turned away, and that really worries us...¹³

6.17 A counsellor from the same organisation gave a specific example:

She had been trying to get an appointment with a financial counsellor in my area for a couple of months and hadn't been able to, so last week she got a Zip money loan, and that's unfortunate. She's already stressed about that.

9 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, vol. 1, p. 492.

10 Ms Roberts Grealish, Senior Solicitor, Consumer Credit Legal Service (WA) Inc, *Committee Hansard*, 12 December 2018, p. 22.

11 Care Inc, *Submission 11*, p. 7.

12 See, for example, Queensland Council of Social Service, *Submission 15*; Legal Aid Queensland, *Submission 3*; Professor Ian Ramsay, Associate Professor Paul Ali and Ms Lucinda O'Brien, *Submission 17*.

13 Ms Fiona Guthrie, Chief Executive Officer, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, p. 1.

She could have applied for a NILS loan, and I would have been able to advise her about that had I been able to fit her in...¹⁴

6.18 Meanwhile, the Salvation Army notes that it does not promote its Moneycare services for fear of being overwhelmed.¹⁵ A representative told the committee:

We'd love to work with people much earlier. Unfortunately, most people come to us when it's very late in the process, things are too far down the track and there are fewer options. We would love to have a promotional campaign, 'Come and see a financial counsellor,' but, because of the large demand on our services already, we can't handle any more people than we are handling at the moment....

We could readily double in size and that demand would be taken up quite quickly.¹⁶

6.19 The Financial Counsellors' Association of New South Wales estimated that there are 950 financial counsellors in Australia, and 2.5 million people living in households of high financial stress. It further pointed to some coming sources of new demand: the drought, and the National Redress Scheme for survivors of child sexual abuse recommendation that survivors have access to financial counselling, for which no new funds have been provided.¹⁷

6.20 AFCA supported better funding of financial counselling:

We believe that a proper, sustainable funding model for financial counsellors is critical. We see, on a daily basis, situations where consumers have tried to access these services but the delay is too long or there are gaps in provision.¹⁸

6.21 UnitingCare Australia pointed to an increasing number of applicants for assistance being found to be ineligible because they are not receiving a social security card or a healthcare card, and suggested that tests for assistance are too low.¹⁹

6.22 Unmet demand may be worse than it appears. The Australian Financial Security Authority reports that more than half of bankrupts with registered trustees and debtors in debt agreements were unaware that they could have accessed free financial counsellor services.²⁰

14 Mrs Sandra Blake, Financial Counsellor, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, p. 2.

15 Salvation Army, *Submission 9*, p. 21.

16 Mr Tony Devlin, National Manager, Moneycare Program, The Salvation Army Australia, *Committee Hansard*, 22 January 2019, p. 22.

17 Financial Counsellors' Association of New South Wales, *Submission 13*, pp. 4–5.

18 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

19 UnitingCare Australia, *Submission 49*, p. 7.

20 Australian Financial Security Authority, *Submission 4*, p. 5.

6.23 The Royal Commission noted that 'the legal assistance sector and financial counselling services frequently struggle to meet demand, which is increasing'.²¹

Funding arrangements for financial counselling

Current funding

6.24 Funding for financial counselling services is provided by the Commonwealth, state governments, some community benefit funding included in ASIC enforceable undertakings, and some community funding.

6.25 The Department of Social Services provides funds for several counselling programs under the Financial Wellbeing and Capability program:

- Commonwealth Financial Counselling and Financial Capability, which supports 44 providers of direct case work;
- the National Debt Helpline (NDH), a telephone financial counselling service and website that provides free, confidential and independent information, advice and referral for people experiencing financial difficulty—it is co-funded by state governments; and
- Commonwealth Financial Counselling for people affected by Problem Gambling, which funds services provided by 33 services.²²

6.26 The program has been the subject of a tender process which was referred to in several submissions. Consultations began in February 2017. In January 2018 the program was extended to December 2018, and further consultations took place. Applications for grants were invited in July 2018. Applications for funding under the Commonwealth financial counselling and financial capability programs closed on 22 August 2018. Despite the long time taken for the process, the final tendering and selection processes were conducted in a compressed time frame.²³ A number of community groups indicated their frustration with tender process.

6.27 The outcome of the tendering process for the NDH has been controversial. Since its establishment, the NDH has been delivered by a separate organisation in each state, including the Consumer action Law Centre in Victoria and the Financial Rights Legal Centre in Victoria, which between them received 45 per cent of all calls to the Helpline. Financial Counselling Australia co-ordinated the operation. In New South Wales and Victoria, state governments provide 70–75 per cent of the funding.²⁴

6.28 The result of the Commonwealth's tender process was that new providers will receive the Commonwealth funding in New South Wales and Victoria (but it appears the existing providers were re-funded in the other states). Consumer Action Law

21 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, vol. 1, p. 492.

22 Department of Social Services, *Submission 63*, pp. 4–5.

23 Ms Elizabeth Heferen-Webb, Deputy Secretary, Department of Social Services, *Committee Hansard*, 24 January 2019, p. 25.

24 Consumer Action Law Centre and Financial Rights Legal Centre, *Submission 42*, p. 2.

Centre and Financial Rights Legal Centre will still operate the Helpline, but there are unanswered questions as to how the 1800 007 007 phone number, which is owned by the Commonwealth Department of Social Services, will be used and how new providers will be integrated—especially as they do not appear to incorporate legal expertise.²⁵

6.29 Mr Gerard Brody, of the Consumer Action Law Centre, commented:

...it appears that there still may be a very confused and inefficient service model as the Department of Social Services is insisting on there being more than one service provider here in Victoria, and in New South Wales and Western Australia. We consider there must be a joined up approach to funding the National Debt Helpline between states and the federal government, and that existing arrangements should be maintained until that has been achieved.²⁶

6.30 Mr Brody, Chief Executive Officer of the Consumer Action Law Centre believed that:

...they [the Commonwealth] didn't understand the co-funded nature of the model. I don't think they engaged with the state governments throughout the tender process about what this would mean for the operation of the helpline after the tender process.²⁷

6.31 The National Association of Community Legal Centres and Financial Counselling Australia put to the Royal Commission a proposal for funding of \$157 million per annum to create a properly funded network of community financial counselling and community legal services. This would comprise \$1 million for the National Debt Helpline, \$130 million for 1000 financial counsellors, and \$26 million for an additional 200 community financial advisers. It is proposed to fund it by an industry levy, as is done in the UK.²⁸

6.32 The Royal Commission did not comment on where the funds should come from, but noted that:

...the desirability of predictable and stable funding for the legal assistance sector and financial counselling services is clear and how this may best be delivered is worthy of careful consideration.²⁹

25 Consumer Action Law Centre and Financial Rights Legal Centre, *Submission 42*, p. 3, p. 4.

26 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 12 December 2018, p. 24.

27 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 12 December 2018, p. 28.

28 Consumer Action Law Centre and Financial Rights Legal Centre, *Submission 42*, p. 4; see also support from Ms Roberta Grealish, Senior Solicitor, Consumer Credit Legal Service (WA) Inc, *Committee Hansard*, 12 December 2018, p. 22, and support for this kind of model from Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

29 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, vol. 1, p. 493.

Financial literacy

6.33 It would be easy to think that if people understood what they were getting into they would be more cautious with credit products. This often leads to calls for more education in financial literacy. Many of the professionals in the field were not convinced.

6.34 A representative of the Queensland Council of Social Service said:

I think financial literacy is really important, and having it delivered and tailored to the needs of the community would be really critical as well for it to actually have an effect, but that's not really going to solve all of the problem. In our submission we also highlighted that some of the structural inequities in Australia. The level of Newstart, for example, means that people just can't afford to make ends meet.³⁰

6.35 A legal worker said:

My view is that financial literacy will always have a place; but, in this space, what we're dealing with is a cohort who are in crisis and in extremely vulnerable situations who are not going to take that information in. What I would say though about the financial literacy of that group is that, in my experience, they're some of the best money managers around—they're certainly better than me—because they've usually stretched what is a very finite amount of money in the most extraordinary ways, and then they've hit the point where they can't do it anymore and they can turn to these products.³¹

6.36 An academic with experience in financial counselling wrote:

To assume that low income earners are less financially literate than the general population is to make the mistake of confusing circumstances with behaviour and knowledge. By way of example, to label a single parent who is receiving no, or minimal child support, who is unable to work full time as they need to be available for parenting duties, is paying market rent as they do not qualify for public housing as 'not financially literate' because they have little savings and are borrowing from a small amount short term lender is an incorrect assumption.³²

Microfinance as an alternative

6.37 Microfinance services are generally provided by community organisations. Funds for lending are provided by banks, and some funding for administration is provided by the Department of Social Services and state governments. Examples are the scheme run by the Brotherhood of St Laurence with funds from ANZ bank, and the scheme run by Good Shepherd Microfinance with funds from Westpac.

30 Ms Carly Hyde, Policy Lead, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, p. 31.

31 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 26.

32 National Credit Providers Association, *Submission 51*, Attachment 2, p. 2.

6.38 Essentially, microfinance services provide appropriate loans at a lower price than the market price. Some are No Interest Loans Schemes (NILS), and some charge low interest.

6.39 The Good Shepherd Microfinance NILS model operates through 178 community organisations at 628 locations across Australia. In 2017–18 it made over 27,000 loans. Loans are available for a limited range of purchases: fridges, washing machines and furniture, education and medical expenses. They can go up to \$1,500. They are available to people who have a healthcare or pension card or who have an income of under \$45,000. There is no credit check, but the borrower must have a willingness and a capacity to repay the loan.

6.40 Good Shepherd Microfinance's Step-Up Loan program offers loans of between \$800 and \$3,000 to people on low incomes. Around 78 per cent of the loans are to purchase a second hand car or for car repairs.

6.41 Good Shepherd Microfinance's Speckle loans are small loans from \$200 to \$2,000 with repayment periods ranging from three months to one year. Interest rates and fees are half the cost of major payday lenders, and dishonour fees and default fees are far lower. Borrowers have to have an annual income of \$30,000, excluding government benefits.³³ The product is a direct competitor in the SACC market:

We chose to test the theory of, 'Can you offer a responsible payday loan?' I think we are pleased to say that you can. Working with consumers, we have priced it at half the regulatory rate—of two per cent, in terms of fees—and we have a very different fee structure, in terms of when people run into hardship.³⁴

6.42 Contributors to the inquiry commented that some of the value in microfinance is that the loans are often delivered with a financial literacy and education component.³⁵ Also, they are:

...delivered through the community sector, and the community sector know their clients; there is a trusted relationship there.³⁶

6.43 There were suggestions that there was insufficient funding to meet the demand for microfinance:

Clients we speak to are often unaware of the microfinance product, and that's partly because it's not widely advertised, and that's partly because there's not an awful lot of money to lend in that microfinance space.³⁷

33 Good Shepherd Microfinance, *Submission 50*, [p. 1].

34 Ms Corinne Proske, General Manager, Retail and Online, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 38.

35 Ms Carly Hyde, Policy Lead, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, p. 31.

36 Ms Rose McGrath, Senior Policy Officer, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, p. 31.

6.44 But representatives of the Queensland Council of Social Service believed that the problem was not a lack of capital for lending, but a lack of administrative funding to support enough local centres:

This is especially a problem in Queensland because the delivery of the NILS products to the community organisations is that a lot of it is mainly volunteers. Relative to other states, we are not as well funded in the delivery of NILS products—and even step-up loans, for example, and those types of products. There are large parts of Queensland that haven't gotten NILS provision.³⁸

Senator Chris Ketter
Chair

37 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 28.

38 Ms Rose McGrath, Senior Policy Officer, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, p. 31.

Coalition Senators Dissenting Report

General comments

1.1 Coalition Senators wish to draw attention to the proposed Government's 'open banking' regime, with the Treasury Laws Amendment (Consumer Data Right) Bill 2018 introduced into the House of Representatives on 13 February 2019.

1.2 Coalition Senators acknowledge that the open banking regime is a core part of the Government's unwavering commitment to better consumer outcomes in the financial services sector. Open banking will allow customers to access their data and direct their data to be sent to trusted and accredited service providers of their choice. Customers will control who holds their data and how it is used.

1.3 Having better access to their data will enable customers to make better and more informed choices about the financial products that are right for them. In turn, informed markets are innovative markets. Open banking will drive competition within the financial services sector, promoting innovation and allowing new and better products and services to be developed. Innovation has already led to better consumer outcomes in the UK, which is the world leader in open banking.

The reality of financial hardship in Australia (recommendation 1)

1.4 Coalition Senators reject recommendation 1 of the Chair's report, which recommends "protecting penalty rates" and "reviewing the adequacy of government payments including Newstart".

1.5 Coalition Senators wish to make it clear that, under the system set up by Australian Labor Party Prime Minister Kevin Rudd in 2009, it is the independent industrial tribunal, the Fair Work Commission, which sets minimum pay and conditions, including penalty rates and the minimum wage. Coalition Senators endorse the system of having an independent tribunal set penalty rates, a position that until recently enjoyed bi-partisan support. In the lead up to the 2016 Federal Election, Opposition Leader Bill Shorten said "I'll accept the independent tribunal". Further, he noted that "the way minimum wages get set in this country is through evidence, it's through the submissions of workers, their representatives and employers".¹ Not long after their election loss, the ALP abandoned this position, and has since introduced legislation that would undermine the decisions of the Fair Work Commission.²

1.6 Coalition Senators highlight that the Government has a strategy to boost the living standards of all Australians through policies that promote economic growth,

1 Michael Koziol, 'Labor won't fight any Fair Work Commission decision to cut Sunday penalty rates: Bill Shorten', *The Sydney Morning Herald*, 21 April 2016, <https://www.smh.com.au/politics/federal/labor-wont-fight-any-fair-work-commission-decision-to-cut-sunday-penalty-rates-bill-shorten-20160421-gobpo5.html> (accessed 22 February 2019).

2 Fair Work Amendment (Restoring Penalty Rates) Bill 2018, available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6135 (accessed 22 February 2019).

boost job creation and support income growth. Australia's targeted tax transfer system plays an important role in protecting low income Australians and, as the Productivity Commission has noted, the tax and transfer system has consistently acted to substantially reduce income inequality. The national minimum wage, which was increased by 3.5 per cent last year, has been stable at around 54 per cent of median full-time earnings since 2008, while the number of Australians under age 65 on welfare is now at its lowest level in thirty years. Unlike other developed countries, Australia had relatively strong growth in incomes across all deciles. Australia exhibits a high degree of income mobility with 90 per cent of Australians moving at least three income deciles in the last 15 years.

1.7 Coalition Senators emphasise that the Newstart Allowance is intended to be a short term, transitional payment designed to assist people to get back into the labour market. The Government has continually promoted policies which improve employment opportunities for those on Newstart Allowance and other working age income support payments. The Government has committed to continuing to index these payments each year.

1.8 Coalition Senators stress that the best form of welfare is a job.

Credit products targeted at Australians at risk of financial hardship (recommendations 2–8)

1.9 Coalition Senators note that recommendation 1.7 from the Royal Commission's final report, which recommends removing point of sale exemptions from the *National Consumer Credit Protection Act 2009* (echoed in recommendation 6 of the Chair's report) has already been accepted by the Government, which is now in the process of implementing this recommendation.

Financial services targeted at Australians at risk of financial hardship (recommendation 8–11)

1.10 Coalition Senators note that the amendment that the Government has tabled for the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill 2018 includes Buy Now Pay Later products.

Centrepay (recommendations 13–14)

1.11 Coalition Senators note that over 640,000 welfare recipients use Centrepay each month to make around two million deductions. This system helps families and pensioners pay their rent, their electricity and household gas accounts, pay for education expenses and pay their fines, and for essential household goods such as fridges and washing machines.

1.12 Coalition Senators wish to emphasise that Centrepay is free and voluntary. It helps individuals to budget, and people can start, change or cancel their Centrepay deductions at any time. The Government has already moved to make changes to protect welfare recipients, including by removing unregulated consumer lease businesses from Centrepay and ensuring that businesses that use Centrepay to finance families need to apply, comply and act in accordance with tightened policy and terms.

The need to support and expand financial counselling services (recommendations 15–17)

1.13 Coalition Senators note that, as part of the Royal Commission response, the Government announced that it would be commencing an immediate review that will focus on the coordination and funding of financial counselling services. It will consider gaps and overlaps in current services and the adequacy of appropriate delivery models for future funding.

Alternative financial products for financially stressed Australians (recommendations 18–20)

1.14 Coalition Senators note that recommendation 19, which recommends "that the government consider what tax and other incentives could be used to encourage mainstream credit providers to offer low interest products to vulnerable Australians", could result in giving tax cuts to banks.

1.15 Coalition Senators wish to draw attention to the fact that, as part of the Royal Commission response, the Government announced that it would be commencing an immediate review that will focus on the coordination and funding of financial counselling services. It will consider gaps and overlaps in current services and the adequacy of appropriate delivery models for future funding.

1.16 Coalition Senators recognize the important work of financial counsellors and note that the Government is providing \$64.2 million over the next four and a half years for financial counselling services.

Inconsistent approach to consumer protections

1.17 Coalition Senators wish to highlight the hypocrisy of the Australian Labor Party's approach to issues pertaining to consumer protections. The ALP has doggedly opposed reform measures introduced into the 44th and 45th Parliaments that are designed to protect consumers.

1.18 Coalition Senators wish to highlight the ALP's staunch opposition to the Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018 ('the Package'). These essential reforms to the superannuation system included in the Package included the banning of exit fees, the capping of fees for low-balance accounts, and the elimination of opt-out insurance for low-balance accounts, inactive accounts, or account for those under 25.

1.19 Coalition Senators note the importance of these reforms, and the widespread support they have received. As noted by Brendan Coates, a Fellow at the Grattan Institute, Labor's obstinacy could cost young workers at least \$400 million per year.³

1.20 Coalition Senators commend the Government for its determination to eliminate opt-out insurance for people under-25 or those with balances below \$6,000,

3 Brendan Coates, 'Labor and the Greens are standing in the way of cheaper super', *ABC News*, 19 February 2019, <https://www.abc.net.au/news/2019-02-19/labor-greens-standing-in-way-cheaper-superannuation/10822876> (accessed 22 February 2019).

in spite of the steadfast opposition from the ALP and the Australian Greens. These measures are addressed in Treasury Laws Amendment (Putting Members' Interests First) Bill 2019, which was introduced into the house on 20 February 2019.

1.21 In the same vein, Coalition Senators wish to highlight the ALP's opposition to the Cashless Debit Card, a measure that is designed to protect vulnerable Australians and those around them.

1.22 Welfare quarantining measures have, until late last year, enjoyed bi-partisan support. The ALP had previously supported the rollout of the Income Management program and initial trial sites of the Cashless Debit Card. They also initiated their own expansions of the Income Management program into new sites, including Bankstown, Rockhampton, Logan, Shepparton, Playford, the APY lands and the Ngaanyatjarra (NG) Lands. By opposing this policy now, they are attempting to claw back the inner-city "green left" vote at the expense of vulnerable people and communities that have already seen the benefits of this program.

1.23 Coalition Senators are disappointed by the prevaricating by the Leader of the Opposition and the Social Services Shadow Minister who have given mixed messages about the future of this important policy. They are shamelessly playing politics with people's lives.

1.24 While this inquiry was established in the noble name of consumer protection, it is clear that those who instigated it have a well-documented history of opposing much more important reforms that protect many more members of the Australian community.

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

1.25 Coalition Senators wish to draw attention to the Australian Labor Party's lacklustre response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry ('the Royal Commission').

1.26 The Royal Commission's final report was handed to the Governor-General Peter Cosgrove by Commissioner Kenneth Hayne on 1 February 2019. The Government issued a response to all 76 recommendations in the final report on 4 February 2019, the same day that the report was made public.

1.27 After taking 15 days to come up with a response to the Royal Commission's findings, the ALP trotted out 3 measly pieces of legislation that addressed a mere 5 recommendations in the report. This "response" is an utter embarrassment, and fails to dignify a Royal Commission that conducted 7 rounds of public hearings over no fewer than 68 days, called more than 130 witnesses, reviewed over 10,000 public submissions, and cost an estimated \$75 million.

1.28 The ALP's proclivity for wasting taxpayer time and money is not merely limited to the manifestly inadequate response to the Royal Commission. The ALP has wasted taxpayers' time and significant sums of their money with the conduct of this inquiry, which has not produced a single substantive finding or original recommendation.

1.29 Coalition Senators note that, by contrast, the current Coalition Government is adding to its already strong record on financial services reform. When the Royal Commission handed down its final report, its recommendations supported multiple pieces of legislation already introduced by this Government. Legislation that was before the Senate has now been passed as a result of support from the Royal Commission's recommendations. This is hard evidence that this Coalition Government was taking the necessary steps to reform the financial services industry.

Senator Jane Hume
Deputy Chair

Additional Comments by the Australian Greens

1.1 The Australian Greens welcome the findings of this committee. We are pleased that Australians at risk of financial hardship have had the opportunity to have their experience examined and that this committee has considered what regulatory frameworks are necessary to protect them.

1.2 We know many Australians struggle to make ends meet. The rising costs of living, wage stagnation, attacks on penalty rates and the inadequacy of government assistance create a ripe environment for predatory lending practices. The Australian Greens strongly believe we need to address the underlying causes of financial hardship, as well as dealing with the excesses of payday lenders who leverage the vulnerability of Australians in financial hardship.

1.3 While we welcome Recommendation 1, which urges the protection of penalty rates and a review of government payments including Newstart, the Greens remain committed to the call of the social services sector to immediately raise the rate of Newstart and Youth Allowance by \$75 a week. We know that current payments are wholly inadequate and call for the rate to be urgently raised.

1.4 We support Recommendation 2 and the adoption of the SACC legislation. However, we also believe this legislation could go further and that maximum interest rate caps should be significantly reduced from 48 per cent. Even if the maximum cap was halved to 24 per cent per annum, a two per cent per month interest rate is still substantially above credit card interest rates, but is a significant reduction from four per cent per month, 48 per cent per annum. This change, in concert with the rest of the report recommendations, would help reduce the impact of payday lenders on vulnerable Australians.

1.5 Buy now pay later services are emerging technologies creating diversity in the market that challenges the monopoly of the big banks and credit card companies. Buy now pay later services are used largely by younger people who are much less likely to use traditional credit products than their parent's generations. Research by Alpha Beta showed that steady declines over the decade leave only 41 per cent of millennials using credit cards compared with two thirds of older generations. Their research indicated that the greater financial pressure on younger people means that they are less likely to use traditional credit products, more likely to budget and use buy now pay later services as a budgeting tool.

1.6 These new models require fit for purpose regulation, especially given the diversity of standards amongst the current and emerging cohort of buy now pay later services. It should be the role of ASIC to understand and regulate this new sector appropriately. We are concerned that the right regulatory balance is struck to allow the convenience and obligation free use of buy now pay later services to continue, and to protect consumers from potential excesses, rorts and exploitation.

1.7 We broadly support the remainder of the report's recommendations and are particularly pleased to see recommendations in support of the Banking Royal Commission, and others designed to bolster financial counselling services and for

community and financial legal services. Vulnerable Australians should be able to access services to support them when they are in need. Equally, they should be able to depend on regulatory frameworks and enforcement regimes that address the predatory behaviour of payday lenders. We believe the recommendations of this report begin to tackle loopholes, compliance, and breaches in the existing regulatory framework.

Senator Sarah Hanson-Young
Senator for South Australia

Appendix 1

Submissions, additional information, answers to questions on notice and tabled documents

Submissions

- 1 Mr Barry Jones
- 2 Financial Counselling Hunter Valley Project Inc
- 3 Legal Aid Queensland
- 4 Australian Financial Security Authority
- 5 TasCOSS
- 6 Australian Collectors & Debt Buyers Association
- 7 Anglicare Tasmania
- 8 Australian Finance Industry Association
- 9 The Salvation Army
- 10 Finance Sector Union
- 11 Care Inc
- 12 Australian Restructuring Insolvency & Turnaround Association
- 13 Financial Counsellors' Association of NSW Inc
- 14 Personal Insolvency Professionals Association
- 15 Queensland Council of Social Service
- 16 Australian Retail Credit Association
- 17 Professor Ian Ramsay, Associate Professor Paul Ali & Ms Lucinda O'Brien
- 18 Zip Co Limited
- 19 NORA Network
- 20 Consumer Credit Legal Service (WA) Inc
- 21 Australian Securities and Investments Commission
- 22 CHOICE
- 23 Anglicare Australia
- 24 National Retail Association
- 25 Consumer Household Equipment Rental Providers' Association
- 26 Afterpay
- 27 Moneybox Loans Pty Ltd
- 28 Australian Institute of Commercial Recovery
- 29 Customer Owned Banking Association
- 30 Uniting Church in Australia, Synod of Victoria and Tasmania
- 31 Financial Rights Legal Centre
- 32 Foundation for Alcohol Research and Education

- 33 Consumer Credit Law Centre SA
- 34 Community Legal Centres Queensland
- 35 Mentone Community Assistance and Information Bureau Inc.
- 36 NSW Financial Inclusion Network
- 37 Consumer Action Law Centre
- 38 Anglicare Sydney
- 39 Legal Aid NSW
- 40 Australian Banking Association
- 41 Finance Industry Delegation
- 42 Consumer Action Law Centre and Financial Rights Legal Centre
- 43 Cr Dominic WYKanak
- 44 COTA Australia
- 45 Name Withheld
- 46 Name Withheld
- 47 Name Withheld
- 48 Name Withheld
- 49 UnitingCare Australia
- 50 Good Shepherd Microfinance
- 51 National Credit Providers Association
- 52 Cash Converters
- 53 Min-it Software and Financiers Association of Australia
- 54 Name Withheld
- 55 NSW Small Business Commissioner
- 56 BaptistCare
- 57 Financial Counselling Australia (FCA)
- 58 Australian Financial Complaints Authority (AFCA)
- 59 Confidential
- 60 Maurice Blackburn Lawyers
- 61 AUSTRAC
- 62 NILS Network of Tasmania
- 63 Department of Social Services
- 64 MyBudget
- 65 Ms Michelle Matheson
- 66 Diverse Rentals
- 67 MyCRA Lawyers
- 68 City Finance
- 69 Ms Maria Rees

Additional information

- 1 Additional information provided by Ozerentals Pty Ltd on 6 December 2018.
- 2 Additional information provided by Debt Negotiators on 18 December 2018.
- 3 Additional information provided by Newsagents Association of NSW and ACT Ltd (NANA) on 20 December 2018.
- 4 Additional information provided by Cash Converters on 16 January 2019.
- 5 Additional information provided by Afterpay Touch Group Limited on 21 January 2019.
- 6 Additional information provided by Financial Counselling Australia on 21 January 2019.
- 7 Additional information provided by Consumer Action Law Centre on 21 February 2019.
- 8 Additional information provided by Cash Converters on 21 February 2019.

Answers to questions on notice

- 1 Finance Sector Union: Answers to questions on notice from public hearing dated 12 December 2018 (received 16 January 2019).
- 2 Australian Securities and Investment Commission: Answers to questions on notice from public hearing dated 24 January 2019 (received 1 February 2019).
- 3 Australian Financial Complaints Authority: Answers to questions on notice from public hearing dated 24 January 2019 (received 8 February 2019).
- 4 Australian Financial Security Authority: Answers to questions on notice from public hearing dated 24 January 2019 (received 8 February 2019).
- 5 Treasury: Answers to questions on notice from public hearing dated 24 January 2019 (received 8 February 2019).
- 6 Department of Social Services: Answers to questions on notice from public hearing dated 24 January 2019 (received 8 February 2019).
- 7 Queensland Council of Social Service: Answers to questions on notice from public hearing dated 22 January 2019 (received 11 February 2019).
- 8 Department of Human Services: Answers to questions on notice from public hearing dated 24 January 2019 (received 21 February 2019).

Appendix 2

Public hearings

Wednesday 12 December 2018 - Melbourne

Senators in attendance: Senators Hume, McAllister.

Witnesses:

BLAKE, Mrs Sandra, Financial Counsellor, Financial Counselling Australia

BRODY, Mr Gerard Gavan, Chief Executive Officer, Consumer Action Law Centre

BRYANT, Mr Robert, Chairman, National Credit Providers Association

BUDISELIK, Mr Sam, Interim Chief Executive Officer, Cash Converters International Ltd

COX, Ms Karen, Chief Executive Officer, Financial Rights Legal Centre

CUMINS, Mr Peter, Executive Deputy Chairman, Cash Converters International Ltd

GLENN, Mrs Melissa, Executive Committee, Personal Insolvency Professionals Association

GODINHO, Dr Vinita, General Manager, Advisory, Good Shepherd Microfinance

GREALISH, Ms Roberta, Senior Solicitor, Consumer Credit Legal Service (WA) Inc

GUTHRIE, Ms Fiona, Chief Executive Officer, Financial Counselling Australia
Henry, Private capacity

KING, Mr Steven, President, Consumer Household Equipment Rental Providers Association

MANNERS, Ms Alice, Chief of Digital and Marketing, Cash Converters International Ltd

McKENZIE, Mr Timothy, Business Development Manager, Consumer Household Equipment Rental Providers Association

MITCHELL, Ms Gemma, Managing Solicitor, Consumer Credit Legal Service (WA) Inc

NAGLE, Mr Peter, Consultant, Credit Repair Australia

NAGY, Ms Miranda, Principal Lawyer, Maurice Blackburn Lawyers

PARIS, Mr Benjamin, Non-Executive Director, Personal Insolvency Professionals Association

PATTISON, Mr Clive, Research and Campaigns Officer, Finance Sector Union

PROSKE, Ms Corinne, General Manager, Retail and Online, Good Shepherd Microfinance

RUDD, Mr Michael, Director, National Credit Providers Association

SYMES, Mr Richard George, Chief Executive Officer and Founder, Credit Repair Australia

TURCO, Ms Georgia, Paralegal, Consumer Credit Legal Service (WA) Inc

WOOD, Mr Richard, Credit Manager, Good Shepherd Microfinance

Tuesday 22 January 2019 - Brisbane

Senators in attendance: Senators Hanson-Young, Hume, McAllister, Stoker.

Witnesses:

BEAMAN, Mr Matthew, Group General Council, FlexiGroup Limited

DEVLIN, Mr Tony, National Manager, Moneycare Program, The Salvation Army Australia

DIAMOND, Mr Larry, Co-Founder and Chief Executive Officer, Zip.co

EISEN, Mr Anthony, Executive Chairman and Co-Founder, Afterpay

FORSBERG, Mr Peter, Chief Financial Officer, Thorn Group Limited

GRAY, Mr Peter, Co-Founder and Chief Operations Officer, Zip.co

HALSE, Major Brad, National Head of Government Relations, The Salvation Army Australia

HARRISON, Dr Paul, Director, Centre for Employee and Consumer Wellbeing, Deakin University

HOLMES, Mr Paul, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland

HYDE, Ms Carly, Policy Lead, Queensland Council of Social Service

JAMES, Ms Kylie (Rebecca), Chief Executive Officer, FlexiGroup Limited

LORD, Mr Timothy, Chief Credit Officer, FlexiGroup Limited

LUCE, Mr Tim, Chief Executive Officer, Thorn Group Limited

McGRATH, Ms Rose, Senior Policy Officer, Queensland Council of Social Service

MOLNAR, Mr Nick, Chief Executive Officer and Co-Founder, Afterpay

Thursday 24 January 2019 - Canberra

Senators in attendance: Senators Hume, McAllister.

Witnesses:

ALLISON Ms Leigh, Acting National Manager, Deduction and Confirmation, Department of Human Services

BERGMAN, Mr David, National Manager, Insolvency and Trustee Services, Australian Financial Security Authority

FIELD, Mr Philip, Lead Ombudsman, Banking and Finance, Australian Financial Complaints Authority

FOREMAN Ms Lisa, Group Manager, Families and Communities, Department of Social Services

HEFREN-WEBB Ms Elizabeth, Deputy Secretary, Department of Social Services

KIRK, Mr Greg, Senior Executive Leader, Strategy Group, Australian Securities and Investments Commission

LOCKE, Mr David, Chief Ombudsman and Chief Executive Officer, Australian Financial Complaints Authority

LUU, Ms Nghi, Acting Principal Adviser, Financial System Division, Markets Group, Department of the Treasury

LYNCH, Ms Kate, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury

MATTHEWS Mr Gavin, General Manager, Older Australians, Department of Human Services

MIKULA, Mr Christian, Senior Specialist, Deposit Takers, Credit and Insurers, and Regional Commissioner, ACT, Australian Securities and Investments Commission

O'ROURKE, Ms Kate, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury

SAADAT, Mr Michael, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission

SHAW, Mr Paul, National Manager, Regulation and Enforcement, Australian Financial Security Authority

