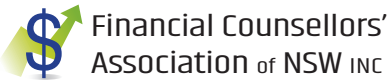
SENATE INQUIRY INTO

Credit and financial services targeted at people in financial hardship

This submission addresses the terms of reference questions in relation to credit and financial services targeted at Australians at risk of financial hardship. A separate submission covers the capacity and capability of the financial counselling sector (TOR (c)) to assist people experiencing financial stress.



SUBMISSION 1 - NOVEMBER 2018

About Financial Counselling

Financial counsellors provide advice to people with money and debt issues. Working in community organisations, their services are free, confidential and independent.

Financial counsellors need an in-depth knowledge of credit law, bankruptcy law, debt collection law and practices, industry hardship processes and government concession frameworks.

Financial counselling agencies are exempt from holding either a Credit Licence or an Australian Financial Services Licence as long as they meet certain criteria, including that their services are free and staff are adequately trained.

There are approximately 800 financial counsellors in Australia, and we estimate this translates into around 500 full time positions.

People can access financial counselling through either face-to-face services or by ringing the phone financial counselling service, the National Debt Helpline on 1800 007 007. We estimate that face to face financial counsellors assist around 125,000 people each year. In 2017, the National Debt Helpline received almost 170,000 calls, an increase of 12% on the previous year.

About the case studies

The case studies in this submission were provided by financial counsellors across Australia. The names of the client(s) have been changed to protect their privacy. Case studies were edited for grammar and clarity in some places.

About this Submission

This is a joint submission from Financial Counselling Australia and the State and Territory financial counselling associations: Financial Counselling Tasmania; Financial and Consumer Rights Council; Financial Counsellors Association of NSW; Financial Counsellors ACT; Financial Counsellors Association of Queensland, Financial Counsellors Association of WA; South Australian Financial Counselling Association.

This submission addresses the terms of reference questions in relation to credit and financial services targeted at Australians at risk of financial hardship. A separate submission has been sent to cover the capacity and capability of the financial counselling sector (TOR (c)).

Glossary

AFCA	**Australian Financial Complaints Authority** AFCA is a free, external dispute resolution scheme. AFCA was launched on 1st November 2018. It subsumes three previous dispute resolution schemes: the Financial Ombudsman Service; the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal. See afca.org.au
EDR	**External Dispute Resolution**
IDR	**Internal Dispute Resolution**
NILS	**No Interest Loans Scheme** See www.nils.com.au

Contents

1 Introduction

Financial counsellors assist people who are in financial difficulty. Financial counsellors are free and have minimum training qualifications. They are not financial planners, they do not charge fees, receive commissions or give investment advice.

Because financial counsellors see so many people in financial difficulty, they often see people who had gone to a firm who preys on people in financial difficulty (debt vultures) before they finally find a financial counsellor. This often leaves the person in a much worse position. It also leaves the financial counsellor working with the person on two problems – their existing financial difficulty and a costly loan or service they cannot afford and did not fix their problem, sometimes making it worse.

There is now considerable evidence that financial stress can reduce a person's effective cognitive capacity. A 2015 World Bank report noted that:

> *"The constant day to day hard choices associated with poverty in effect tax an individual's bandwidth, or mental resources. This cognitive tax, in turn, can lead to economic decisions that perpetuate poverty."*[1]

This means that people in financial hardship need extra protections to counterbalance the propensity to make poorer decisions because of this stress.

Vulnerable people are at significant risk from payday lenders, consumer lease providers, buy now, pay later and debt management firms. This will be discussed in detail at Part 6 of this submission.

1 World Bank, World development report: Mind, society and behaviour, December 2014, p. 27.

2 Summary of what needs to change

Payday lenders and consumer leases

- Urgently enact National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 (Cth);
- 48% interest rate cap for all credit products;
- Consumer lease providers must not be able to use Centrepay;
- Strong anti-avoidance provisions; and
- End the sale of leases that are really loans.

Unlicensed financial service providers including "buy now, pay later" providers and short-term credit providers

- Anti-avoidance legislation is required to deal with fringe lenders who seek to avoid the National Credit Act.
- Buy now, pay later services must be licensed and regulated under the National Credit Act.
- Product Intervention Powers and Design and Distribution Obligations must cover these fringe credit providers.

Debt management firms, debt negotiators, credit repair agencies and personal budgeting services

- Comprehensive and regulation of all debt management firms.
- Product Intervention Powers and Design and Distribution Obligations must cover debt management firms

Pawnbrokers and debt consolidation loans

- Pawnbroking must be regulated under National Credit Act. In the interim, the States and Territories in consultation with the Commonwealth Government should legislate to make pawnbrokers join AFCA as a priority.
- Reform is needed to make ASIC RG209, which provides guidance about responsible lending, legally enforceable with specific guidance on when it is not appropriate to provide a debt consolidation loan.

Vulnerable people

- People on low income:
  - addressing issues around insufficient income. Increase and index Newstart so it is not below the poverty line;
  - expanding and greater funding for No Interest Loan Schemes (NILS); and
  - working with local government to limit predatory lending and debt vultures in low income neighbourhoods.
- People experiencing problems with gambling:
  - expanded guidance on gambling as expenditure in RG209 to provide clear limits on when lending should not occur;
  - enabling people to self-exclude from credit; and
  - giving ASIC RG209 in relation to responsible lending the force of law.
- Aboriginal and Torres Strait Islander people:
  - providing culturally appropriate services including:
    - offering interpreters where needed;
    - ensuring the product is tailored; and
    - asking people if they identify as Aboriginal and Torres Strait Islander.
  - introducing a mechanism for a referral to a funded financial counselling service for advice before making decisions about certain high-risk lenders and services; and
  - designing targeted disclosure for Aboriginal and Torres Strait Islander people for high risk lending and services.
- Women experiencing or impacted by domestic and family violence (DFV):
  - enhanced access to financial help funded by the Government to escape DFV;
  - working with all creditors (including the Government) to have a compassionate approach to women experiencing debt caused by DFV; and
  - ensuring that credit reporting processes recognise the needs of women escaping DFV to rehabilitate financially which should include removing negative information off her credit report.

3 Payday lenders and consumer lease providers

What do they do

Payday lenders provide short term (under 24 months) high cost loans with a maximum amount of credit of $2000. In the National Credit Act, they are called Small Amount Credit Contracts (SACC). Consumer lease providers give credit by renting goods to people for personal purposes. There must be no right to buy the goods. If there is a right to buy, it is not a consumer lease but instead is a sale of goods by instalments.[2]

Current regulation

Both consumer lease providers and SACCs are regulated under the *National Consumer Credit Protection Act 2009* (National Credit Act). The current regulation has been subject to a comprehensive review (the Review)[3] which then led to a proposed Bill to action the suggested reforms, the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017*.[4] Despite the Government saying they would introduce this legislation, the Bill has not passed through Parliament and appears to be indefinitely delayed.

Consumer advocates have loudly called for reform for years. The delay in introducing this legislation has been unconscionable and does not meet community standards and expectations.

The harm

The harm caused by payday lenders and consumer lease providers is extensive and documented in the Review. ASIC has also taken a number of enforcement actions against specific consumer lease providers or SACCs.[5]

2 Section 9 of the National Credit Code (being Schedule 1 of the National Consumer Credit Protection Act 2009)

3 Review of the Small Amount Credit Contract Laws, Final Report, March 2016 available at https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf.

4 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 (Cth)

5 A list of the major enforcement actions can be found on pages 2 and 3 of the joint consumer submission re: Small Amount Credit Contract and Consumer Lease reforms dated 3/11/17 available at https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/11/171103-FINAL-submission-exposure-draft-SACC-legislation.pdf.

The harm includes:

- **Irresponsible lending:** There are numerous examples of SACCs and consumer leases being given to people that they cannot afford to repay or only repay with substantial hardship - see case studies for payday loans and consumer leases in Part 8 of this submission. ASIC has taken action against payday lenders for breaches of responsible lending, for example Cash Converters,[6] but this has not stopped the misconduct. This problem is systemic and common in financial counselling casework. In fact, the banks look like very responsible lenders compared to payday lenders and consumer lease providers. Specifically, payday lenders and consumer lease providers:
  - fail to check actual expenses. By law, SACC providers are required to get 90 days of bank statements. They pay lip service to this requirement only and fail to assess this information;
  - may not use any benchmark to stress test expenditure against stated expenses or use benchmarks which are patently inadequate;
  - contrary to their legal obligations, may fail to ask in detail about the purpose of a loan or lease yet still provide loans or leases where they do not meet the needs of the person. Examples are:
    - loans to pay utility bills when a hardship arrangement could be made with the utility provider;
    - loans for a stated other purpose when there is a clear history of gambling on the account statements; and
    - providing a lease when the person wants to own the goods.
- **The consequences of irresponsible lending:** Financial counsellors see the harm caused by irresponsible lending which includes:
  - being left with in sufficient money for basic living expenses as a direct debit takes any income before rent, food and utilities (they always line up any direct debit with payday);
  - for people on Centrelink, consumer lease providers can get paid first by setting up Centrepay;
  - the need to access emergency relief from charities (eg food, vouchers for electricity) as the person has insufficient money;
  - the stress of not having enough money to cover basic needs;
  - being ineligible for No Interest Loans as a result of over indebtedness with payday loans and/or consumer leases;
  - desperately borrowing to attempt to get out of the debt trap; and
  - as a result of unaffordable debt, entering into Part IX debt agreements and/or bankruptcy.[7]

6 See ASIC Media Release in 2016 available at https://asic.gov.au/about-asic/news-centre/find-a-media-release/2016-releases/16-380mr-cash-converters-to-pay-over-12m-following-asic-probe/

7 It is noted that some people go into a Part IX Debt Agreement then default and eventually go bankrupt.

- **Repossession of goods:** Consumer lease providers can repossess the goods under the lease if the person gets behind on repayments (and a default notice has been sent and remains unpaid). As there is no right to buy the goods, the person may have paid the cost of the goods many times over and the goods can still be repossessed—see case study 5 in Part 8 of this submission. In contrast, if the lease was a loan there is a specific protection in the National Credit Code if the loan has mostly been repaid that means goods cannot be repossessed without the consent of a court.[8] 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.
- **Debt collection and enforcement:** Debt collection is stressful. Repeated calls and demands wear a person down. This is particularly difficult when the person could never afford the loan and now owes default fees as well—see case study 9 in Part 8 of this submission. There are also the serious consequences of enforcement through the court including garnishee of wages or savings, repossession of household goods and forced bankruptcy.

What needs to be done

- **Urgently enact the proposed legislation**[9] (with the changes requested in the joint consumer submission) on small amount credit contracts and consumer lease providers. The Review was completed in March 2016. It is now over two years later and the harm continues. The legislation is urgent.
- **A 48% p.a. interest rate cap for all credit products** under the National Credit Act. 48% sounds like an enormous interest rate but for people getting SACCs or consumer leases this would be a reduction in interest. ASIC found some consumer lease providers charge up to 248% p.a.[10]
- **Consumer lease providers must not be able to use Centrepay**. Centrepay is for essential costs, not to cover exploitative high cost leases.
- **Strong anti-avoidance provisions.** Payday lenders, consumer lease providers and other fringe credit providers have constantly found ways to avoid regulation since the introduction of the credit laws (see case study 1 in Part 8 of this submission as an example). There has been a constant stream of very creative, completely unethical methods to avoid the law including selling financial literacy information, diamonds, offering lower

8 See section 91 of the National Credit Code (being Schedule 1 of the National Credit Act), This applies where the amount owing is less than 25% of the amount of the loan or $10,000, whichever is the lowest.

9 National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 (Cth)

10 ASIC Report 447 Cost of consumer leases for household goods September 2015 available at https://download.asic.gov.au/media/3350956/rep-447-published-11-september-2015.pdf.

interest rates but high default fees/application fees, splitting the loan through a broker, false business purpose declarations and the list goes on. This conduct is so persistent and long standing the only way to solve the problem is strong anti-avoidance laws.

- **End the farce where a lease is really a sale of goods by instalments.**[11] Many people enter into a lease based on a "wink wink" arrangement that they will be able to buy the goods at the end. An example of this avoidance is the flyer that offers to gift the goods to a third party[12] (see case study 16). The contract always states that the person has no right to buy the goods. This happens in car and household goods leases. This arrangement contradicts the purpose of "truth in lending" in consumer laws. The law needs to be changed to recognise that some people want to buy the goods in instalments and some consumer lease providers want to offer this service. A separate category needs to be created so people can buy the goods at an agreed price and not rely on verbal reassurances.

11 See report A loan in lease clothing: Problems identified with instalment-based rent/purchase contracts for household goods 2007 Micah Law Centre. Available at https://www.consumer.vic.gov.au/library/...and.../a-loan-in-lease-clothing-2007.pdf

12 Also noted that Local Appliance Rentals has now been the subject of enforcement action from ASIC on responsible lending see Media Release at https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-337mr-local-appliance-rentals-to-remediate-customers-and-pays-257-500/.

4 Unlicensed financial service providers including "buy now, pay later" providers and short-term credit providers

What do they do

This is a group of credit providers who fall into two broad groups:

- Buy now, pay later services.
  a. Afterpay is the most well-known example, but now has a number of competitors including ZipPay, Oxipay, Once, Payright, Zumi, ShopZero and MIM Pay.
  b. Certegy has been in the market for some time and provides interest free finance via "ezi-pay" offering "no interest ever".
  c. A more recent entrant to the market is Deferit, which allows people to pay utility bills over time.
- Other financial services avoiding the National Credit Act by exploiting creative loopholes. One example are two related companies that claim the National Credit Act does not apply as the costs of a payday loan are split between them. These companies provide payday loans of up to $1,000 for personal purposes. Case studies 1 and 15 are examples. Financial counsellors are seeing more clients with loans structured in this way. Consumer advocates have long argued that the structure is a sham and a breach of s.31B of the National Credit Code.[13] To date, this avoidance remains unresolved and people are losing the protection of the National Credit Act.

Buy now, pay later is a service where you buy a product and then pay off the product over time. The person gets the product immediately (unlike Lay-By). The business model includes charging retailers a fee and charging consumers monthly account keeping fees, payment processing fees (e.g. Certegy) and late fees (e.g. Afterpay).

Current regulation

These unlicensed financial services providers are **not** regulated by the National Credit Act. They are regulated under the ASIC Act. This provides general protections such as prohibitions against misleading or

13 Being Schedule 1 of the National Credit Act.

unconscionable conduct. There is no doubt that these products were designed to avoid the National Credit Act and the specific and expansive obligations required under that Act.

The current regulation does not meet the expectations of the community. People use these services believing they are regulated and are disappointed to find that they are not protected.

The harm

- **People lose the protections in the National Credit Act** including responsible lending, disclosure, default notices before legal action, the right to seek a variation on the grounds of financial hardship, rights to request documents and requirements that enforcement costs must be reasonable.
- **No truth in lending**. The business model can have fees and charges and the true cost of credit is not clear. There is no effective interest rate disclosure for the fees. See case studies under buy now, pay later in Part 8 of this submission.
- **ASIC will not have access to the proposed new product intervention powers and design and distribution obligations**. This leaves people exposed to exploitation.
- **People can get credit they cannot afford to repay**. The harm caused from being given a loan a person cannot repay has been well-documented in the Financial Services Royal Commission. See case studies under buy now, pay later in Part 8 of this submission.
- **It's a trap.** The business model and profits include a heavy reliance on fees to make a profit, including when people default. This incentivises irresponsible lending. It is also misleading to state there are no fees or interest when some business models do rely on default fees and interest from a percentage of customers.
- **The purchases can be large with some business models (up to $30,000)**. This means that the harm can be significant when the person cannot afford to repay. People can be forced into bankruptcy for any debt over $5,000. There is a real possibility of a person losing their home due to unforeseen events such as illness or job loss paired with buy now, pay later business models.
- **A person can have many "buy now, pay later" arrangements**. With no requirement to lend responsibly people can have many contracts—see for example case studies 21 and 23 under buy now, pay later in Part 8.
- **No requirement to be in the Australian Financial Complaints Authority (AFCA)**. This means if there is a dispute the person does not have free access to justice. It also means that AFCA is unable to identify and respond to systemic issues.

What needs to be done

- **Anti-avoidance legislation is required** to deal with fringe lenders who seek to avoid the National Credit Act.
- **Buy now, pay later services must be licensed and regulated under the National Credit Act.**
- **Product Intervention Powers and Design and Distribution Obligations must cover these fringe credit providers.** We support the ASIC suggestion that PIPs and DADOs should cover credit products and products that are only regulated by the ASIC Act.[14]

14 See paragraph 5, Submission by ASIC in response to the Design and distribution obligations and product intervention power: Revised exposure draft legislation, August 2018. Available at https://download.asic.gov.au/media/4849144/design-and-distribution-obligations-and-product-intervention-power-revised-exposure-draft-legislation-submission-by-asic.pdf.

5 Debt management firms, debt negotiators, credit repair agencies and personal budgeting services

What do they do

There are four types of debt management firms:

1. **Budgeting help.** Developing and managing budgets (including making payments to creditors);
2. **Debt negotiation.** Negotiation with creditors for repayment arrangements including reduced lump sum settlements and delaying or negotiating to stop repossession;
3. **Brokering Part IX Debt Agreements/advising and charging on bankruptcy.** Advising and arranging Part IX Debt Agreements and charging to help people go bankrupt voluntarily; and
4. **Credit repair.** "Fixing" negative information on credit reports to enable people to access credit.

Current regulation

Debt Management Firms generally are **not** regulated by the National Credit Act. It is arguable that brokers of Part IX Debt Agreements are regulated under the National Credit Act. They are all regulated under the ASIC Act. This provides general protections such as prohibitions against misleading or unconscionable conduct.

The current regulation does not meet the expectations of the community. These services are targeted at people in financial difficulty who are often desperate for help. The awful irony is that their financial difficulty is often exacerbated by the fees charged by these services and they are left in a worse position.

The harm

Debt Management Firms

- **High up-front fees.** People in financial difficulty find it hard to pay these fees. The payment of the fee is usually only achieved by not paying a creditor. This exposes the person to higher debt and risk of court action.
- **Difficult to work out costs.** As there is no disclosure regulation, it is often difficult for people to work out what they will pay for the service. It can be difficult to discover costs until you meet with the debt management firm.[15]
- **No requirement that the services are suitable.** There is no requirement to tailor the service to the needs of the person. People are often given no other option, not referred to free services who could help, including financial counselling, and the service is not tailored to their needs.[16]
- **Reduced access to justice.** If there is a dispute, the complainant may not have access to the Australian Financial Complaints Authority (AFCA) because there is no requirement for Debt Management Firms to be in AFCA.

Budgeting help

- **People hand over their money with no protections.** Budgeting services manage their client's money as well as their budget. The person's money is placed in the budgeting service's account. If there is misconduct or insolvency that money is at serious risk and may be unrecoverable.
- **The budgeting service does not consider whether the debt is owed.** Some debts are no longer owing or only owed in part due to misconduct or another defence. An example would be breaches of responsible lending or when the debt is no longer owed as it is old and statute barred.[17]
- **Poor consideration of debt priorities.** All debts are not created equal. Some debts or ongoing expenses are more important than others. For example, rent and utilities are a higher priority payment then a credit card debt. The failure to prioritise certain payments and arrears can lead to court action, repossession or at worst, homelessness. There are example of budgeting services inappropriately prioritising some payments over others;

15 See ASIC Report 465 Paying to get out of debt or clear your record: The promise of debt management Firms January 2016. See page 25 under Sales techniques. Available at https://download.asic.gov.au/media/3515432/rep465-published-21-january-2016.pdf

16 Ibid. See page 26 of Report 465 under Service and Value.

17 Debt may become statute barred under various Acts in each State and Territory in Australia usually because the person has not made a payment in over 6 years.

- **Unrealistic budgets**. Preparing and making a workable budget is a difficult task. That task is more complicated when the person is in financial difficulty. Financial counsellors work with people on budgets and have extensive training on preparing realistic budgets. Some major recurring challenges with budgets are unrealistic promises to change spending, undisclosed debts, sensitivity with disclosing some expenditure such as smoking, gambling, alcohol, and on-line shopping. This means that the budgets made by budgeting services can be unrealistic.
- **Costs and interest.** The budgeting service pockets all of the interest on the funds provided by their client. The budgeting service charges an ongoing fee. If the person is already in financial hardship the fee makes things worse as there is less money to pay creditors and get back on track.

Debt negotiation

- **The debt is not negotiated or the repayment arrangement is unrealistic.** These services do not promise success. The fees are paid for the service to attempt to negotiate a repayment arrangement or reduced lump sum settlement. The credit provider does not have to agree to an arrangement. People can end up in unaffordable repayment arrangements or facing legal action or home repossession.
- **Telling people to stop paying creditors.** Some debt negotiators tell people to stop paying their creditors and instead pay the fees of the debt negotiator. See for example nobankruptcy.com.au which clearly tells people to stop paying their creditors. It states at step 2: "Let us negotiate your debt. Stop paying your existing monthly repayments as we contact your creditors to significantly reduce your debt". This is highly unethical and risky. It is unethical because people should be attempting to pay the debts they agreed to repay. It is extremely risky as credit providers can start a process to commence legal proceedings or repossess security to collect the debt.
- **Impact on creditors and AFCA** – creditors report that debt negotiators can be aggressive to deal with and use the threat of taking a dispute to the Australian Financial Complaints Authority as a negotiation tool.

Arranging Part IX Debt Agreements and bankruptcy

- **A very poor option.** Many financial counsellors rarely if ever refer people to a Part IX Debt Agreement. This is because they are almost always a very poor option for the person. Financial counsellors are aware that many creditors have very good financial hardship options and the same result can be achieved with direct negotiation which avoids the enormous fees, committing an act of bankruptcy and ruining the person's credit report. If the person is genuinely insolvent with few assets, then bankruptcy is a far better option than a Part IX Debt Agreement—see case studies under debt agreement brokers in Part 8 of this submission.
- **People in temporary financial hardship are insolvent.** It is very easy to prey on people to enter into a Debt Agreement because the definition of insolvency is so easy to trigger. To be insolvent the person cannot pay their debts when they fall due. This means that everyone who can't make a payment qualifies (subject to income and debt thresholds) to go into a Debt Agreement. This means that people struggling with a temporary problem could end up with the serious negative consequences of a Debt Agreement.
- **Unaffordable repayments on the debt agreement**. Financial counsellors regularly report seeing people who could not afford the repayments under the Debt Agreement from the start. Those people can persist for a while but eventually they default and cannot catch up. The rising rate of incomplete Debt Agreements[18] indicates there is a problem with the affordability and sustainability of repayments - see case studies under debt agreements brokers in Part 8 of this submission.
- **Telling people to stop paying creditors.** Financial counsellors are aware of examples where brokers of debt agreements tell people to stop paying their creditors and instead pay their fees. This seems to be on the assumption that the debt agreement proposal will be accepted when this may not be the case. The person may have no debt agreement and be even further behind in repayments due to fees.
- **Increasing length of agreements.** The length of debt agreements has increased markedly since 2010. Over 80% of debt agreements are now expected to run for five years or longer.[19] Longer term agreements can harm people. There is an increasing likelihood of default and financial hardship in keeping to the agreement.

18 See discussion on page 19 on the increasing number of incomplete Debt Agreements in *An evaluation of Debt Agreements in Australia, Chen, O'Brien and Ramsay (2018) 44(1) Monash University Law Review (forthcoming).*

19 Ibid. See page 20 for a discussion on the increasing length of Debt Agreements.

- **Misleading conduct.** Many people respond to advertisements from brokers of Debt Agreements believing they are consolidating debt so they get one affordable repayment. The Australian Financial Security Authority, which regulates this industry, has issued guidance[20] to try and stop some of this misleading advertising. However, the brokers of Debt Agreements get around this problem by saying they offer a range of services, for example, repayment arrangements, debt agreements, and bankruptcy. As there is no requirement of suitability the broker can then steer a person into the arrangement that delivers the most money to them (which is usually Debt Agreements).
- **Ripping off creditors.** Although not directly related to people using Debt Agreements, many creditors are dismayed by the fees going to the broker[21] and debt agreement administrator when a financial hardship arrangement could have been negotiated, avoiding that cost. Some creditors uniformly vote against Debt Agreement proposals as they see them as harmful to both people and creditors.[22]
- **Charging for bankruptcy.** Financial counsellors regularly assist people to go bankrupt (when it is the best option in their circumstances). Financial counsellors do this for free. Low income and middle-income people should not have to pay to go bankrupt. These services are not required to tell people about financial counsellors or make a referral. It is likely that these people pay the fees for bankruptcy by using their credit card so ultimately the banks are paying for the advice.

Credit repair

- **Up-front fees with no guarantee of success.** Most credit repair services charge an up-front administration fee and a set fee for each listing being removed. The administration fee is usually not refundable. The fee for the removal of the listing is usually refundable if the listing cannot be removed.[23] It is very possible the person is paying at least one fee for no result.
- **People are unaware that inaccurate default listings can be disputed for free.** Credit repair services do not tell people there is free financial counselling and legal advice on how to dispute a listing for free. Every person with a negative listing has access to free External Dispute Resolution (EDR) (such as AFCA or a utilities ombudsman or the Telecommunications Industry Ombudsman).

20 Inspector-General Practice Guideline 1 – Guidelines relating to advertising and marketing of debt agreements Last updated July 2016. Available at https://www.afsa.gov.au/about-us/practices/inspector-general-practice-guideline-1

21 Op cit, n16. See for example the comments page 18 regarding increasing fees

22 Op cit n16. For example, Credit Corp. See page 37.

23 For further detail see *A quick fix? Credit Repair in Australia*, Ali, O'Brien and Ramsay (2015) 43 ABLR 179. Available at http://financialrights.org.au/wp-content/uploads/2015/06/Ali-OBrien-Ramsay-Credit-repair-in-Australia.pdf

- **Misleading conduct.** Credit repair services actively mislead people that they can just fix a credit report for a fee. In fact, a credit report listing can only be removed if it is inaccurate or the parties settle a dispute to remove a listing. There is no doubt that there are inaccurate listings, for example, the debt is not owed or partially not owed due to irresponsible lending or another defence, failure to send the required notices, the debt is statute barred, and so on. However, there are many times when the debt is owed and the listing was properly made.
- **Unethical conduct.** There is evidence, particularly from creditors and external dispute resolution schemes, that credit repair services, because of the time and cost involved in an EDR dispute, use this threat and the actual process to wear the creditor down into removing listings without a meritorious case. This is unethical. Credit repair disputes are clogging up EDR schemes.

What needs to be done

- **Regulation and licensing.** Comprehensive regulation for all Debt Management Firms to ensure that people are protected from misconduct. The regulation would cover:
  - requirement to be a member of AFCA to operate in Australia;
  - ban up-front fees;
  - duty to ensure the service is suitable and to act in the client's best interests;
  - barriers to entry including qualifications and ethics standards;
  - management of client money obligations;
  - specific disclosure requirements including warning and information on free financial counselling and legal advice (for example a referral to the National Debt Helpline);
  - requirement to speak to a free financial counsellor before entering into a Debt Agreement;
  - rules modelled on the Credit Repair Organizations Act (USA)[24] and as enhanced in *A quick fix? Credit Repair in Australia.*[25]
- Further reform on Debt Agreements as outlined in the joint consumer submission dated 21 February 2018.[26] In summary, the reforms requested are:
  - introducing minimum eligibility thresholds and a statement of suitability to ensure that debt agreements are affordable, suitable and well-targeted at people who can genuinely benefit from this insolvency option – these reforms would be far more effective at

24 Available at http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-chapter41-subchapterII-A&num=0&edition=prelim

25 Ali, O'Brien and Ramsay (2015) 43 ABLR 179. Available at http://financialrights.org.au/wp-content/uploads/2015/06/Ali-OBrien-Ramsay-Credit-repair-in-Australia.pdf

26 Available at https://policy.consumeraction.org.au/2018/03/07/submission-debt-agreement-reform/

reducing inappropriate debt agreements than a payment to-income ratio or undue hardship discretion;

- requiring administrators to provide internal and external dispute resolution to resolve complaints, an important mechanism to ensure access to justice, resolve systemic issues and encourage good industry practice;
- limits on excessive and upfront fees to ensure affordable repayments, a fair return to creditors and curb the rampant mis-selling of debt agreements;
- providing a statement of account and referral to a financial counsellor for debt agreements that terminate due to arrears; and
- comprehensive reform of debt agreement brokers and the debt management industry more broadly.

- **Product Intervention Powers and Design and Distribution Obligations must cover debt management firms.** We support the ASIC suggestion that PIP and DADOs should cover credit products and products that are only regulated by the ASIC Act.[27]

27 See paragraph 5, Submission by ASIC in response to the Design and distribution obligations and product intervention power: Revised exposure draft legislation, August 2018. Available at https://download.asic.gov.au/media/4849144/design-and-distribution-obligations-and-product-intervention-power-revised-exposure-draft-legislation-submission-by-asic.pdf.

6 Pawnbrokers and debt consolidation loans

There are other services that also affect people in financial hardship or at risk of financial hardship. They are:

1. pawnbrokers; and
2. debt consolidation loans.

Pawnbrokers

Pawnbroking is a form of high cost credit where a person pawns their goods for money. If the money is not repaid the goods are sold. Rates of interest for pawn loans are up to 30% per month (or 360% per year). It is very high cost credit. Pawnbroking is regulated under State or Territory legislation (which mainly focuses on stopping stolen goods being pawned) and section 76 of the National Credit Code (which cover unjust transactions). There are no requirements for disclosure, hardship arrangements, statements, default notices, interest rate caps, responsible lending and membership of AFCA.

The most vulnerable people go to pawnbrokers. These include people who are desperate, people with a gambling addiction, people on low incomes, women escaping domestic violence, and Aboriginal and Torres Strait Islander people. Regulation is urgently needed to protect people from this high cost exploitative credit.

Pawnbroking should urgently be regulated under the National Credit Act. In the interim, the States and Territories in consultation with the Commonwealth Government, should legislate to make pawnbrokers join AFCA as a priority.

Debt consolidations loans

Debt consolidation loans are a common solution people turn to when they are in financial hardship. The reasoning is that if all the debt is consolidated at a lower interest rate then they would no longer be in financial hardship. In theory that can work, however, there are a number of big risks:

- turning short term debt into longer term debt and paying a lot more;
- paying out credit cards that are not closed and then drawing up the debt again so the overall debt increases significantly;

- there is a risk of turning unsecured debt into secured debt. If further financial hardship occurs the risk of losing the family home increases; and
- it may not change spending behaviour so the financial hardship may reoccur even with debt consolidation.

There have been many articles explaining why debt consolidation is a poor decision.[28] It is also noted that many debt management firms, including debt negotiators and brokers of Debt Agreements, offer debt consolidation loans. This rings alarm bells.

Reform is needed to make ASIC RG209, which provides guidance about responsible lending, legally enforceable with specific guidance on when it is not appropriate to provide a debt consolidation loan. This should specifically prohibit making short term unsecured debt into long term secured debt.

28 For example, see *Why debt consolidation loans are often financially irresponsible, The Sydney Morning Herald, 26 January 2018 by Noel Whittaker available at https://www.smh.com.au/money/borrowing/why-debt-consolidation-loans-are-often-financially-irresponsible-20180125-h0oi9h.html.*

7 Vulnerable people

People experiencing some form of vulnerability are disproportionately affected by debt vultures or firms that offer services to people in financial difficulty. Vulnerability can be temporary or can go on for months and years. It depends on the person. Financial counsellors see a lot of people who are experiencing some form of vulnerability. We propose to specifically discuss four groups:

1. People on a low income
2. People experiencing a problem with gambling
3. Aboriginal and Torres Strait Islander people
4. Women experiencing domestic and family violence

Financial counsellors often observe that vulnerable people are targeted by payday lenders and consumer lease providers These services specifically set up in locations where people are on low incomes or visit remote communities. This type of targeted predatory behaviour is unacceptable and needs to be stopped urgently.

The ACCC has published a brochure "Don't take advantage of disadvantage".[29] This is a good general starting point for businesses. This needs to be updated with information from ASIC to include lenders, brokers, buy now pay later services and debt management firms.

People on a low income

Financial counsellors see many low-income people as clients. These people are often on Centrelink as their sole source of income. People receiving Newstart are living below the poverty line. Low income people are often short on money and are attracted to a range of services to get money to cover basic living expenses.

Payday lenders and consumer lease providers can be lenders of last resort. People on low incomes can have trouble getting credit. If responsible lending is working as it should, it would not matter which lender you go to you as you **should not** be able to get a loan if you cannot afford to repay it. Yet, payday lenders and consumer lease providers they often say yes when every other lender says no. The low-income person is left in a debt trap.

29 Available at https://www.accc.gov.au/system/files/217_%20BS%20Don%27t%20take%20advantage%20_FA_Web_Nov-2014.pdf

Payday lenders and consumer lease providers have many shop-fronts in low income areas to maximise access to low income people. This is a clear indication that action is needed. Low income people are also increasingly using buy now, pay later services. Again because of the lack of any suitability assessment they can use these services to get access to goods that unfortunately can leave them in a debt trap. Low income people can also be targeted by some debt management firms. A particular problem is credit repair. Financial counsellors report that low income people feel strongly about their credit report and this can lead to large expenditure to "fix" it.

The reforms suggested above at Parts 3, 4 and 5 would help. Further reforms are needed to protect low income people including:

- addressing issues around insufficient income the single most important reform would be to increase and index Newstart so it is not below the poverty line;
- expanding and providing greater funding for No Interest Loan Schemes (NILS); and
- working with local government to limit predatory lending and debt vultures in low income neighbourhoods.

People experiencing problems with gambling

People with a gambling addiction are very vulnerable to payday lending. This is the credit accessed after all of the credit cards are at their limits and no one else will lend. It is typically used to fund gambling, or to fund debts caused by gambling.

The systemic failure of payday lenders to lend responsibly has led to people with gambling addictions ending up with many loans they cannot afford to repay. There is also evidence that payday lenders actively ignore signs of gambling addictions even when the signs are obvious. Expenditure on gambling is an expense and needs to be considered in any decision on whether a loan is suitable. ASIC Regulatory Guide 209.33 specifically mentions gambling as expenditure that creditors need to take into account in assessing whether to provide a loan:

> *"Depending on the circumstances of the particular consumer, and the kind of credit contract or consumer lease they may acquire, reasonable inquiries could also include:*
>
> *a) the consumer's other expenditure that may be discretionary (such as entertainment, take-away food, alcohol, tobacco and gambling);*
>
> *b) the extent to which any existing debts are to be repaid from the credit advanced." (our highlighting)*

Specific measures are required to protect people with a gambling addiction from exploitation by payday lenders[30] which should include:

- expanded guidance on gambling as expenditure in RG209 to provide clear limits on when lending should not occur;
- enabling people to self-exclude from obtaining credit; and
- giving ASIC RG209 in relation to responsible lending the force of law.

Aboriginal and Torres Strait Islander people

Aboriginal and Torres Strait Islander people are particularly vulnerable to credit and financial services targeted at people at risk of or in financial hardship. Many Aboriginal and Torres Strait Islander people are on low incomes and/or live rurally or remotely which causes particular vulnerabilities including:

- **language and literacy**—Aboriginal and Torres Strait Islander people may have very limited understanding of English as it is their second, third or even fourth language. This is particularly common in remote communities;
- **low financial literacy**—Aboriginal and Torres Strait Islander people may have a very limited understanding about how financial products work;
- **culture and kinship**—Aboriginal and Torres Strait Islander kinship is the foundation of the social structure. The existence of a kinship relationship means that people will support each other regardless of whether they are biologically related. This support can be physical, social, emotional and (in modern times) financial;
- **trust**—Aboriginal and Torres Strait Islander culture considers it to be inappropriate to question or disagree. This means that Aboriginal and Torres Strait Islander people can be very trusting; and
- **cost**—in regional and remote communities the costs of basic necessities can be very high which may make loans appealing.

Particular reforms need to protect Aboriginal and Torres Strait Islander people are:

- providing culturally appropriate services including:
  - offering interpreters where needed;
  - ensuring products are tailored to their needs; and
  - asking people if they identify as Aboriginal and Torres Strait Islander.

30 Financial Counselling Australia's submission on gambling to the banking Royal Commission sets out what reforms are needed by the banking industry. It is available at:

- introducing a mechanism for a referral to a funded financial counselling service for advice before making decisions about certain high-risk lenders and services; and
- designing targeted disclosure for Aboriginal and Torres Strait Islander people for high risk lending and services.

Women experiencing domestic and family violence

Women experiencing domestic and family violence (DFV) can be a vulnerable group and fall victim to predatory lending. Women in DFV relationships often experience economic abuse and can have the following vulnerabilities:

- staying in or leaving a relationship with a significant amount of debt;
- needing to get a loan to escape or manage other expenses caused by DFV; and/or
- needing a clean credit report to access rental properties[31] and rehabilitate.

The additional reforms required are:

- enhanced access to financial help funded by the Government to escape DFV;
- working with all creditors (including the Government) to have a compassionate approach to women experiencing debt caused by DFV; and
- ensuring that credit reporting processes recognise the needs of women escaping DFV to rehabilitate financially which should include removing negative information from her credit report. The Financial Ombudsman Service (now AFCA) Approach to Joint Facilities and Family Violence[32] specifically recognises the need for financial services providers to remove or refrain from listing negative information on her credit report (at 2.7 pages 12 and 13). The Credit Reporting Code should be updated to recognise this.

31 While real estate agents are not allowed to access the credit reporting system directly, they can ask people seeking to rent to provide a copy of their own report that they obtain.

32 Available at https://www.fos.org.au/custom/files/docs/fos-approachjoint-facilities-and-family-violence-final-4-may-17.pdf

8 Case Studies

Pay day lenders, consumer leases and pawnbroker loans

Case study 1: Payday lender exploiting loopholes in the National Credit Act

A payday lender provided Vicky with a $200 loan which if paid on time would have required one payment of $167.00 on the 02.11.2017 and another of $166.85 on the 09.11.2017. The effective interest rate is well above the cap for SACC loans.

Vicky was on Centrelink Newstart allowance at the time she got the loan and did not have the capacity to make payment within the given timeframe. Vicky defaulted and was charged dishonour fees, including for the lender sending letters.

When Vicky came to see the financial counsellor she had paid a total of $937 and was told by the payday lender that she still had an outstanding balance of $299.50 to pay assuming there were no further dishonour fees. The financial counsellor arranged to have the debt waived on compassionate grounds.

Detailed Account Statement

Client Ref	
Statement Begins	18/10/2017
Statement Ends	24/05/2018
Amount to Debtor	$200.00
Establishment Fee	$0.00
Stamp Duty	$0.00
Revs, Certificate, Bill of Sale	$0.00
Total Credit	**$200.00**

Opening Balance		Total Payments (Credited)		Total Interest (Debited)		Total Fees (Debited)		Payout Amount
$200.00	-	$937.00	+	$0.00	+	$737.00	=	$-0.00

Date	Description	Debit	Credit	Accruing Interest	Accruing Fees	Balance
18/10/2017	Loan	$200.00	$0.00	$0.00	$0.00	$200.00
18/10/2017	Same Day Deposit Fee	$16.00	$0.00	$0.00	$16.00	$216.00
18/10/2017	Financial Supply Fee - 2 Payments	$90.00	$0.00	$0.00	$106.00	$306.00
18/10/2017	Lender Fee	$10.00	$0.00	$0.00	$116.00	$316.00
25/10/2017	AC Keeping Fee	$5.95	$0.00	$0.00	$121.95	$321.95
01/11/2017	AC Keeping Fee	$5.95	$0.00	$0.00	$127.90	$327.90
06/11/2017	Dishonour Fee	$49.00	$0.00	$0.00	$176.90	$376.90
06/11/2017	1st Dishonour Letter Fee	$30.00	$0.00	$0.00	$206.90	$406.90
08/11/2017	AC Keeping Fee	$5.95	$0.00	$0.00	$212.85	$412.85
09/11/2017	Payment	$0.00	$167.00	$0.00	$212.85	$245.85
15/11/2017	AC Keeping Fee	$5.95	$0.00	$0.00	$218.80	$251.80
20/11/2017	1st Dishonour Letter Fee	$30.00	$0.00	$0.00	$248.80	$281.80
20/11/2017	Dishonour Fee	$49.00	$0.00	$0.00	$297.80	$330.80
22/11/2017	AC Keeping Fee	$5.95	$0.00	$0.00	$303.75	$336.75
27/11/2017	2nd Dishonour Letter Fee	$50.00	$0.00	$0.00	$353.75	$386.75
27/11/2017	Dishonour Fee	$49.00	$0.00	$0.00	$402.75	$435.75
29/11/2017	AC Keeping Fee	$5.95	$0.00	$0.00	$408.70	$441.70
29/11/2017	Payment	$0.00	$200.00	$0.00	$408.70	$241.70
06/12/2017	AC Keeping Fee	$5.95	$0.00	$0.00	$414.65	$247.65
08/12/2017	1st Dishonour Letter Fee	$30.00	$0.00	$0.00	$444.65	$277.65
08/12/2017	Dishonour Fee	$49.00	$0.00	$0.00	$493.65	$326.65
13/12/2017	AC Keeping Fee	$5.95	$0.00	$0.00	$499.60	$332.60
15/12/2017	2nd Dishonour Letter Fee	$50.00	$0.00	$0.00	$549.60	$382.60
15/12/2017	Dishonour Fee	$49.00	$0.00	$0.00	$598.60	$431.60
20/12/2017	AC Keeping Fee	$5.95	$0.00	$0.00	$604.55	$437.55
21/12/2017	3rd Dishonour Letter Fee	$50.00	$0.00	$0.00	$654.55	$487.55
21/12/2017	Dishonour Fee	$49.00	$0.00	$0.00	$703.55	$536.55
21/12/2017	Collections Tracking Fee	$50.00	$0.00	$0.00	$753.55	$586.55
26/12/2017	Payment	$0.00	$30.00	$0.00	$753.55	$556.55
27/12/2017	AC Keeping Fee	$5.95	$0.00	$0.00	$759.50	$562.50
02/01/2018	Payment	$0.00	$30.00	$0.00	$759.50	$532.50
03/01/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$765.45	$538.45
09/01/2018	Payment	$0.00	$30.00	$0.00	$765.45	$508.45
10/01/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$771.40	$514.40
16/01/2018	Payment	$0.00	$30.00	$0.00	$771.40	$484.40
17/01/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$777.35	$490.35
23/01/2018	Payment	$0.00	$30.00	$0.00	$777.35	$460.35
24/01/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$783.30	$466.30
30/01/2018	Payment	$0.00	$30.00	$0.00	$783.30	$436.30

31/01/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$789.25	$442.25
06/02/2018	Payment	$0.00	$30.00	$0.00	$789.25	$412.25
07/02/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$795.20	$418.20
14/02/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$801.15	$424.15
15/02/2018	1st Dishonour Letter Fee	$30.00	$0.00	$0.00	$831.15	$454.15
15/02/2018	Dishonour Fee	$49.00	$0.00	$0.00	$880.15	$503.15
20/02/2018	Payment	$0.00	$30.00	$0.00	$880.15	$473.15
21/02/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$886.10	$479.10
27/02/2018	Payment	$0.00	$30.00	$0.00	$886.10	$449.10
28/02/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$892.05	$455.05
06/03/2018	Payment	$0.00	$30.00	$0.00	$892.05	$425.05
07/03/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$898.00	$431.00
13/03/2018	Payment	$0.00	$30.00	$0.00	$898.00	$401.00
14/03/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$903.95	$406.95
20/03/2018	Payment	$0.00	$30.00	$0.00	$903.95	$376.95
21/03/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$909.90	$382.90
27/03/2018	Payment	$0.00	$30.00	$0.00	$909.90	$352.90
28/03/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$915.85	$358.85
03/04/2018	Payment	$0.00	$30.00	$0.00	$915.85	$328.85
04/04/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$921.80	$334.80
10/04/2018	Payment	$0.00	$30.00	$0.00	$921.80	$304.80
11/04/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$927.75	$310.75
17/04/2018	Payment	$0.00	$30.00	$0.00	$927.75	$280.75
18/04/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$933.70	$286.70
24/04/2018	Payment	$0.00	$30.00	$0.00	$933.70	$256.70
25/04/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$939.65	$262.65
01/05/2018	Payment	$0.00	$30.00	$0.00	$939.65	$232.65
02/05/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$945.60	$238.60
09/05/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$951.55	$244.55
10/05/2018	1st Dishonour Letter Fee	$30.00	$0.00	$0.00	$981.55	$274.55
10/05/2018	Dishonour Fee	$49.00	$0.00	$0.00	$1,030.55	$323.55
15/05/2018	Payment	$0.00	$30.00	$0.00	$1,030.55	$293.55
16/05/2018	AC Keeping Fee	$5.95	$0.00	$0.00	$1,036.50	$299.50
17/05/2018	Cancellation of Fees	$-299.50	$0.00	$0.00	$737.00	$-0.00
	Totals	$937.00	$937.00	$0.00	$737.00	$-0.00
					Payout Amount	$-0.00

Case study 2: payday loans, pawns and Centrelink advances

Yasmin and Rashid are aged in their 50s. They live in a private rental property with their son Amir who is aged in his 20s, and the three share the household expenses. Yasmin recently started working in a casual job with fluctuating hours, Rashid receives Newstart Allowance, and Amir works in a casual gig-based job and receives Newstart Allowance. Yasmin arrived in Australia eight years ago and Rashid and Amir arrived in Australia about four years ago.

Yasmin and Rashid have high medication costs from health issues. Yasmin and Rashid initially sought financial counselling because an insurance company alleged that they were liable for an incident and were attempting to collect a sum of $60,000 from them.

During the financial counselling process, Yasmin and Rashid also revealed that they had a number of payday loans and Centrelink advances, they were in arrears on their utility bills, Rashid was in debt to a medical specialist that he needed to continue to see, and the family regularly experienced rental stress and had been threatened with eviction on more than one occasion.

On one occasion, the family's landlord had also threatened to blacklist them if they did not pay their rent arrears within a short period of time. Yasmin said that she obtained a new mobile phone on a contract, pawned the phone at a second-hand dealer to obtain a pawn loan, and used the pawn loan to pay the rent arrears. When asked where she learned that she could pawn items to get a loan, Yasmin said that she and Rashid have pawned a number of items before, and that they lost some items from doing so.

Yasmin, Rashid and Amir had only a little understanding of the financial and legal systems in Australia, including when it came to insurance and exclusions, liability for an incident, tenancy rights, and the impact of getting into more debt to deal with existing debt.

The financial counsellor prepared a Statement of Financial Position which showed a deficit of $313.09 per fortnight. The payday loans and pawn loans were never affordable. The financial counsellor assisted the clients to resolve the debt issues and they will now avoid payday lenders and pawnbrokers.

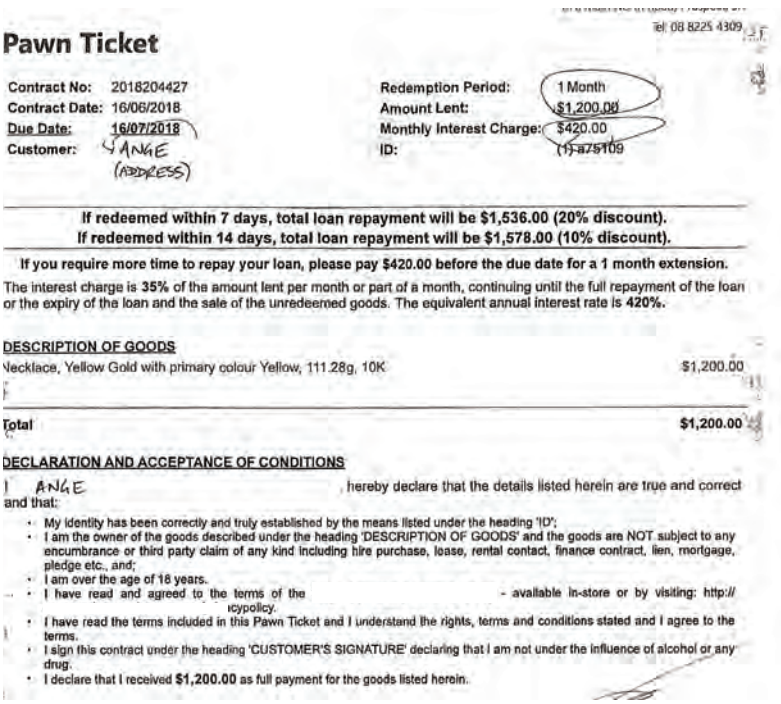
Case study 3: Payday loans and pawnbrokers lending to a person in financial hardship

Ange is aged in her 50s. Up until recently she was working and living in her own home that has a mortgage. However, she left her job to move in with her elderly mother and care for her. She now receives a Carer's Pension.

After Ange left her job and her income decreased, she could no longer afford her living expenses and loan repayments. She fell into arrears on her mortgage repayments and water bill. To deal with her financial hardship, she pawned her own chain (jewellery) and her deceased father's chain to obtain pawn loans from a second-hand dealer, and soon found that she could not afford the repayments on the pawn loans either. As part of the pawn loan contracts, she was required to make repayments on the loans for a long period of time, unless she either paid a lump sum to retrieve the chains, or she stopped making repayments and allowed the goods to be forfeited.

Upon the advice of a Financial Capability Worker, Ange changed the pawn loan for her father's chain to a lay buy in order to put a much earlier end date on the repayments that she was required to make to them. Ange couldn't afford the repayments on the lay buy either. When the financial counsellor made hardship requests to the company on Ange's behalf in relation to the lay buy, they were only willing to extend the end date until 31st August 2018 at which point they would repossess the chain if it the layby wasn't paid out in full.

The pawn ticket:



Pawn Ticket

Tel 08 8225 4309

Contract No:	2018204427	**Redemption Period:**	1 Month
Contract Date:	16/06/2018	**Amount Lent:**	$1,200.00
Due Date:	16/07/2018	**Monthly Interest Charge:**	$420.00
Customer:	ANGE (ADDRESS)	**ID:**	(1) a75109

If redeemed within 7 days, total loan repayment will be $1,536.00 (20% discount).
If redeemed within 14 days, total loan repayment will be $1,578.00 (10% discount).

If you require more time to repay your loan, please pay $420.00 before the due date for a 1 month extension.

The interest charge is **35%** of the amount lent per month or part of a month, continuing until the full repayment of the loan or the expiry of the loan and the sale of the unredeemed goods. The equivalent annual interest rate is **420%.**

DESCRIPTION OF GOODS

Necklace, Yellow Gold with primary colour Yellow, 111.28g, 10K — $1,200.00

Total — **$1,200.00**

DECLARATION AND ACCEPTANCE OF CONDITIONS

I ANGE, hereby declare that the details listed herein are true and correct and that:

- My identity has been correctly and truly established by the means listed under the heading 'ID';
- I am the owner of the goods described under the heading 'DESCRIPTION OF GOODS' and the goods are NOT subject to any encumbrance or third party claim of any kind including hire purchase, lease, rental contact, finance contract, lien, mortgage, pledge etc., and;
- I am over the age of 18 years.
- I have read and agreed to the terms of the icypolicy. - available in-store or by visiting: http://
- I have read the terms included in this Pawn Ticket and I understand the rights, terms and conditions stated and I agree to the terms.
- I sign this contract under the heading 'CUSTOMER'S SIGNATURE' declaring that I am not under the influence of alcohol or any drug.
- I declare that I received **$1,200.00** as full payment for the goods listed herein.

Case study 4: consumer lease provider repossesses TV after the consumer paid $653 more than the TV was worth.

The consumer lease company rented Susan a TV with a retail value of approximately $600. The total contract cost was over $2,000 over a period of years. To date Susan has paid $1,253 – $653 more than the TV is worth. The financial counsellor asked for a review on the grounds of financial hardship and whether Susan could exit the contract early. She was in severe hardship and often went without food or relied on charitable organisations for food assistance. The company completely bypassed the financial counsellor and approached the client with an intimidating tone once the request was received for a review. The company told Susan they would be coming to repossess the TV which they did.

Type	Number	Date	Due Date	Amount	Payments	Today's Balance
Loan	2018209847	17/09/2018	17/10/2018	$20.00	$0.00	$27.00
	TELEVISION, Make: awa, Model: msdv2203-f3-d0, Serial #: AWAA1008161702, BLACK					
Loan	2018208451	7/08/2018	7/10/2018	$75.00	$26.25	$101.25
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	All other Jewellery Types, Silver, Pandora, 1 g					
	Bracelet, Silver, Pandora, 45.86 g					
Loan	2018207815	19/07/2018	19/10/2018	$200.00	$140.00	$270.00
	Ring, Yellow Gold, 2.31 g, 18 K					
	Diamond Ring, Yellow Gold, 1.67 g, 18 K					
	Diamond Ring, Yellow Gold, 3.14 g, 18 K					
Loan	2018206650	15/06/2018	15/10/2018	$150.00	$157.50	$202.50
	SEWING MACHINE, Make: OVERLOCKER, Model: 1034D, Serial #: E13021E2U113728, WHITE					
Loan	2018206424	9/06/2018	9/10/2018	$70.00	$73.50	$94.50
	ROUTER, Make: RYOBI, Model: ERT2100VK, Serial #: 0836000632, BLUE					
Loan	2018205249	15/05/2018	15/10/2018	$50.00	$70.00	$67.50
	Bracelet, Silver, Pandora, 39.49 g					
Loan	2018202134	10/03/2018	10/10/2018	$20.00	$42.00	$27.00
	Ring without Stone, Rose Gold, 1.78 g, 9 K					
Loan	2018202102	10/03/2018	10/10/2018	$50.00	$105.00	$67.50
	Bracelet, Silver, 28.84 g					
	Bracelet, Silver, 27.89 g					
	COOKER, Make: breville, Model: slc50, Serial #: nvsn, WHITE					
	COOKER, Make: gva, Model: khc-425, Serial #: 77260401, WHITE					
Loan	2018200974	1/02/2018	1/10/2018	$110.00	$269.50	$187.00

Type	Number	Date	Due Date	Amount	Payments	Today's Balance
	BBQ, Make: Weber Q, Model: Q2000, Serial #: AH1134580, BLACK					
	HAIRDRYER, Make: Diva, Model: 3600, Serial #: 5280, BLACK					
	DRILL, Make: Ozito, Model: ozcd144v1bk, Serial #: 0904e, BLACK					
Loan	2018200968	1/02/2018	1/10/2018	$50.00	$122.50	$85.00
	LAWNMOWER, Make: masport, Model: quantum xe 50, Serial #: 974337, RED					
Loan	2018200961	1/02/2018	1/10/2018	$50.00	$122.50	$85.00
	Ring with Stone, Yellow Gold, 3.97 g, 9 K					
Loan	2018200672	22/01/2018	22/09/2018	$133.00	$325.85	$226.10
	LABEL MAKER, Make: brother, Model: p-touch 1000, Serial #: e63074j5j957064, PINK					
	SEWING MACHINE, Make: brother, Model: nx-600, Serial #: h3b116994, WHITE					
Loan	2018200346	11/01/2018	11/10/2018	$155.00	$434.00	$209.25
	ANGLE GRINDER, Make: MAKITA, Model: 9554NB, Serial #: 0291243, BLUE					
	PLANER, Make: POWER MASTER, Model: PM71PL, Serial #: 004608, BLACK					
	MITRE SAW, Make: RYOBI , Model: EMS2025SCL, Serial #: 0735039337, BLUE					
Loan	2017209851	22/12/2017	22/09/2018	$220.00	$616.00	$374.00
	MOBILE PHONE, Make: samsung s5, Model: sm-g900i, Serial #: rf8h52jl90k, IMEI #: 353423062723512, GREY					
	LAPTOP, Make: toshiba satellite, Model: c50d-a, Serial #: xd382896q, SILVER					
Total Loan Owing As of TODAY is: $2,023.60						
Layby	2018300791	20/09/2018	4/10/2018	$69.00	$14.00	$55.00
	BENCH DRILL, Make: GMC, Serial #: 61600208, BLUE					
Layby	2018300761	13/09/2018	27/09/2018	$50.00	$10.00	$40.00
	GAME CONSOLE, Make: nintendo dsi, Model: wap-002, Serial #: tam104096213, BLUE					
Total Layby Owing As of TODAY is: $95.00						
Total Owing As of TODAY is: $2,118.60						

Case study 5: consumer lease provider repossesses TV after the consumer paid $653 more than the TV was worth.

The consumer lease company rented Susan a TV with a retail value of approximately $600. The total contract cost was over $2,000 over a period of years. To date Susan has paid $1,253 - $653 more than the TV is worth. The financial counsellor asked for a review on the grounds of financial hardship and whether Susan could exit the contract early. She was in severe hardship and often went without food or relied on charitable organisations for food assistance. The company completely bypassed the financial counsellor and approached the client with an intimidating tone once the request was received for a review. The company told Susan they would be coming to repossess the TV which they did.

Case study 6: renting to buy turned out to be a lease with no right to buy and extremely expensive

Sarah has three children had been though some hurdles in life. She needed a TV and a washing machine and her only income was Centrelink. Sarah was not aware of other programs that could help like the No Interest Loans Scheme. Sarah signed up to a rental company so she could also have quick access to the goods. She signed a 48-month contract in 2015 for both a TV and a washing machine, under the belief that she would be buying them.

As her finances got tighter, she sought financial counselling and discovered that her $152.75 per month repayments will total $6,883.59 with still another full year remaining. At this point she did not want to lose the goods as she had paid so much for them. Sarah understood and accepted that she had to pay for the TV and washing machine including some interest, but this was over the top it wasn't even a smart TV and just a personal washing machine (not industrial).

At one point she paid to repair them, as the consumer lease company refused to do this. Paying the rental left Sarah with a deficit of $169.34. This would mean she would reduce the food bill and often not update the children's school uniforms. Even when asked to finish the contract based on what she had already paid, she still had to cover the current selling cost of the goods. It was lucky that she had some credit in her account and only had to come up with $141 to buy the goods. To get to a payout point was difficult as the consumer lease company was not responsive to requests, it wasn't until the financial counsellor went to management that the matter resolved.

Case study 7: an unaffordable loan with a payday lender to repay an insurance debt that the insurance company should have waived on compassionate grounds

Tom sought financial counselling as he had an insurance debt which he was struggling to pay. After he received his age pension and covered his living expenses he didn't have enough to cover to the payment plan that he had made with the insurance company. His solution was to head to a payday lender to get a loan. He also pawned his tools that he used for the men's shed so that he could pay the payment plan. However, paying back the payday lenders loan at $80 per fortnight was making him short by $78.80 each fortnight. The pawn broker was keeping Tom in a debt trap for the total cost of $161.50 to retrieve his goods. The financial counsellor supported Tom with food assistance so that he could use the food money to get his goods back from the pawn broker and Tom chose to self-ban at that point also. The financial counsellor also dealt with the insurance debt Tom initially came to seek financial counselling for.

Case study 8: Paying rental for a stolen fridge for 17 years

George is 57 years old. He rented a fridge back in 2001. George was in a relationship in 2001 and shortly thereafter he and his partner separated. When he returned to collect his personal belongings, she had thrown everything out and said she had sold the fridge. George was honest enough to keep paying for that fridge as he felt that was the right thing to do. After 5 or 6 years he attempted to contact the company branch in Seven Hills and found that it was no longer in operation. He had a workplace accident in 2012 that left his hand crippled and he is no longer employable. He is now living alone and barely surviving.

The original contract was signed in December of 2001 for $33 per fortnight and was cancelled by a support letter the financial counsellor wrote for him in June 2018. The direct debit was also finally cancelled. The consumer lease company provided the financial counsellor with a five-year ledger showing that the repayments had been being made for some time. The consumer lease company had also increased the payments from $33 to $35 without telling George. They said that in 17 years they could not contact George and that's why the payments continued.

The contract doesn't state the make or model of the fridge but it probably was not worth anything more than $3,000, which seems extremely reasonable for a fridge of any make or model in 2001. At $33 pf George has paid $14,586 and at $35pf he would have paid $15,470.

Case study 9: multiple online consumer leases all unaffordable

Jane is a single mum with one child and in her mid-twenties. Jane has many rental contracts all gained on line from a consumer lease company. She had just one other small credit card debt with a bank. Jane approached a financial counsellor convinced that she needed to file for bankruptcy but didn't want to stop paying the rentals. All the rental contracts were being paid by Centrepay leaving Jane with only **$30 left per fortnight to cover her living expenses>**

Case study 10: rent to buy that is not rent to buy

Linda is in receipt of the Disability Support Pension, in her fifties with shared custody of her two teenage children Liam (15) and Linley (12). Linda presented overwhelmed with bills, in poor mental health and seeing a psychiatrist due in part to her financial stress. Linda detailed that she needed to borrow money frequently from family members and seek food assistance from local community emergency relief outlets.

Linda disclosed she had a contract with a Rent to Buy Company where she believed she was renting to buy, but the contract proved to be of the industry standard consumer lease. Linda thought she was purchasing these items and had no real idea how much the rental contracts would be. Under the consumer lease company's contracts over 18-24 months, an Android phone worth $300 would cost $819, and an X-box bundle worth $300 would cost $1,794, for a total outlay of $2,613. At the time of her first financial counselling appointment, Linda had already paid $1,437 on these combined goods.

The consumer lease company did not provide the contract, credit assessment and income within the set times under the National Credit Act and a complaint was lodged with the Credit and Investments Ombudsman (now part of the Australian Financial Complaints Authority).

When the requested documents were finally provided by the consumer lease company, it was immediately apparent that responsible lending laws had been ignored. Examples include during the assessment process for the purchase of the phone not including any expenses for a phone plan, assuming all utilities were paid for by Linda's father, despite the utility bills being in Linda's name and her father not living with Linda and merely occasionally assisting with money for food, and grossly underestimating food expenses. This issue became further compounded when at the second assessment for the Xbox, the rental company merely copied over the already inaccurate expenses from the first assessment. Linda's children had come into her care at that time, and the new credit assessment took no notice of the increased expenses for these children or the additional liabilities that were paid by Centrepay on the Income Statement used by the rental company to verify Linda's income for that assessment.

The rental company did not respond to the financial counsellor's initial emails. Linda contacted the financial counsellor when two burly men from the consumer lease company visited her at home. Linda described feeling intimidated but relieved that she had a financial counsellor and their agency to empower her to ask them to leave and contact her financial counsellor.

Linda has frequently stated that she feels this type of behaviour by consumer lease companies takes advantage of people who are vulnerable and not aware of their rights. If they had access to a financial counsellor that they would know what to do and be able to do better.

The financial counsellor and Linda worked together to review the original contracts and Linda now knows about more affordable loans such as NILS.

Case study 11: Payday loan worsens the debt problems

Hannah is a single mother with two children aged 15 and 17. Her 17-year-old lives with his grandparents and is in year 12. The 15-year-old lives with her and is in year 10. Both children attend a private school. They have been in this school since reception. Hannah separated about three years ago from her husband/their dad. He died from cancer, left all his money to a new girlfriend and the kids received nothing. This was challenged in court but Hannah withdrew as she was too overwhelmed.

When Hannah was married, she had a job paying $200k a year. When she got divorced, she had to leave this job to care for the kids and get a different job that paid her about $80k a year. She ran up debts during the divorce. Hannah lives in a private rental property. It is really important to her to allow her kids to finish at their private school given their Dad has died, the divorce and the children have been at this school since reception. Overwhelmed with debt she cannot get ahead. Hannah has received default notices from credit card companies. Her cards are maxed out and she can't keep up with payments. She has approached banks trying to consolidate her debts but was declined. Her son leaves school at the end of 2018 when he finishes year 12 so she will have some additional money then.

Hannah borrowed $2,500 online from a company to pay her rent and school fees. The responsible lending assessment does not add up. They had rent shown as $435 a month and food $204 a month, with no allocation of monies for running a car, yet they acknowledged the client had a car loan. When the financial counsellor asked how they had taken reasonable steps to verify the figures, they advised that they were unable to explain due to "AP 12.3(j)", a reference to the Australian Privacy Principles. The financial counsellor asked where in Australia can you rent a unit for $435 a month and how can you feed a child and adult on $204 a month. They declined to answer. By lending Hannah this money, they placed her further into financial hardship and enabled the debt spiral to continue. This placed a massive strain on her mental well-being, made her feel overwhelmed and trapped in debt.

The financial counsellor helped by giving Hannah hope that there should be a way out of her cycle of debt and feeling overwhelmed with finances and ensuring she knew all of her options, some of which she had been unaware of. The financial counsellor also helped Hannah dispute a telco debt and make repayment arrangements on credit cards.

The company that had provided the high cost short term loan had been bullying Hannah with relentless calls when she couldn't make the payments. With additional help from a lawyer from the legal services commission the outcome was that all fees, charges and interest were removed from the loan and an affordable repayment arrangement negotiated.

Case study 12: very dodgy car lease company

Sara needed a 7-seater car and went to a 'rent to own' vehicle company. They had no suitable car, but she was in need so she purchased a sedan, paying $3,000 deposit for a $6,000 car. The total cost of the lease was $14,000. The car yard used her partner at the time's income, as she was on Centrelink.

Sara never understood that it was a lease and believed she would own the car after finishing making the payments under the contract. The car also remained registered to the car yard. This caused problems for Sara with the Police. If she was pulled over the registration showed that she did not own the car.

Sara then had issues with the motor in the car that the car yard refused to fix. They also refused any financial hardship arrangement and as they had an immobiliser in the car, they were able to lock the vehicle from being used. This meant when Sara was behind on repayments the car was unusable.

The financial counsellor contacted the consumer lease company to raise a dispute about irresponsible lending. The consumer lease company denied any problems. The financial counsellor then lodged a dispute in the Credit and Investments Ombudsman (now Australian Financial Complaints Authority). Within three days the consumer lease company had picked up the car and refunded $3,000. The conduct was also reported to the ACCC and they have indicated they are commencing legal action against the car yard.

Case study 13: Unregulated payday lender gives two loans in 48 hours

Bob is 34 and he is a single Dad. He got two loans from an unregulated payday lender in 48 hours. He got another loan a few weeks later. The financial counsellor called to ask about responsible lending. He was told they were unregulated and did not have to do responsible lending.

Case study 14: no money for rent due to a consumer lease

Sarah is Aboriginal, 36 years old and is a single parent with five children. She lives in state housing. She was referred to a financial counsellor by a community agency as she had no money left after rent, electricity and rental repayments.

Over a two year period Sarah had executed around six consumer leases with three different consumer lease companies. One had four agreements in total. After a review of the documentation by the financial counsellor it was noted that the consumer lease company with four agreements had not complied with the responsible lending requirements. The initial financial position was used for all four consumer leases despite the number of children in Sarah's care going from five to seven. None of the children's day to day expenses in either the initial assessment and or the last were considered.

The financial counsellor made a complaint to the Credit & Investments Ombudsman (now Australian Financial Complaints Authority). The resolution was that Sarah was released from three of the consumer lease contracts and the goods remained in her possession, $2000 of debt arrears was reversed and Sarah was able to pay the remaining amount owing on the contract by the end of 2018.

Case study 15: two payday loans (one being a loan that avoids the law) debt trap

Kate is 64 years old, single and living in state housing. She has been on the Disability Support Pension for 8 years. Her statement of financial position showed a deficit of $85 per fortnight. Kate already had a Centrelink advance, NILS loans and Afterpay. Kate got a loan of $650 from a payday lender. She then took out another loan for $175. She could not afford the loans and the fees and default fees were making the debt go up. The fees included dishonour fees, dishonour letter fees and account keeping fees.

Kate had stopped making payments because she was completely overwhelmed and could not afford the payments from the start. The financial counsellor negotiated a reduction of the debt, stopping all fees and charges, and a repayment arrangement she could afford.

Detailed Account Statement

Client Ref	
Statement Begins	12/02/2018
Statement Ends	04/09/2018
Amount to Debtor	$175.00
Establishment Fee	$0.00
Stamp Duty	$0.00
Revs. Certificate, Bill of Sale	$0.00
Total Credit	**$175.00**

Opening Balance		Total Payments (Credited)		Total Interest (Debited)		Total Fees (Debited)		Payout Amount
$175.00	-	$214.90	+	$0.00	+	$915.95	=	$876.05

Date	Description	Debit	Credit	Accruing Interest	Accruing Fees	Balance
12/02/2018	Loan	$175.00	$0.00	$0.00	$0.00	$175.00
12/02/2018	Financial Supply Fee - 4 Payments	$131.25	$0.00	$0.00	$131.25	$306.25
12/02/2018	Lender Fee	$8.75	$0.00	$0.00	$140.00	$315.00
19/02/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$145.95	$320.95
19/02/2018	Change of Payment Date and Amount Fee	$20.00	$0.00	$0.00	$165.95	$340.95
26/02/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$171.90	$346.90
05/03/2018	Change of Payment Date and Amount Fee	$20.00	$0.00	$0.00	$191.90	$366.90
05/03/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$197.85	$372.85
12/03/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$203.80	$378.80
19/03/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$209.75	$384.75
22/03/2018	Payment	$0.00	$98.00	$0.00	$209.75	$286.75
26/03/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$215.70	$292.70
02/04/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$221.65	$298.65
03/04/2018	Change of Payment Date and Amount Fee	$20.00	$0.00	$0.00	$241.65	$318.65
09/04/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$247.60	$324.60
16/04/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$253.55	$330.55
19/04/2018	Payment	$0.00	$116.90	$0.00	$253.55	$213.65
23/04/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$259.50	$219.60
30/04/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$265.45	$225.55
01/05/2018	Change of Payment Date and Amount Fee	$20.00	$0.00	$0.00	$285.45	$245.55
07/05/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$291.40	$251.50
14/05/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$297.35	$257.45
19/05/2018	1st Dishonour Letter Fee	$30.00	$0.00	$0.00	$327.35	$287.45
19/05/2018	Dishonour Fee	$49.00	$0.00	$0.00	$376.35	$336.45
21/05/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$382.30	$342.40
21/05/2018	Change of Payment Date and Amount Fee	$20.00	$0.00	$0.00	$402.30	$362.40
28/05/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$408.25	$368.35
04/06/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$414.20	$374.30
11/06/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$420.15	$380.25
16/06/2018	2nd Dishonour Letter Fee	$50.00	$0.00	$0.00	$470.15	$430.25
	Fee					
30/06/2018	3rd Dishonour Letter Fee	$50.00	$0.00	$0.00	$680.05	$640.15
02/07/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$686.00	$646.10
09/07/2018	Account Keeping Fee	$5.95	$0.00	$0.00	$691.95	$652.05
13/07/2018	Investigator/Hand Over Fee	$175.00	$0.00	$0.00	$866.95	$827.05
13/07/2018	Dishonour Fee	$49.00	$0.00	$0.00	$915.95	$876.05
	Totals	$1,090.95	$214.90	$0.00	$915.95	$876.05
					Payout Amount	$876.05

Case study 16: Payday lenders still giving unaffordable loans

Michael was a real battler. He had bought a modest little house and desperately wanted to keep this home he was so proud of. He worked as a labourer earning $800 week after tax, and supported his wife who couldn't work and couldn't get Centrelink. They had some issues and their children had been removed from their care. Michael desperately wanted to re-unite their family, and needed to show that their life was financially sustainable, as part of getting the children back.

He applied for a 12-month payday loan of $2,000 to buy Christmas presents and food (at a contract cost of $3360), and the lender verified that it would not cause Michael 'substantial hardship'.

Issues with the loan application

1. The loan application dramatically under-reported his expenses. The lender stated that he had $1,759 of 'free and uncommitted income', when in fact the financial counsellor established that his monthly deficit was $509 at the time the loan was taken out (see Statement of Financial Position).

2. The lender verified that his total living expenses were approximately $1,500, when his bank statement showed that the mortgage repayment alone was $1,200. This was grossly inaccurate.

3. Not only was the loan repayment unaffordable, but Michael already had multiple loans under 'hardship arrangements' paying token amounts not even covering a fraction of the interest, all signs the borrower couldn't afford more loans. Further the payday lender used these nominal hardship token monthly repayments in its loan assessment spreadsheets, so it could lend more, instead of amounts that would allow the debts to be cleared within a few years. Loans under 'hardship' included:

    - $17,000 secured loan with a token $50 payment arrangement per month
    - $20,000 unsecured card loan, sitting with a debt collection agency, with a token payment arrangement of $30 per month
    - $10,000 credit card debt - missed by the payday lender. Not on the loan application.

The outcome

The financial counsellor lodged a complaint with the lender about the unsuitability of the loan, and the multiple errors with substantiating expenses. The loan was waived.

Michael's - **"Unsuitable".**

Loan application shows $1859.86 free and uncommitted income, but he actually had a $509 deficit at the time the loan was given. The monthly expenses are wrong.f

SMALL AMOUNT CREDIT CONTRACT APPLICATION

INCOME AND EXPENDITURE STATEMENT

MONTHLY INCOME	
CENTRELINK	$0.00
EMPLOYMENT	$3,501.78
SELF EMPLOYMENT	$0.00
OTHER	$0.00
TOTAL MONTHLY INCOME	$3,501.78

A

MONTHLY EXPENSES				
Share of ACCOMMODATION	$875.44	Add extra ACCOMMODATION	$210.87	Incorrect
Share of LIVING EXPENSES	$525.25	Add extra LIVING	$0.00	Incorrect
Other SACC LOAN REPAYMENTS	$0.00	If any ATM withdrawals are not for discretionary spending please adjust the Living Expenses above		
OTHER recurring Creditor payments	$130.36			Incorrect
CREDIT CARD payments	$0.00			Incorrect
TOTAL MONTHLY EXPENSES	$1,741.92			Incorrect

B

A minus B = $1,759.86 FREE + UNCOMMITTED INCOME

Incorrect. He had no free income, rather a deficit of $509

NOTES (eg – where repayments on another small amount loan have been finalised even though they show up on last 90-days bank statements or explaining the share of accommodation expenses)

SACC's	Description	Repayments	Frequency	Start Date	End Date
Cash Converters Elizabeth	Cash Advance	$32.00	Weekly	5/11/2016	14/12/2016

Creditors	Description	Repayments	Frequency	Start Date	End Date
Other		$156.09	Fortnightly	1/01/2014	18/10/2016
Other	[redacted]	$30.00	Weekly	25/11/2016	1/06/2017

Applicant's Initials _____

Summary of Financial Counsellor's Statement of Financial Position
(figures at time of loan application)

SUMMARY

Summary of financial position		
Total Income	$3,467	
Total Living Expenses	$2,089	
Total Income Less Total Living Expenses (before repayments)		$1,378
Less Current Repayments Being Made	$1,887	
Current Surplus/Deficit		($509)
Proposed Payments	$1,887	
Adjusted Surplus/Deficit		($509)

He actually had -$509 , i.e. a deficit each month, not $1759 as Cash Converters claimed.

Case study 17: Consumer Lease Company Flyer (Broome)

Debt agreement brokers

Case study 18: debt agreement broker puts the family home at risk

Henry is a retiree aged in his 60s. He lives with his wife Mary in a house with a mortgage. His two adult children have moved out of the family home.

Henry initially retired from work in 1999 due to health issues and incapacity to work. He returned to work and then retired again in May 2016, when he was aged in his 50s, due to his health issues worsening. Henry receives no income, and he and Mary live off of Mary's income from her full-time employment. Henry has been persistently applying for the Disability Support Pension and ongoing payments from Total and Permanent Disability insurance since he left work in 2016 however his applications have been rejected.

By 2015, when Henry was trying to return to work, he had accumulated some unsecured debts in his own name. In 2015 he entered into a Part IX debt agreement through a debt agreement broker. Henry didn't understand the agreement that he had entered into – he believed that it was like a consolidation loan. The total amount owing on the debt agreement was more than $25,000, and the fortnightly repayments were more than $200.

When Henry left work again in 2016, he and Mary found that they were unable to cover their household bills along with the repayments for Mary's unsecured debts and Henry's Part IX debt agreement. They fell into arrears on their mortgage repayments, council rates, water, electricity, gas, mobile phone and internet bills.

The company assisted Henry to enter into a Part IX debt agreement, which is an act of bankruptcy, without Henry understanding this. If Henry had kept his unsecured debts and been referred to a financial counsellor in 2015, the financial counsellor could have assisted him to negotiate with his creditors and apply for debt waivers or full and final settlements, particularly once he stopped working in 2016.

As it stands, if Henry terminates the Part IX debt agreement including by not making the repayments, his creditors can use the act of bankruptcy to apply to the court to make him bankrupt. Henry owns a house and car, so if he is made bankrupt, he will be at risk of losing his car and home. Henry (after receiving advice – both financial counselling and legal) decided to continue paying the Debt Agreement.

Case study 19: Cannot afford debt agreement payments

Grace is a 57-year-old woman who is living in private rental accommodation with her children. Grace sold her family home to pay for her husband's debts. There were still other debts so Grace contacted a debt agreement broker who advised her to sign up for a debt agreement. She cannot afford the Debt Agreement payments.

Case study 20: debt agreement not the best option with only one debt

"Jimi" is a 20-year-old man from Broome in Western Australia. When Jimi was nearly 18, he applied for a job at the local takeaway bottle shop. The day he turned 18 he began working there, but only 12 hours per week (on average) and casual.

Two months after he started work there a big bank gave him an unsecured personal loan for $20,000. This was despite the fact he'd given them a letter confirming the casual nature of his employment and the limited hours. Jimi had no savings history, no permanent job, and he lived at home. Jimi told the bank he wanted to buy a car with the money. He spent $5,000 on a car, and the rest on drugs. He bought and sold drugs for nine months until he was caught and sentenced to two years in prison. He gained parole after one year. By this time the debt had grown to $23,000 and the ANZ wanted him to resume repayments.

Jimi's financial counsellor wrote to the bank in March 2018 raising a dispute on the grounds of irresponsible lending. The bank 'dragged out' the dispute, despite being asked every month if there had been a decision. Meanwhile, Jimi had turned his life around. He had secured full time employment doing an apprenticeship and plans to establish his own business within five years but he still has an enormous debt.

In June 2018, unknown to the financial counsellor, Jimi saw an advertisement for a debt negotiation company. He was still worried about the debt and so he rang the debt negotiation company and agreed to pay for a Part IX Debt Agreement. The debt agreement broker ocharged Jimi $1,800 as an upfront commission, and Jimi is adamant that this is the only fee they ever mentioned to him.

After he'd paid this fee, they then charged him another $1,911 for lodging the Part IX Agreement - even though the AFSA website clearly states that this fee is $200. Then, three months later he was charged another $6,825, which suddenly appeared on his online statement. Screenshots of these items are below

Jimi was not told about either the $1,911 fee or the $6,825 fee.

He said: "I was told it would be an $1,800 fee. I talked to their guy. He seemed friendly. But just today I was looking online and saw they'd added another $6,000 fee." (17/10/18).

In October 2018 the bank finally told the financial counsellor that their authority to act on Jimi's behalf had been "superseded by the broker of Debt Agreement's authority" in June 2018. This is how the financial counsellor discovered that the Debt Agreement had happened.

The bank finally agreed to reduce the $23,000 debt to $5,000. The debt agreement broker then agreed on 12/11/18 to refund Jimi the three amounts he'd been charged, and to cancel the Part IX Agreement.

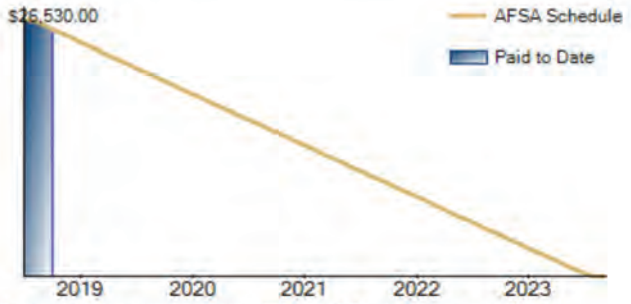
51% 3:57 pm

- Statements

Your Account

Make An Extra Payment

DRS Number	[redacted]
Acceptance Date	24/07/2018
Completion Date	30/05/2023
Total Due	$27,300.00
Paid To Date	$770.00
Arrears	$0.00
Balance Owing	**$26,530.00**



Click to see how you can pay off your debt agreement quicker!

Your Creditors

More Detail

Creditor	Original Debt	Total Due
Creditors	$29,914.16	$18,564.00
AFSA	-	$1,911.00
Admin Fee	-	$6,825.00

TOTAL	$29,914.16	$27,300.00

Your Payments

More Detail

Next Due	$110.00	30/10/2018

Your Payment Schedule

Start Date	Amount	Frequency	No.
28/08/2018	$105.00	Weekly	260

Privacy Policy Update

Read more

FAQs

I want to make a complaint.

Read more

Need Help? Call 1300 666 144
User Agreement | Privacy

Case study 21: Debt broker making harmful recommendations

Dan contacted a debt negotiation company in 2016. They recommended he enter into a debt agreement - $43,586.00. He was employed at the time he entered into the Debt Agreement but is no longer employed. He now has no assets to protect or savings. He did have a car but this was repossessed after he got the Debt Agreement.

Dan was in a motorcycle accident (on a trail bike off road) in April 2018 and has ongoing injuries. His latest surgery was in August 2018. He will require future surgeries.

Dan is currently on Newstart and cannot work due to ongoing medical conditions.

Dan cannot afford the Debt Agreement at all now and the financial counsellor has entered into negotiations with the Debt Agreement broker. The Debt Agreement broker has been uncooperative. They refuse to vary the agreement. They suggested that Dan access his superannuation to pay the Debt Agreement. This is a major concern as Superannuation is for retirement.

Buy now, pay later

Case study 22: completely unaffordable buy now, pay later for vet costs

Sam is a 19-year-old male who was referred to the service internally to address a payment plan with a utility provider. Sam lives independently with no dependents and is in receipt of Youth Allowance.

Sam experiences literacy issues and mental health issues. He has a pet dog that he describes as 'the most important thing in my life'. It was due to the dog needing vet care that Sam engaged with buy now, pay later. This occurred not once, but twice, and the client was making two separate payments to the company.

Sam had previously had a regular payment plan set up with the electricity retailer however this had been broken. He had tried to contact the electricity retailer a number of times however any offers that Sam made for an affordable payment plan were declined. This was due to the client not offering a payment plan to cover usage and arrears.

During discussions with Sam it was identified that he had two accounts with the buy now, pay later company which were impacting his financial position and placing him in financial hardship. The client was making two payments per fortnight to this company being $80 and $120 which was a total of $200 per fortnight. This was impacting the amount of money Sam had available to make payments on utilities and impacting other areas such as food. The financial counsellor assisted Sam to make a repayment plan with the utility provider as Sam was afraid he could not access vet services in the future without buy now, pay later.

Case study 23: Buy now, pay later deals took 42.75% of the person's income

Bessie is a 45-year-old female residing in a remote region of South Australia. She is in receipt of the Disability Support Pension. Bessie has multiple complex health conditions.

Bessie is a client of the domestic violence program and was referred to the Low Income Support Program to apply for a micro credit loan to attend a tertiary medical facility in the capital city for a medical procedure. Bessie identifies with having an issue with compulsive shopping on line.

It was identified that there were multiple payments to the company that were impacting her financial position. Bessie had 42.75% of her income all going to buy now, pay later payments.

Case study 24: multiple accounts with buy now, pay later with no checks on affordability

Anna has multiple accounts with a buy now, pay later company. Her repayments total $300 per fortnight which is impacting her ability to meet payments on her electricity.

In lengthy discussion about the obtaining of these facilities Anna said that she preferred a particular buy now, pay later company as they did not do any checks and you could have as many items as you wished.

Anna had contacted the other buy now, pay later company prior to attendance to financial counselling and had arranged a variation on the payments.

The client said that the main buy now, pay later company does not allow hardship variations and the items must be paid in full in four payments.

One of the issues Anna identified was the availability of the product at local stores such as Target and Kmart. The client said that it was easy to add small amounts for items for the children e.g. $10 or $20. The client has quickly found herself in financial hardship due to the number of items purchased in this manner.

The financial counsellor has now assisted Anna with grants to pay her electricity and provided information on alternate safer loan products such as NILS.

Income and expenditure statement:

Household Expenses

Mortgage or Rent	$ 136.00
Food and Groceries	$ 240.00
Milk and Bread	$ 60.00
Child formula	$ 125.00
Fruit and Vegetables	
Pet Food	
Lunches/Take away	
Sub Total	$ 561.00

Household Services Expenses

Electricity	$ 30.00
Gas	$ 58.00
Water	$ 50.00
Telephone	$ 50.00
Mobile Phone -Internet	$ 40.00
Council Rates	$ 47.00
House Insurance	$ 45.00
Contents Insurance	
House Repairs	
Sub Total	$ 320.00

Family Expenses

Glasses/Hearing	
Dentist	
Clothes/Shoes	
School/Excursions	
Child Care/Kindy	
Hair Care/Make-up	
Birthdays/Christmas	
Pocket Money	
Ambulance Cover	
Sport	
Chemist and Medical	$ 50.00
Medical Insurance	
Cigarettes	
Lotto/Keno/Pokies	
Entertainment/Videos/Austar	
Savings	
Alcohol	
Other	
Sub Total	$ 50.00

Transport Expenses

Car Registration	$ 25.00
Insurance	
Petrol	$ 80.00
Licence/RAA	
Service/Repairs	
Public Transport/Taxi	$ 10.00
Sub Total	$ 115.00

Regular Repayments

Rentals	
Credit Cards	
Zip PAY	$ 20.00
After PAY	$ 300.00
Child Support	
Centrelink -LSA	$ 25.00
Fines	
Housing SA	
Sub Total	$ 345.00
TOTAL EXPENSES	$ 1,391.00

INCOME

Centrelink Benefit Type: Parenting Payment	$ 723.00
Family Tax A	$ 486.00
Family Tax B	
Child Support	$ 20.00
Board	
Rent Assistance	
GST	
Large Family Supplement	
Pharmacutical Allowance	
Other	
TOTAL INCOME	$ 1,229.00

TOTAL INCOME	$ 1,229.00
less TOTAL EXPENSES	$ 1,391.00
SURPLUS/DEFICIT	-$ 162.00

Gambling

Case study 25: a debt with payment services provider

Jay has a gambling addiction. He has an everyday savings account with a major bank. He has an account with a payment services provider to make payments for services. Jay made multiple bets in a row with a major gambling company. The payments were honoured and paid even though Jay did not have enough money in his account to cover the bets.

Jay now has a debt of over $100,000 to the payment services provider. It remains unclear why these payments were ever processed when there was insufficient money.

Case study 26: two payday loans and gambling

Mary is a 48-year-old single parent with a 15-year-old child. Mary went to the financial counsellor as she could not afford to pay her car rego. When the financial counsellor talked to Mary it was found she had two payday loans she was struggling to repay.

When the financial counsellor reviewed the loan documents, he found that the payday loans were completely unsuitable. A dispute was raised with both payday lenders. The first payday loan was settled with money refunded and a release from the debt. The second payday lender also agreed to refund $2000 to Mary.

The financial counsellor also talked to Mary in detail about her spending and this led to Mary admitting she had a problem with gambling and that is why she had been using payday loans.