

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Statement of Kevin Foo

File Number: ACT1 of 2019

File Title: Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code and the determination made by the ACCC on 5 December 2019

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

DEPUTY REGISTRAR

Dated: 5/05/2020 4:47 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2019

Re Application for authorisation AA1000439 lodged by the Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Flexigroup Limited [ACN 122 574 583]

Applicant

Statement of: **Kevin Foo**

Address: Level 5, 100 Market Street, Sydney NSW 2000

Occupation: Senior Manager, ASIC

Date: 5 May 2020

**Contents**

| Document number | Details | Paragraph | Page |
|-----------------|---|-----------|------|
| 1. | Statement of Kevin Foo | N/A | 1 |
| 2. | Annexure "KF-1", being a copy of ASIC Report 600 | 6 | 7 |
| 3. | Annexure "KF-2", being a copy of ASIC submission to the Senate Inquiry into Credit and financial services targeted at Australians at risk of financial hardship | 16 | 59 |
| 4. | Annexure "KF-3", being a copy of the report of the Senate Inquiry into Credit and financial services targeted at Australians at risk of financial hardship | 17 | 94 |
| 5. | Annexure "KF-4", being a copy of ASIC's submission to the ACCC in respect of the NETCC determination | 20 | 207 |
| 6. | Annexure "KF-5", being a copy of an ASIC media release regarding its intentions for regulatory work as a result of COVID-19 dated 14 April 2020 | 26 | 226 |
| 7. | Annexure "KF-6", being a copy of a table attached to the ASIC media release | 27 | 229 |

Filed on behalf of (name & role of party) Australian Securities and Investments Commission
 Prepared by (name of person/lawyer) ASIC
 Law firm (if applicable) _____
 Tel (02) 9911 5703 Fax _____
 Email James.Walker@asic.gov.au

Address for service

(include state and postcode) Level 5, 100 Market Street, Sydney NSW 2000

I, Kevin Foo, of 100 Market Street, Sydney in New South Wales say as follows:

1. I am employed by the Australian Securities and Investments Commission (**ASIC**) as a Senior Manager in ASIC's Credit, Retail Banking and Payments team (**Credit team**). I have been employed in this role since April 2016. I am authorised to make this statement for the purposes of ASIC's role as an Intervener in these proceedings.
2. I make this statement from my own knowledge or records retained by ASIC.

Credit team

3. The Credit, Retail Banking and Payments team (**Credit team**) oversees supervision of retail banking, consumer and small business credit, mortgage brokers and other credit intermediaries, and electronic payments. This includes responsibility for the regulation of responsible lending and ASIC's work to monitor and review consumer outcomes from financial services. The Credit team works with other areas of ASIC to fulfil this role, including Misconduct and Breach Reporting (which deals with complaints and breach reports to ASIC) and Financial Services Enforcement. I am one of multiple Senior Managers within the Credit team.
4. Buy Now Pay Later (**BNPL**) products are part of the Credit team's responsibilities. This includes conducting reviews of the BNPL industry as ASIC sees fit. To date, those reviews have looked at the BNPL industry as a whole, rather than by specific reference to new energy technology (**NET**).
5. I am the manager of a team of officers working on the regulation of BNPL products.

ASIC Report 600

The Report Process

6. After commencing a review in January 2018, in November 2018 ASIC published Report 600 "Review of buy now pay later arrangements" (**Report 600**). A copy of Report 600 is **Annexure "KF-1"** to this statement. My team was responsible for the drafting of Report 600.
7. The review underlying Report 600 is summarised at paragraphs 13 to 17 of Report 600, and a more detailed methodology is included at Appendix 1 to the report. The review included:
 - (a) an examination of 6 BNPL providers;
 - (b) the commission of independent consumer research, both qualitative and quantitative;
 - (c) consultation with stakeholders; and
 - (d) the review of material provided to ASIC by each BNPL provider.

8. In addition to these processes and those described in the Report, my team at ASIC under my supervision (which included lawyers, analysts and data analysts):
 - (a) analysed information and data; and
 - (b) provided relevant portions of the draft report to the BNPL providers mentioned in the report to confirm the accuracy of facts relevant to that provider.
9. Further, prior to its release, Report 600 was reviewed and approved consistent with ASIC's internal policies on release of public reports.

The Findings of the Report

10. In this statement, I do not intend to set out in detail the findings of Report 600.
11. However, the eight "headline" findings in Report 600 (set out in paragraphs 24 to 67) were:
 - (a) BNPL is a rapidly growing industry;
 - (b) the BNPL industry is diverse and evolving;
 - (c) some BNPL arrangements result in the price of goods being inflated;
 - (d) many BNPL users are relatively younger consumers;
 - (e) BNPL arrangements have influenced the spending habits of some consumers;
 - (f) over-commitment can be a risk for some consumers;
 - (g) BNPL providers take some steps to act fairly with consumers, but can do more; and
 - (h) BNPL providers included potentially unfair terms in their contracts with consumers.
12. In terms of regulatory issues, Report 600 noted as a "first step" that ASIC considered its proposed product intervention power should be extended to all credit facilities regulated under the ASIC Act, which includes BNPL facilities. Subsequently, the product intervention power was enacted to cover BNPL facilities.
13. Further, Report 600 stated that "as a further step, it may be that buy now pay later providers should be required to comply with the National Credit Act. ASIC has not yet formed a view that this is necessary. Our ongoing monitoring of this industry...will help us to assess whether we should advise the Government to consider further law reform".
14. By this statement, ASIC was not seeking to give any impression that compliance with the Credit Act was *unnecessary*. Rather, ASIC was simply noting that at that stage of its review of the industry, it was *yet to form a view one way or the other* about the necessity of such a compliance step.

Senate Inquiry into Credit and Financial Services

15. On 17 October 2018, the Senate referred an inquiry into the Credit and financial services targeted at Australians at risk of financial hardship (**the Inquiry**) to the Senate Economics References Committee (**the Committee**) for inquiry and report.
16. In November 2018 ASIC appeared and provided Submission 21 to the Inquiry (**Inquiry Submission**). A copy of ASIC's submission is **Annexure "KF-2"** to this statement. The portion of the Inquiry Submission relating to BNPL (Section C titled "Buy now, pay later' arrangements") was drafted by members of my team under my supervision, largely using the information and data gathered for the purpose of preparing Report 600, noting that Report 600 had not yet been publicly released at the time of the Inquiry Submission but its release was imminent.
17. The report of the Inquiry (**Inquiry Report**) was released on 22 February 2019. A copy of the Inquiry Report is **Annexure "KF-3"** to this statement.
18. The Inquiry Report included the following recommendations in relation to BNPL:

Recommendation 9

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

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

Recommendation 10

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

19. ASIC has not yet responded to the Inquiry Report, which I discuss in further detail in the "Follow Up Report" section below.

ASIC's submission to the ACCC

20. On 11 October 2019, ASIC provided a confidential submission (**ASIC-ACCC Submission**) to the Australian Competition and Consumer Commission (**ACCC**) in relation to the application for authorisation of the New Energy Tech Consumer Code, which is the subject of this proceeding. A copy of ASIC's submission to the ACCC is **Annexure "KF-4"** to this statement.
21. The ASIC-ACCC Submission was drafted by members of my team under my supervision. The ASIC-ACCC Submission was prepared based on the information and data gathered for the purposes of Report 600, research undertaken for the purposes of the ASIC-ACCC Submission and requests for information issued for the purposes of the ASIC-ACCC Submission.
22. Again, I do not intend to set out the matters raised in the ASIC-ACCC Submission, save to note that ASIC remains of the view that the alternative wording it proposed in Annexure 1 to the ASIC-ACCC submission is an appropriate form of regulation.
23. ASIC also considers that the form of regulation ultimately contained in the ACCC's Determination (clause 25 of the Consumer Code) sufficiently reflects the intention of the ASIC-ACCC Submission, and therefore supports it.

Follow Up Report to Report 600

24. Since mid-2019, my team under my supervision has been working on a follow up to Report 600 intended to be a public report (**Follow Up Report**). The Follow Up Report is also intended to be a response to the Inquiry Report.
25. As part of work to prepare the Follow Up Report, my team under my supervision has undertaken the following:
 - (a) in the second half of 2019, we sent an information request to six BNPL providers, which sought qualitative and quantitative data over the three-year period from April 2016 to June 2019;
 - (b) in the same period, we also sent an information request to four major financial institutions which sought quantitative data on BNPL repayments made using banking products;
 - (c) consultation with a range of other stakeholders; and
 - (d) quantitative and qualitative consumer research conducted by an external firms on ASIC's behalf.

26. On 14 April 2020, ASIC issued a media release regarding its intentions for regulatory work as a result of COVID-19 (**COVID-19 Media Release**). A copy of this media release is **Annexure “KF-5”** to this statement.
27. The COVID-19 Media Release attached a table setting out specifics of various projects. A copy of this table is **Annexure “KF-6”** to this statement. In relation to BNPL, the table stated:
- This work will continue but ASIC is deferring the finalisation and release of the follow-up report until further notice. ASIC will be engaging with the sector on their responses to COVID-19.
- ASIC will also be engaging with consumer representatives and closely monitoring the use of small amount and alternative credit products, especially by vulnerable consumers.
28. The Follow Up Report is currently in draft form only. This and any subsequent drafts are subject to revision and to various internal approval processes within ASIC before the Follow Up Report will be finalised and approved for publication. Approval of the Follow Up Report is a power exercised exclusively by the Commission (by which I mean ASIC’s seven Commissioners) and I am not authorised to say anything further about the content or conclusions of the Follow Up Report.

Dated: 5 May 2020



Kevin Foo
Senior Manager
Australian Securities and Investments Commission

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2019

Re: Application for authorisation AA1000439 lodged by the Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Flexigroup Limited [ACN 122 574 583]

Applicant

ANNEXURE CERTIFICATE

This is the annexure marked “**KF-1**” annexed to the statement of **Kevin Foo** dated 5 May 2020.

Annexure “KF-1”

ASIC Report 600



ASIC
Australian Securities &
Investments Commission

REPORT 600

Review of buy now pay later arrangements

November 2018

About this report

This report summarises the findings of ASIC's review of 'buy now pay later' arrangements. These arrangements allow consumers to buy and receive goods and services immediately but pay for that purchase over time.

The aim of our review was to develop a broad understanding of this industry and to identify potential risks for consumers.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

| | |
|---|-----------|
| Executive summary | 4 |
| Background to our review | 5 |
| Summary of findings | 9 |
| Next steps for ASIC | 15 |
| A The buy now pay later industry | 17 |
| Size and volume of the industry | 17 |
| Application approvals..... | 21 |
| Comparison with other types of credit | 21 |
| Interaction with merchants..... | 23 |
| B Consumer demographics and behaviour | 25 |
| Which consumers use arrangements | 25 |
| How consumers use arrangements..... | 27 |
| Why consumers use arrangements..... | 27 |
| How arrangements influence spending behaviour | 30 |
| How consumers make repayments | 31 |
| C The risk of over-commitment | 33 |
| What is over-commitment? | 33 |
| How can these arrangements contribute to over-commitment? | 34 |
| Are consumers having difficulty making repayments? | 34 |
| Do providers assess the financial situation of consumers? | 35 |
| D Conduct of providers | 37 |
| Interacting with consumers..... | 37 |
| Unfair contract terms | 39 |
| Appendix 1: Methodology | 40 |
| Selection of review participants | 40 |
| Information requests | 40 |
| Comparison with credit cards | 41 |
| Stakeholder consultation | 41 |
| Consumer research | 42 |
| Appendix 2: Accessible versions of figures | 44 |
| Key terms | 48 |
| Related information | 50 |

Executive summary

- 1 In January 2018, ASIC commenced a review of ‘buy now pay later’ arrangements. These arrangements allow consumers to buy and receive goods and services immediately but pay for that purchase over time.
- 2 The market for these arrangements is diverse, evolving, and growing rapidly. The number of consumers who used at least one buy now pay later arrangement has increased about five-fold from 400,000 consumers during the 2015–16 financial year to over 2 million consumers during the 2017–18 financial year. This represents about 10% of the adult population in Australia.
- 3 Many buy now pay later users appear to be regular users of these arrangements. More than four in five consumers (86%) who had used a buy now pay later arrangement within the last 12 months plan to do so again. Most users also believe that these arrangements allow them to buy more expensive items, spend more than they normally would, or make more spontaneous purchases.
- 4 Buy now pay later arrangements can create some risks for consumers if they take on debt that they may have difficulty paying back. To make a scheduled repayment on a buy now pay later arrangement, some consumers delayed paying bills, became overdrawn, or borrowed money from family, friends or another loan provider.
- 5 Many consumers who have recently used a buy now pay later arrangement are also younger consumers and students who describe themselves as part-time employed or unemployed.
- 6 Buy now pay later providers take some steps to help consumers stay in control and make informed decisions about their purchases and repayments. For example, 75% of users keep track of their repayment obligations through notifications, online accounts and mobile applications from their buy now pay later provider. While we identified instances where providers could have done more, each provider demonstrated a readiness to work with ASIC by improving their practices in response to our recommendations.
- 7 The consumer protections under the *National Consumer Credit Protection Act 2009* (National Credit Act) do not apply to buy now pay later arrangements. This means that buy now pay later providers do not need to hold an Australian credit licence (credit licence) to provide these arrangements, nor comply with the responsible lending obligations.
- 8 Only one out of six providers in our review examined the income and existing debts held by consumers before providing their services. We also received reports of instances where consumers were allowed to use a buy now pay later arrangement despite having limited or no income and substantial existing debt.

- 9 Currently, ASIC has limited jurisdiction to regulate conduct and address lending risks to consumers when they use a buy now pay later arrangement.
- 10 We consider that ASIC’s proposed product intervention power should apply to all credit facilities regulated under the *Australian Securities and Investments Commission Act 2001* (ASIC Act), which includes buy now pay later arrangements. This would allow us to act quickly and effectively to address the causes of problems if we identify a significant detriment to consumers that cannot be resolved through other action.
- 11 In using the product intervention power, we would look for interventions that represent the most targeted and appropriate regulatory solutions to address identified consumer detriment.

Note: See ASIC, [Submission to the design and distribution obligations and product intervention power: Revised exposure draft legislation](#) (August 2018) (PDF, 518 KB).

Background to our review

- 12 ASIC’s review of the buy now pay later industry is consistent with our mandate to promote confident and informed consumers in credit and financial services. It is also consistent with our mission to drive good consumer outcomes and to promote the strong and innovative development of the financial system.

Note: For our new regulatory mission, see [ASIC’s Corporate Plan 2018–22](#).

- 13 The aim of our review was to develop a broad understanding of this industry and to identify potential risks for consumers.
- 14 We examined six buy now pay later providers: see Table 1.

Table 1: Arrangements covered by our review

| Arrangement | Provider |
|-----------------|--------------------------------------|
| Afterpay | Afterpay Pty Ltd (Afterpay) |
| zipPay | zipMoney Payments Pty Ltd (zipMoney) |
| Certegy Ezi-Pay | Certegy Ezi-Pay Pty Ltd (Certegy) |
| Oxipay | Oxipay Pty Ltd (Oxipay) |
| BrightePay | Brighte Capital Pty Ltd (Brighte) |
| Openpay | Openpay Pty Ltd (Openpay) |

15 We commissioned independent consumer research which included a qualitative online discussion board and a quantitative survey of 600 randomly selected consumers who had used a buy now pay later arrangement within 12 months of completing the survey.

16 We also consulted a range of stakeholders including other regulatory agencies, consumer advocates, the two ASIC-approved external dispute resolution (EDR) schemes at the time, and industry associations.

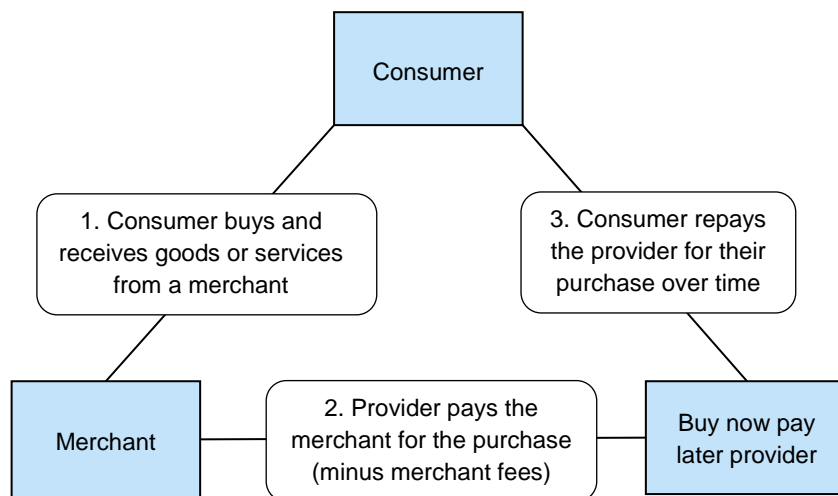
17 We reviewed information provided to us by each buy now pay later provider. This included policies and procedures, responses to a qualitative survey (survey) and over 650 aggregated fields of data (data) from each provider.

Note: For a full methodology, see Appendix 1.

What is a buy now pay later arrangement?

18 A buy now pay later arrangement usually involves a contract between the consumer and the buy now pay later provider, a contract between the consumer and the merchant, and a contract between the provider and the merchant: see Figure 1.

Figure 1: How a buy now pay later arrangement works



Note: This figure illustrates that when a consumer uses a buy now pay later arrangement to buy goods or services, the merchant is paid by the provider of the arrangement. The provider then collects repayments from the consumer to recover the upfront payment over time. Consumers can receive the goods or services immediately, well before the purchase price has been fully repaid.

19 Each provider in our review charges merchants when consumers use a buy now pay later arrangement. Some providers also charge consumers for these arrangements. Arrangements are available in-store, online, and sometimes through door-to-door sales.

- 20 These arrangements can be cheaper for consumers than some other types of credit because consumers are generally not charged interest and there are limits on the fees that buy now pay later providers can charge. However, consumers can incur missed payment fees.
- 21 The scope of our review focused on buy now pay later arrangements that are not regulated under the National Credit Act:
- (a) Afterpay and Oxipay do not charge consumers for providing the credit, so the arrangement is not regarded as ‘credit’ under the National Credit Code (Sch 1 of the National Credit Act).
 - (b) An arrangement would not be regulated under the National Credit Act if the credit is for a term of 62 days or less, fees and charges do not exceed 5% of the amount of credit, and interest charges do not exceed an amount equal to 24% per annum. None of the buy now pay later providers in our review offer these arrangements.

Note: See s6(1), National Credit Code (short term credit exemption).
 - (c) The remaining four buy now pay later providers offer continuing credit contracts not regulated under the National Credit Act because they only include charges for credit that amount to an upfront fee (e.g. an establishment fee) or a periodic fee (e.g. an account-keeping fee) that is fixed, does not vary according to the amount of credit that is provided, and is less than specified amounts.

Note: See s6(5), National Credit Code (continuing credit contract exemption), National Consumer Credit Protection Regulations 2010.
- 22 Other unregulated ‘no interest’ payment arrangements exist, such as arrangements which allow consumers to defer payments on utility bills and insurance excesses. These were beyond the scope of this review.

The industry at a glance

- 23 Table 2 summarises the different features of the buy now pay later providers in our review.

Table 2: Features of buy now pay later providers

| Feature | Description |
|----------------|---|
| Start date | Certegy started offering buy now pay later arrangements in 2000 and Openpay started in 2013. The remaining four providers started from April 2015 or later. |
| Listing on ASX | Afterpay, zipMoney, Certegy and Oxipay are part of larger ASX-listed groups. |
| Licensing | Afterpay holds a credit licence but does not provide any products regulated under the National Credit Act, while zipMoney holds a credit licence to provide a different product regulated under the National Credit Act. Certegy and Oxipay are subsidiaries of FlexiGroup, which holds a credit licence and also provides regulated credit products. |

| Feature | Description |
|---|--|
| Application of the National Credit Act | <p>zipMoney, Certegy, Openpay and Brighte offer continuing credit contracts that are exempt from the National Credit Act under s6(5) of the National Credit Code.</p> <p>Afterpay and Oxipay provide arrangements that are exempt because they do not charge the consumer for providing the credit (missed payment fees do not affect this exemption).</p> <p>Note: None of the arrangements fall under the short term credit exemption.</p> |
| Loan amount | <p>Afterpay, zipMoney and Oxipay offer amounts up to \$1,000–2,000, while Openpay offers amounts up to \$17,500. Brighte and Certegy offer amounts up to \$30,000.</p> |
| Loan terms (including early exit) | <p>Afterpay and Oxipay offer weekly or fortnightly repayments over 6–8 weeks.</p> <p>zipMoney has no fixed repayment term but requires a minimum monthly repayment.</p> <p>Openpay offers three repayment options over 2–36 months.</p> <p>Certegy and Brighte offer continuing credit contracts with repayments over 2–60 months.</p> <p>All six providers allow consumers to repay early.</p> |
| Fee structures | <p>Each provider has a different fee structure for consumers. Fees can include:</p> <ul style="list-style-type: none"> • establishment and redraw fees; • regular account keeping or administration fees; • payment processing fees; and • missed payment fees and/or account closure fees. <p>Afterpay and Oxipay do not charge consumers any fees if they pay on time.</p> <p>To rely on the continuing credit contract exemption, zipMoney, Openpay, Certegy and Brighte limit fees to up to \$200 in the first year and \$125 in subsequent years (regardless of the amount of credit).</p> <p>zipMoney does not charge any fees if the closing balance is paid in full within one month.</p> <p>Missed payment fees range from \$4.99 to \$15. None of the providers charge consumers a fee for paying off their debt early.</p> <p>All providers charge merchants a fee for each transaction that usually includes, but is not limited to, a percentage of the purchase price for the goods or services.</p> |
| Information used to assess applications | <p>Brighte performs a credit assessment that considers a consumer's financial position, including their income and expenses.</p> <p>Afterpay, Openpay, Certegy and Oxipay assess applications by considering the consumer's previous repayment history with the provider. For example, consumers could start with a lower account limit with some providers and qualify for a higher account limit by making repayments on time.</p> <p>Openpay, zipMoney, Certegy and Oxipay consider demographic information about the consumer such as their age, location and details of the purchase.</p> <p>Openpay, zipMoney and Brighte consider negative credit information from credit reports.</p> |
| Financial hardship | <p>All providers have a policy for helping consumers having difficulty making repayments.</p> |
| EDR membership and dispute resolution | <p>All providers are members of the Australian Financial Complaints Authority (AFCA), which is an ASIC-approved EDR scheme. Each provider has procedures for addressing consumer complaints, but these procedures vary between providers.</p> |
| Overseas operations | <p>Afterpay, Openpay, Certegy, Oxipay and zipMoney operate businesses in New Zealand. Afterpay recently started operating in the United States and the United Kingdom.</p> |

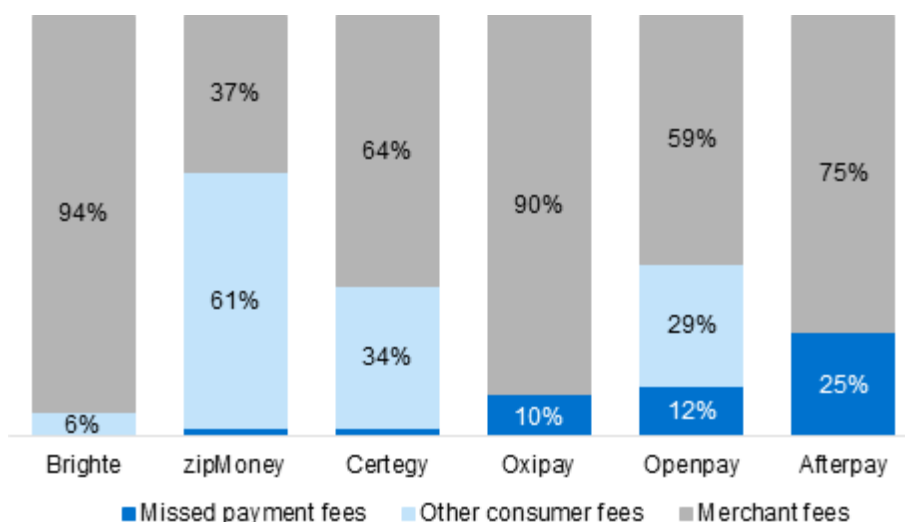
Summary of findings

Finding 1: Buy now pay later is a rapidly growing industry

- 24 Although buy now pay later arrangements from Certegy have been available to consumers in Australia for nearly two decades, the recent entry of new buy now pay later providers has led to substantial growth in this industry.
- 25 The number of buy now pay later transactions in each month has grown from over 50,000 transactions in April 2016 to 1.9 million transactions in June 2018. The total balance of outstanding debt from these arrangements grew from \$476 million in April 2016 to over \$903 million by June 2018.
- 26 The number of merchants that offer buy now pay later arrangements has also grown. By 30 June 2018, 50 times more merchants were partnered with zipMoney than in June 2016, and 45 times more merchants were partnered with Afterpay.
- 27 The total revenue of the six buy now pay later providers in our review increased from \$32 million during the quarter that ended on 30 June 2016 to \$78 million during the quarter that ended on 30 June 2018.

Finding 2: The buy now pay later industry is diverse and evolving

- 28 The diverse range of buy now pay later arrangements that are available to consumers is reflected in Table 2.
- 29 Consumers can use zipPay, Oxipay and Afterpay for up to \$1,000, \$1,400 or \$2,000 of credit respectively, without being charged a fee if they pay on time or, for zipPay, if they repay their outstanding balance within the balance period. In contrast, Openpay provides consumers credit limits up to \$17,500, and Certegy and Brighte provide up to \$30,000.
- 30 Buy now pay later arrangements are not limited to low-value purchases. For example, these arrangements can be used to finance solar power products, health services, travel, and electronics. Buy now pay later arrangements are also available for daily necessities such as groceries and at 'everyday' retailers such as Big W, Target, Harris Scarfe and Kmart.
- 31 The diversity of business models in this industry is also reflected in the share of revenue that each provider earned from merchant fees and consumer fees (including missed payment fees): see Figure 2.

Figure 2: Revenue earned by buy now pay later providers (FY 2017–18)

Note: For the underlying data shown in this figure, see Table 4 in Appendix 2. Percentages are rounded to the closest 1%.

32 All six buy now pay later providers in our review allow consumers to use an arrangement online or in-store, and Certegy and Brighte also allow consumers to make some purchases over the phone. Our data indicates that online purchases are more common for some but not all buy now pay later providers.

33 We note that other credit arrangements that are not regulated under the National Credit Act have also emerged, such as arrangements that allow consumers to defer payment on their utility bills or insurance excesses. These credit arrangements were not included in our review.

Finding 3: Some buy now pay later arrangements result in the price of goods being inflated

34 Each provider in our review contractually prevents merchants from charging consumers higher prices for using a buy now pay later arrangement.

35 For lower priced goods (typically under \$1,000–2,000), and for goods sold at merchants that do not negotiate prices (such as online stores or department stores), consumers do not currently pay more for using a buy now pay later arrangement compared to other payment methods such as cash, a debit card or credit card. Given existing surcharges for some credit card transactions, merchants may in the future seek to introduce surcharges for buy now pay later arrangements. The implications of this would need to be considered.

36 However, we have received anecdotal evidence that some merchants may have charged consumers significantly higher prices for using a buy now pay later arrangement, including for:

- (a) higher-value purchases (over \$2,000);
- (b) where the price of goods is less transparent and ‘negotiable’ (e.g. solar power products); or
- (c) where consumers are acquiring services.

37 These higher prices can be misleading to consumers if they are not disclosed, because they can obscure the actual cost of using a buy now pay later arrangement. This can make it difficult for consumers to make an informed decision about the costs of the arrangement.

38 ASIC is considering the legal position of scenarios where a merchant inflates the cost of the underlying goods if a consumer uses a buy now pay later arrangement. We have taken action against credit providers for attempting to avoid the National Credit Code by creating artificial business models and for engaging in credit activities without a licence.

Note: For example, see [Media Release \(16-027MR\)](#) *Payday lender penalised for overcharging consumers* (9 February 2016), [Media Release \(15-278MR\)](#) *Federal Court finds Fast Access Finance breaches National Credit Act* (1 October 2015), [Media Release \(13-090MR\)](#) *ASIC accepts enforceable undertaking from Solar Rental Company* (29 April 2013).

Finding 4: Many buy now pay later users are relatively younger consumers

39 Our data analysis indicates that 60% of the buy now pay later users in our review were aged between 18 and 34 years old. Further analysis of this data shows that younger consumers are over-represented in the population of buy now pay later users, compared to the overall Australian population and the population of credit card holders in Australia.

40 In our consumer research, more than two in five buy now pay later users (44%) had an annual income of less than \$40,000. Within this group, almost 40% described themselves as either students or in part-time work.

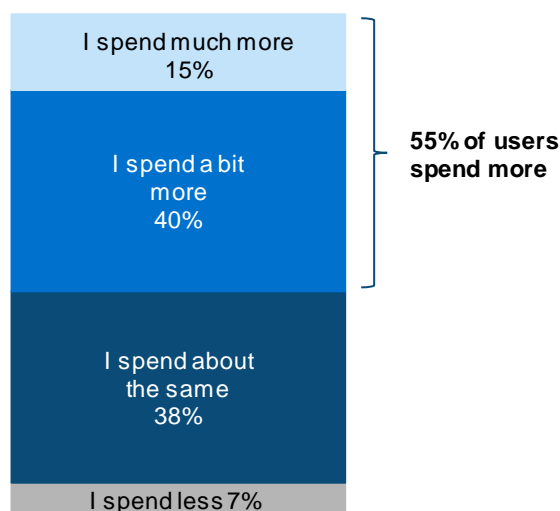
41 We are doing further research to understand how the emergence of buy now pay later arrangements is influencing the choices that consumers make in relation to traditional credit products, such as credit cards.

Finding 5: Buy now pay later arrangements have influenced the spending habits of some consumers

42 Our consumer research found that users saw buy now pay later arrangements as easy to use, convenient, and ‘less risky’ than other payment options. More than four in five users (86%) planned to use an arrangement again.

43 Most users (90%) believed that buy now pay later arrangements helped them ‘manage their spending by spreading payments over time’.

44 But consumers also believed these arrangements allowed them to buy more expensive items that they otherwise could not afford in one payment (81%), spend more than they normally would (64%), and make more spontaneous purchases (70%). More than half (55%) of buy now pay later users believed that they were spending more on some items than before they started using these arrangements: see Figure 3.

Figure 3: Effect of buy now pay later arrangements on spending behaviour

Note: For the underlying data shown in this figure, see Table 5 in Appendix 2.

45 The design and sales process of buy now pay later arrangements can also influence how consumers make purchasing decisions. Our consumer research identified several behavioural factors in the buy now pay later process—such as over-confidence, how the price of a purchase is framed, and the speed and ease of the sales process—which can influence consumers to make a purchase without careful consideration of the cost.

46 Using a credit card to make payments on a buy now pay later arrangement can expose consumers to potential interest charges on a purchase. Our consumer research showed that 23% of users made repayments on their arrangement with a credit card.

Finding 6: Over-commitment can be a risk for some consumers

47 Our survey, consumer research and stakeholder consultation identified a real risk that some buy now pay later arrangements can increase the amount of debt held by consumers and contribute to financial over-commitment.

48 Over-commitment can cause a consumer to miss repayments on a buy now pay later arrangement. It can also contribute to other difficulties—even when a consumer has not missed repayments—such as difficulty affording essential goods and services (e.g. utilities or groceries) and financial stress.

49 Our consumer research found that one in six buy now pay later users (16%) believed they had experienced at least one type of negative impact due to a buy now pay later arrangement. This included becoming overdrawn, delaying bill payments, and borrowing additional money from family, friends or another loan provider.

50 Less than 10% of buy now pay later users with five providers were charged missed payment fees more than once on the same transaction in each quarter. This compares with 19% of credit card holders in Australia who had problematic debt.

Note: See [Report 580](#) *Credit card lending in Australia* (REP 580). This comparison is subject to qualifications: see paragraphs 184–185.

51 The responsible lending obligations in the National Credit Act do not apply to buy now pay later arrangements. This means that when providers decide whether to approve an application for an arrangement, they are not required to inquire into the consumer's financial position, verify the consumer's financial position or make an assessment as to whether the consumer would be able to repay the credit without substantial hardship.

52 Each provider takes some steps to refuse some credit applications. For example, if a consumer misses a scheduled repayment, five of the six buy now pay later providers in our review suspend that consumer's ability to make additional purchases until they have remedied the missed payment.

53 This can help reduce the risk of a consumer taking on additional debt when they may already be having trouble making repayments. However, consumers who have missed payments to one provider might access another provider. This is a risk we will monitor.

54 Our consumer research found that one in three (31%) users believed that their buy now pay later provider checked to make sure consumers would be able to meet the repayment terms. But only one of the six providers in our review actually considers the income and existing debts of consumers when assessing an application.

55 Our stakeholder consultation also highlighted instances where consumers were allowed to use a buy now pay later arrangement despite having limited or no income and substantial existing debt.

56 The case studies in this report have been provided by the Consumer Action Law Centre, which operates the National Debt Helpline. They are presented as examples and they are not intended to be representative of the broader consumer experience.

Case study 1: Debts on top of further debts

Vicki was in her early 20s and a mother to three preschool-aged children. She was unemployed but received Centrelink payments.

Vicki had multiple payday loan debts totalling \$4,000 and a \$9,000 car loan. Vicki also had a \$1,000 debt to Certegy Ezi-Pay that had been referred to a debt collector and several telecommunications and utility debts.

Vicki explained that she then incurred a \$740 debt to Afterpay to buy goods at a butcher and several clothing stores.

Finding 7: Buy now pay later providers take some steps to act fairly with consumers, but can do more

- 57 We identified some measures taken by buy now pay later providers to help consumers stay in control and make informed decisions about their purchases and repayments.
- 58 For example, some providers send consumers updates about upcoming repayments, and some providers also present prospective repayment terms to consumers in a way that is straightforward and written in plain English. Consumers can also keep track of their repayment deadlines through online accounts and mobile applications made available by the provider.
- 59 All buy now pay later providers have a detailed written policy for responding to consumer complaints and to requests for hardship assistance.
- 60 But we also identified instances where buy now pay later providers could have done more. For example, some of the providers in our review did not tell consumers how they could complain or ask for help with their repayments.
- 61 We consider that buy now pay later providers should ensure that:
- (a) consumers adequately understand the terms of their arrangement;
 - (b) a complaints process is visible and accessible for consumers;
 - (c) consumers understand that they can request financial hardship assistance from their provider; and
 - (d) merchants act consistently with guidelines supplied by the provider which limit how these arrangements may be promoted and provided to consumers.
- 62 Each provider in our review demonstrated a readiness to work with ASIC to improve how they can act fairly with consumers. After feedback from ASIC, all six providers began a review of their practices.
- 63 Some providers have already implemented several improvements. For example:
- (a) two providers became members of an EDR scheme;
 - (b) one provider made information about their complaints and hardship processes more accessible by placing it on their website; and
 - (c) one provider now refers consumers to a financial counselling service if they tell the provider they cannot meet repayment obligations.

Finding 8: Buy now pay later providers included potentially unfair terms in their contracts with consumers

- 64 Buy now pay later providers are prohibited from including terms in their standard form contracts with consumers that are ‘unfair’.

Note: See Div 2 of Pt 2 Subdiv BA of the ASIC Act.

- 65 In our view, each buy now pay later provider in our review included some terms in their standard contracts that are potentially unfair to consumers. This includes terms that:
- (a) gave the buy now pay later provider a very broad unilateral discretion to vary the contract;
 - (b) provided a very broad range of circumstances in which a consumer will be regarded to be in ‘default’ on their arrangement;
 - (c) limited and excluded the liability of provider for goods or services supplied by the merchant;
 - (d) held the consumer liable for unauthorised transactions, even when the provider knows or suspects the transaction may be unauthorised; and
 - (e) very broadly indemnified the provider against losses, costs, liabilities and expenses.
- 66 We have raised our concerns with each provider in our review to highlight terms in their consumer contracts that are potentially unfair, and we will continue to keep all regulatory options open to address these concerns. Each provider is reviewing their contracts to amend or remove unfair terms.
- 67 All providers must ensure that their standard form contracts do not contain contract terms that are potentially unfair.

Next steps for ASIC

The regulatory framework

- 68 The National Credit Act does not apply to buy now pay later arrangements. In particular, buy now pay later providers do not need to comply with the responsible lending obligations in the National Credit Act, which prohibit credit licensees from providing credit that would be unsuitable for the consumer.

Note: See Pt 3.2 of the National Credit Act.

- 69 Because these arrangements are regarded as ‘credit facilities’ under the ASIC Act, ASIC has some jurisdiction over these arrangements. For example, we are responsible for administering laws which prohibit buy now pay later providers from engaging in misleading, deceptive, or unconscionable conduct.

Note: See Div 2 of Pt 2 of the ASIC Act.

- 70 As a first step, we consider that ASIC’s proposed product intervention power should be extended to all credit facilities regulated under the ASIC Act. This would allow us to act quickly and effectively to address the causes of problems if we identify a significant detriment to consumers that cannot be resolved through voluntary action.

71 In using the product intervention power, we would look for interventions that represent the most targeted and appropriate regulatory solutions to address identified consumer detriment.

Note: See ASIC, [Submission to the design and distribution obligations and product intervention power: Revised exposure draft legislation](#) (August 2018).

72 As a further step, it may be that buy now pay later providers should be required to comply with the National Credit Act. ASIC has not yet formed a view that this is necessary. Our ongoing monitoring of this industry (see paragraphs 73–79) will help us to assess whether we should advise the Government to consider further law reform.

The potential harms we will monitor

73 The growth of the buy now pay later industry means that it will remain an area of ongoing focus for ASIC.

74 Specifically, we are examining situations where consumers may be charged more by merchants for using buy now pay later arrangements, and we are considering our regulatory options.

75 More broadly, there are already signs that some consumers are struggling with taking on too much debt through these arrangements. Some buy now pay later providers are mitigating the risk of over-commitment by:

- (a) capping or limiting the missed payment fees that can be charged; and
- (b) preventing consumers from making another purchase using an arrangement if they have not remedied a missed payment for an existing purchase.

76 We consider these to be important protections and safeguards, particularly where buy now pay later providers are otherwise not required to comply with the responsible lending obligations in the National Credit Act.

77 Whether these protections are adequate, and whether additional safeguards are required, remains an open question. For example, a consumer who has missed payments with one buy now pay later provider can still access credit with another provider. We will actively monitor this potential risk.

78 More generally, we will:

- (a) collect data on a recurrent basis to monitor risks;
- (b) continue to give consumers information about these arrangements on our MoneySmart website and through social media; and
- (c) continue to review changes made by buy now pay later providers, including to remove potentially unfair contract terms.

79 Where we identify evidence of serious misconduct or poor consumer outcomes, we will consider regulatory action under the ASIC Act and further recommendations for law reform.

A The buy now pay later industry

Key points

Our review highlights a market that has grown rapidly in two years.

The population and demographic of buy now pay later users in Australia is still smaller and younger than the credit card market in Australia.

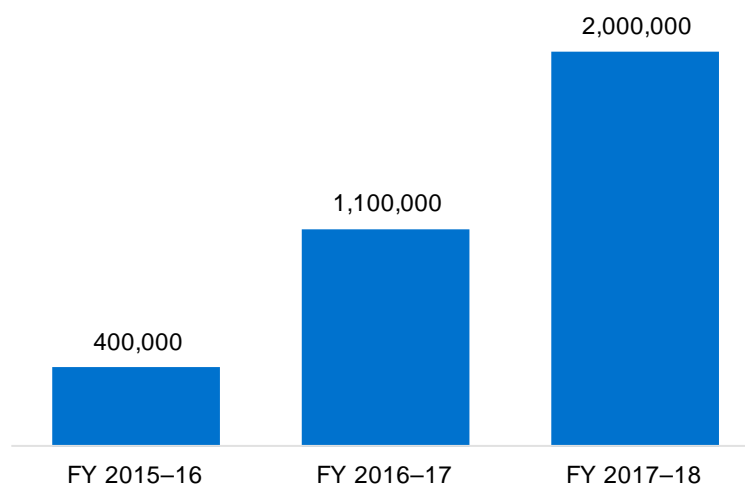
While the total value of all transactions in each month has risen, smaller and more frequent transactions have become more common.

Size and volume of the industry

Number of active customers

80 Based on our data, the number of consumers who used at least one buy now pay later arrangement from a provider in our review within the last 12 months increased from an estimated 400,000 consumers in the 2015–16 financial year to over 2 million consumers in the 2017–18 financial year: see Figure 4.

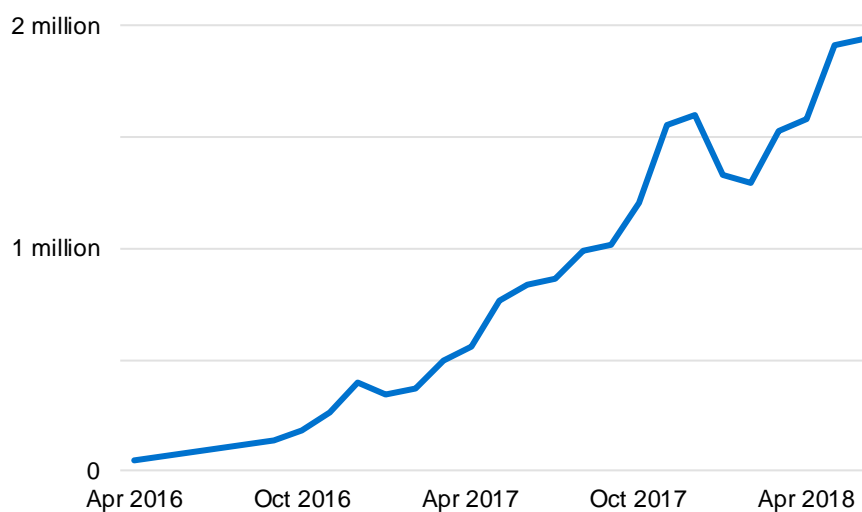
Figure 4: Estimated number of active buy now pay later users



Note: For the underlying data shown in this figure, see Table 6 in Appendix 2. This estimate is based on a sum of the total number of consumers with each buy now pay later provider. Consumers who had arrangements with two or more providers are counted more than once.

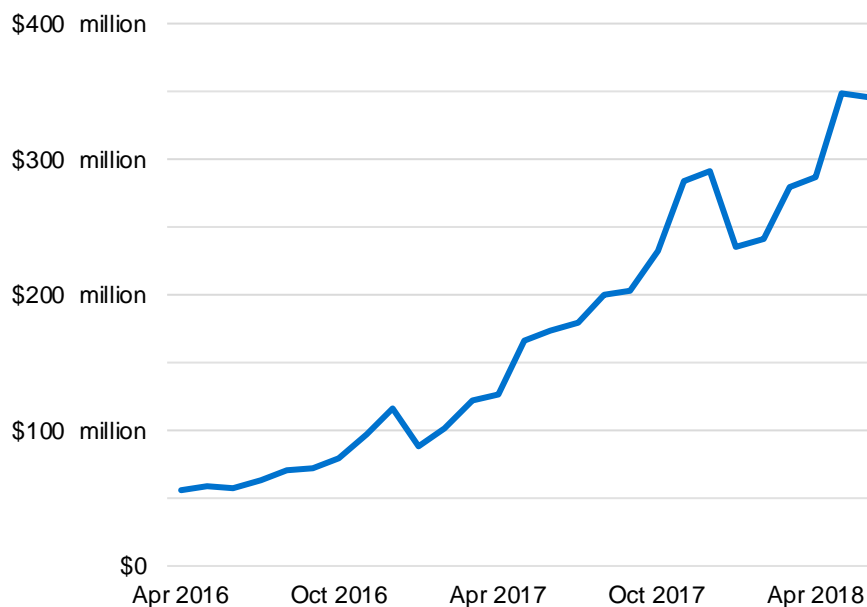
Transaction volume

81 The number of transactions in each month rose from 51,000 in April 2016 to 1.9 million in June 2018. Our data highlights seasonal trends involving a temporary rise and subsequent fall in the number of transactions at the end of each year: see Figure 5.

Figure 5: Number of transactions (April 2016–June 2018)

Note: For a description of the underlying trends shown in this figure, see paragraph 82.

82 The total value of all transactions in each month rose from \$56 million in April 2016 to \$346 million in June 2018: see Figure 6.

Figure 6: Monthly transaction value

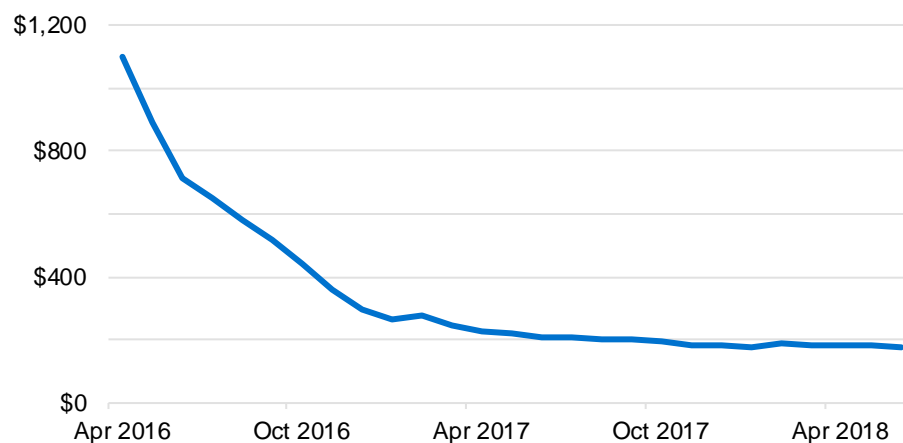
Note: For a description of the underlying trends shown in this figure, see paragraph 83.

83 From April 2016 to 30 June 2018, outstanding balances rose from \$476 million to \$903 million. Outstanding balances have increased less than the total value of all transactions, due to the substantial growth in the volume of buy now pay later arrangements with shorter repayment schedules.

Average transaction value

84 Smaller and more frequent transactions have become more common. The average transaction value for the buy now pay later arrangements in our review fell from \$1,098 in April 2016 to \$178 by June 2018: see Figure 7.

Figure 7: Implied average transaction value

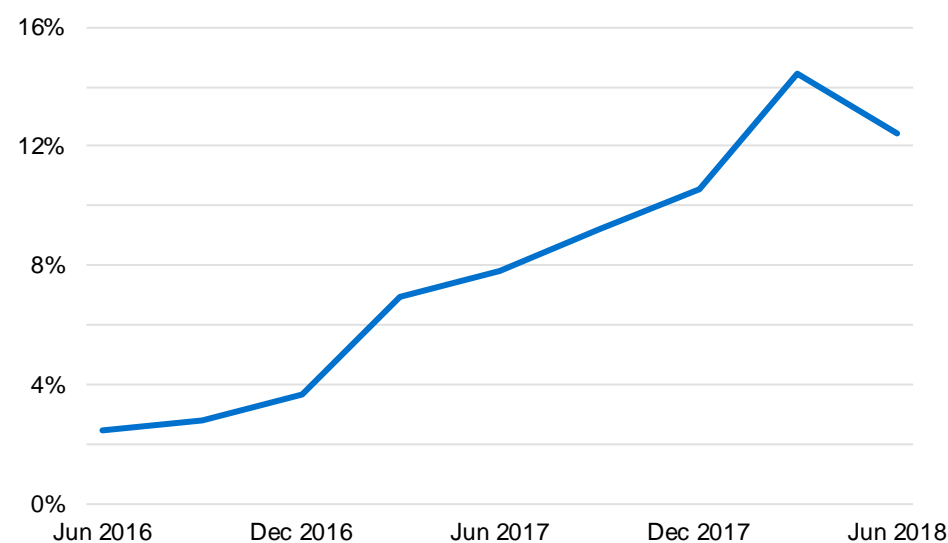


Note: For a description of the underlying trends shown in this figure, see paragraph 84.

Revenue

85 The total revenue earned by the six providers in our review rose from \$32 million in the quarter ended 30 June 2016 to \$78 million in the quarter ended 30 June 2018. While the percentage of revenue from merchant fees remained stable, the percentage of revenue from missed payment fees rose from just 2% of total revenue in the quarter ended 30 June 2016 to a high of 14% in the quarter ended 31 March 2018 before dropping back to 12% in the quarter ended 30 June 2018: see Figure 8.

Figure 8: Missed payment fees as a percentage of total revenue



Note: For a description of the underlying trends shown in this figure, see paragraph 85. Our data highlights seasonal trends involving a temporary rise and subsequent fall in the number of transactions at the end of each year.

- 86 Part of this growing revenue in missed payment fees is attributable to:
- (a) the entry and growing popularity of buy now pay later providers who charge multiple missed payment fees;
 - (b) the increase in lower-value purchases, which attract merchant fees that are smaller relative to the amount of a fixed missed payment fee; and/or
 - (c) the recent entry of many first-time users, who may be less likely to miss a payment when they start using these arrangements for the first time but become more likely to miss one or more payments over time.

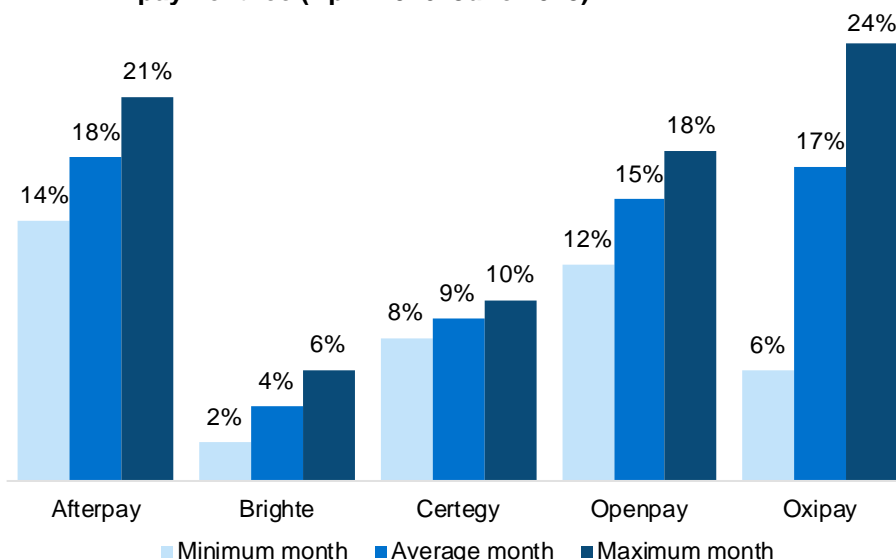
87 Overall, the percentage of buy now pay later transactions that incurred a missed payment fee remained relatively stable at between 8% and 14% of transactions from June 2016 to June 2018: see Figure 9 and Figure 10.

Figure 9: Percentage of transactions that incurred a missed payment fee



Note: For a description of the underlying trends shown in this figure, see paragraph 87. This data covers five providers as zipPay arrangements do not incur missed payment fees at a transaction level.

Figure 10: Percentage of active users who were charged a missed payment fee (April 2016–June 2018)



Note: For the underlying data shown in this figure, see Table 7 in Appendix 2. This data covers five providers as zipPay arrangements do not incur missed payment fees at a transaction level.

- 88 Providers that offer smaller arrangements had a relatively higher proportion of users who had been charged a missed payment fee.

Application approvals

- 89 Our survey found that some applications can be declined for reasons that may not be immediately apparent to consumers, including:
- (a) a poor credit score or credit report;
 - (b) making several applications within a short amount of time;
 - (c) poor past repayment history with the provider; or
 - (d) failed external identity verification.
- 90 Our survey also found that previous exposure to particular credit products such as small amount credit contracts could negatively affect the likelihood that an application would be approved.
- 91 Our review identified substantial differences in declined application rates between providers, ranging from 6% to 43% of all applications.

Comparison with other types of credit

- 92 Buy now pay later arrangements can be cheaper than other types of credit. However, the relative cost of these arrangements depends on a number of factors, such as the type of arrangement and purchase, and whether the consumer misses repayment deadlines.

Table 3: Comparison between buy now pay later arrangements and other credit options

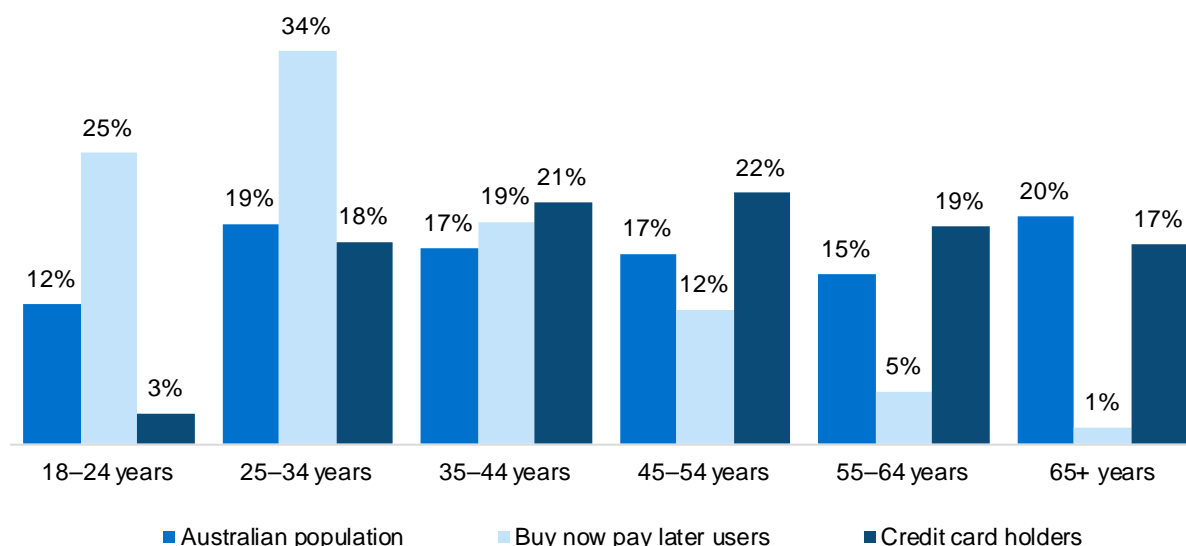
| Credit products | Summary | Cost limit (excluding missed payment fees) |
|--|--|---|
| Short-term buy now pay later arrangements | Credit is available for up to \$1,000–2,000. The purchase price is repaid in equal instalments. | Consumers pay no extra charges if they pay within a specified period. |
| Buy now pay later arrangements that are continuing credit contracts | Credit is available for up to \$30,000. Some arrangements require a minimum periodic repayment. Others involve a fixed repayment plan for each purchase. Multiple advances of credit may be available. | Fees and charges are limited to \$200 in the first year and \$125 in each subsequent year. |
| Small amount credit contracts | Unsecured credit is available up to \$2,000 repaid over 16 days to one year. At the cost limit, a \$2,000 small amount credit contract over 12 months could incur additional costs of \$1,360. | The establishment fee is limited to 20% of the borrowed amount, and any account management fee is limited to 4% of the borrowed amount. The credit provider cannot collect more than 200% of the borrowed amount, including missed payment fees. |

| Credit products | Summary | Cost limit (excluding missed payment fees) |
|---|--|--|
| Medium amount credit contracts | Credit is available from \$2,001–5,000, repaid over 16 days to two years. This is not a continuing credit contract and is not offered by an authorised deposit-taking institution (ADI). The debt can be secured or unsecured. | The establishment fee is limited to \$400. The annual cost rate is limited to 48% of the borrowed amount. |
| Continuing credit contracts such as credit cards | This is a credit contract where multiple advances of credit are contemplated. Consumers may not be charged interest if they pay on time but may still pay an annual fee. | There is no cost limit if the contract is offered by an ADI. Otherwise, the annual cost rate is limited to 48% of the borrowed amount. |

Credit cards

- 93 The buy now pay later industry is still smaller than the credit card market in Australia. Based on our data, an estimated 2 million consumers had used a buy now pay later arrangement within the last 12 months by 30 June 2018, while almost 10 million adult Australian residents had a credit card account in June 2017.
- 94 Buy now pay later users are over-represented among younger age groups compared to credit card holders: see Figure 11.

Figure 11: Percentage of buy now pay later users and credit card holders by age group compared to Australian population



Note: For the underlying data shown in this figure, see Table 8 in Appendix 2.

- 95 Due to this younger age profile, buy now pay later users are also more likely to have lower incomes than credit card holders. Our consumer research found that 44% of buy now pay later users have an annual income of less

than \$40,000, while ASIC data shows that only 14% of credit card holders reported an income less than \$41,599.

- 96 It is difficult to compare consumers' use of credit cards to their use of buy now pay later arrangements, due to the variety of fee structures and the inherent differences between these arrangements and credit cards. For example, the buy now pay later arrangements in our review:
- (a) do not attract interest charges;
 - (b) do not offer promotional and balance transfer periods;
 - (c) do not offer supplementary benefits, such as promotional and balance transfer periods, rewards programs and travel insurance;
 - (d) usually involve fee structures that are rarely used for credit card accounts, such as missed payment fees for individual transactions and payment processing fees (whereas credit cards often have annual fees, missed payment fees that are charged at an account level, and interest charges on outstanding balances); and
 - (e) are part of a rapidly growing and evolving market, while the credit card market in Australia is relatively mature.

Interaction with merchants

Uptake of buy now pay later options

- 97 Our stakeholder consultation with retail industry groups suggests that most merchants are choosing to offer buy now pay later options in response to apparent demand from consumers for these arrangements.

Promotion of buy now pay later options

- 98 Each buy now pay later provider in our review had entered into an agreement with merchants requiring the merchant to actively promote the arrangements to customers by making the provider's advertising and branding material visible online and at shopfronts.
- 99 The agreements used by each provider also require merchants to comply with advertising guidelines that are supplied by the provider. Some buy now pay later providers require all merchants to distribute any promotional material that is supplied to them.
- 100 In some instances, buy now pay later payment options can be repeatedly advertised to consumers before they choose to buy certain goods and services. For example, promotions for buy now pay later arrangements from some providers can be found on social media, websites, billboards, during telephone sales calls, and in-store.

Costs to merchants

- 101 For each buy now pay later arrangement in our review, merchants are charged a fee equal to a percentage of the amount of the purchase. Some providers also charge merchants a fixed fee for each arrangement.
- 102 The size of these fees depends on factors such as the volume of buy now pay later arrangements used by the merchant, the risk profile of the merchants, and the types of goods and services offered by the merchant.

Refund policies

- 103 As the supplier of the goods or services purchased by consumers, merchants are generally liable to provide the consumer guarantees set out under the Australian Consumer Law. Consumers have certain rights for their purchase to be repaired, replaced or refunded. The refund and returns policy of the merchant applies to purchases made with a buy now pay later arrangement.

Note: See Pt 3-2, Div 1 of the Australian Consumer Law (Sch 2 of the *Competition and Consumer Act 2010*).

B Consumer demographics and behaviour

Key points

A significant number of consumers who use buy now pay later arrangements are young (18–34 years), which is also reflected in lower levels of income and employment among users.

Most consumers use at least one other credit facility in addition to buy now pay later arrangements; one third of users reported they do not have any other credit facility.

Consumers intend to keep using buy now pay later arrangements; they see these arrangements as convenient, allowing them to buy things they might otherwise be unable to afford upfront.

55% of consumers reported they are spending more than they did before they used buy now pay later arrangements.

Most consumers used a transaction account to make repayments. One quarter of consumers reported having missed a repayment.

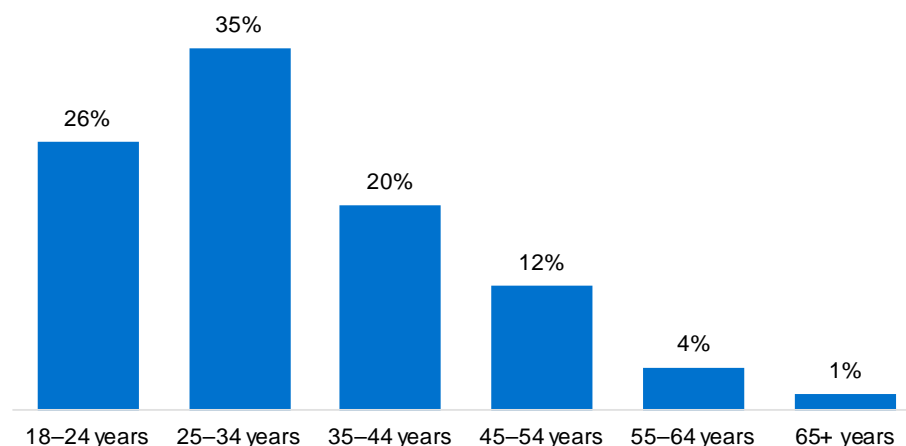
Which consumers use arrangements

104 Much of the growth in this industry has been recent. In consumer research, 70% of users said they used a buy now pay later arrangement for the first time in the last 12 months.

105 Our data shows that 60% of buy now pay later users are 18–34 years old (see Figure 12); 57% of users were female and 42% male.

Note: These figures do not exclude instances in which consumers were counted in our data more than once if they had arrangements with more than one provider.

Figure 12: Age profile of buy now pay later users (FY 2017–18)



Note: For the underlying data shown in this figure, see Table 9 in Appendix 2.

106 Our data also highlighted substantial variations in the age profile of buy now
pay later users who have arrangements with each provider.

107 Some of these variations may be attributable to aspects of the business model
of each provider. For example, some providers offer arrangements that may
be more suitable for particular types of purchases (e.g. arrangements with
higher credit limits may be more suitable for higher-value purchases such as
home improvements). Additionally, our survey indicated that some providers
focus their businesses on specific product segments, such as fashion products.

108 These factors can affect the age profile of the users who use arrangements
with each buy now pay later provider.

Income and employment

109 Of the participants in our consumer research:

- (a) 44% reported an annual income of less than \$40,000;
- (b) 39% had an income between \$40,000 and \$100,000; and
- (c) 8% said they earned over \$100,000.

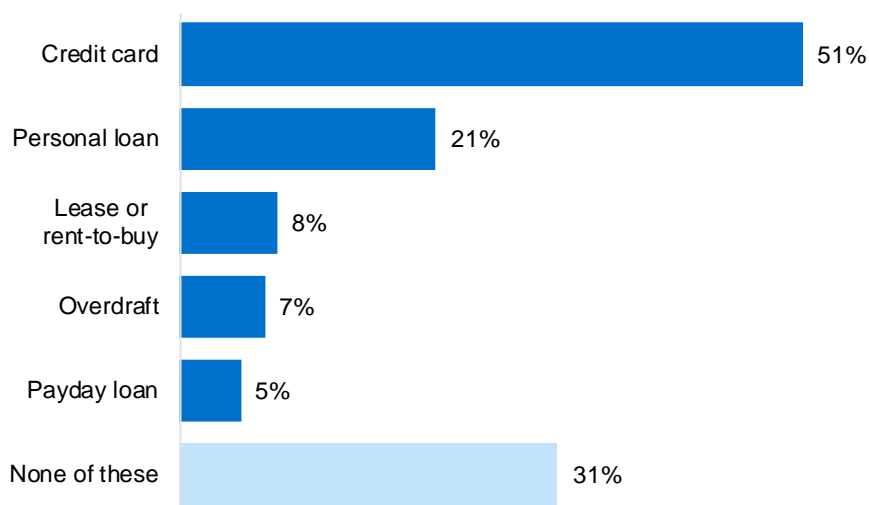
Note: The remaining consumers did not provide an estimate of their income.

110 Our analysis of data from the Australian Bureau of Statistics (ABS) indicates
that this breakdown of income is likely to be consistent with the income and
age profile of the broader Australian population.

111 Most (65%) of the buy now pay later users in our consumer research
described themselves as employed full time or part time. Of the users who
earned less than \$40,000 a year, 40% said they were either employed part
time or students.

Other credit arrangements

112 Our consumer research indicated that almost one in five buy now pay later
users (19%) had two or more other types of credit facilities besides a buy
now pay later arrangement. Almost one-third of users (31%) had no other
credit facility: see Figure 13.

Figure 13: Other credit facilities held by buy now pay later users

Note: For the underlying data shown in this figure, see Table 10 in Appendix 2.

How consumers use arrangements

- 113 Based on our consumer research, an estimated 69% of users had made three or more buy now pay later purchases within the last 12 months and 30% of users had used more than one provider during that time.
- 114 Consumers predominantly used buy now pay later arrangements to buy clothing, technology, electronics or software, personal care items, furniture, homewares, and appliances. These arrangements are also available for more expensive purchases such as home improvements and cosmetic procedures.

Why consumers use arrangements

Triggers

- 115 Our consumer research found that 62% of consumers used a buy now pay later arrangement for the first time when they bought goods or services online.
- 116 Almost one in five of users (19%) believed that a sales assistant had 'encouraged' them to use a buy now pay later arrangement for the first time.
- 117 Although this varied between each provider, consumers believed that their decision to use an arrangement had been influenced by:
- word of mouth (28%);
 - advertising (24%);
 - a suggestion by a staff member in a shop (14%); and
 - seeing a poster or advertising in a retail store (14%).

118 Our consumer research indicated that consumers generally chose to use a buy now pay later arrangement as part of their decision to buy an item from a particular merchant. This suggests that users generally select a particular ‘merchant’ and use an arrangement from whatever provider is available to facilitate a purchase.

Motivations

119 86% of users believed that they would use a buy now pay later arrangement again. Our findings about what consumers believed motivated them to use a buy now pay later arrangement are summarised below.

Access to higher-value purchases

120 Most buy now pay later users agreed that buy now pay later arrangements allowed them to buy more expensive items and spend more.

‘My shopping exceeded the intended amount I wanted to spend, so I decided to opt for it.’ (30–35 years, Female, Vic)

‘I have purchased some more expensive items I probably wouldn’t of (sic) bought if I had to pay all the money at the time.’ (46–54 years, Female, Qld)

Access to time-sensitive purchases

121 Some users said buy now pay later arrangements allowed them to take advantage of ‘sales’ or ‘limited offers’ from merchants. Other consumers needed to meet unexpected expenses.

‘I wanted the bag and it was on promotion, so I wanted to buy it. But I was \$50 short. So, I decided to pay in four instalments as I didn’t have to pay anything extra. And I was paid fortnightly from [my] part-time job so I could pay it easily.’ (18–24 years, Male, Vic)

‘I love this way because sometimes I don’t have enough money to buy it, but they have something which was [on] sale so I can buy it and pay later.’ (25–29 years, Male, Vic)

‘I have used...for things we have needed for our car and home, which has been really convenient as well because these are expensive items we needed without notice and I could get them straight away without being late for other bills.’ (30–35 years, Female, NSW)

Convenience and ease of use

122 Compared to other payment options, 81% of users believed that a buy now pay later arrangement was more convenient. Users also commented on the ease of using these arrangements.

‘It’s easy, quick finance and easy to repay.’ (30–35 years, Female, Vic)

‘I just signed up the online account when at checkout. It was pretty simple, took me less than five minutes. My limit was \$500.’ (18–24 years, Male, Vic)

‘It was an easy way to pay off a large amount at your own pace.’ (36–45 years, Female, NSW)

Flexibility and choice

- 123 Some consumers said that they actively considered their payment options and concluded that using a buy now pay later arrangement would be more cost-effective.
- 124 More than three in five users (65%) agreed that the consequences of missing repayments on a buy now pay later arrangement are less risky compared to other payment options.
- ‘I always think about if it fits into my budget for the week, if so I pay cash. If I know I won’t be able to pay it back within the 55 days interest-free period on my credit card than I opt for the buy now pay later option.’ (25–29 years, Female, NSW)
- ‘For the larger, more expensive purchases especially travel, I try to put whatever I can on credit card, so I can accumulate reward points but still stay within my credit limit. I also like to use buy now pay later methods for larger more expensive luxury items such as technology or furniture that I can pay off over time, as this option lets me still make these purchases where I otherwise would not be able to afford them immediately.’ (36–45 years, Female, NSW)
- ‘It gives me flexibility to pay back, and if it’s interest free, why would I use my credit card?’ (36–45 years, Male, NSW)

Possible effects of product design and sales process

- 125 The design and sales process of buy now pay later arrangements can also influence how consumers make purchasing decisions. Our consumer research identified three behavioural factors that appeared to influence consumer decisions to use buy now pay later arrangements. These behavioural factors can also affect how consumers behave with other deferred payment methods, such as credit cards.

Overconfidence and over-optimism

- 126 A consumer can underestimate the possibility that unexpected or bad events will happen or overestimate their ability to handle those events.
- 127 For example, a consumer may be overly optimistic about the risk of unexpected events or expenses arising that could make it hard to make repayments, or overly confident in their ability to understand the terms of their buy now pay later arrangement.
- ‘I don’t envisage myself ever having any problems with buy now pay later unless an unforeseen incident occurred in my life. I am very good at budgeting for bills and for amounts I owe.’ (36–45 years, Female, SA).

Framing

- 128 The way in which the prices and key features of a product are presented in the sales process can downplay the costs and risks of a purchase.

129 For example, prices for goods and services can be displayed to emphasise the amount of each instalment, rather than the full price. This can make a purchase seem more affordable.

‘The main disadvantage to buy now, pay later for me is that it blurs the line for what is “affordable”. I often find myself considering (and buying) things that I don’t necessarily think are a good price or good value just because I am not paying the full amount up front, it kind of seems like it actually costs less than it does.’ (30–35 years, Female, NSW)

‘Before I used to see that price as \$400. Now, when you buy using buy now pay later, I see it as just \$100 per instalment. I think it just makes me feel less guilty on spending on some expensive things.’ (18–24 years, Male, Vic)

Ease and speed of spending

130 An easy, quick, and seamless application process can create a positive and convenient user experience. But this can also lull consumers into ‘fast’ or ‘automatic’ thinking. This can increase the likelihood of making a purchase quickly without careful consideration.

131 For example, some buy now pay later providers make mobile applications available so that existing buy now pay later users can buy goods or services quickly, simply by pressing a few icons on their mobile phone.

132 The ease of applying for a buy now pay later arrangement can reduce the feeling of parting with money.

‘I get a false sense of security that I can afford some things which I might have thought twice about in the past, because of the fact that I don’t have to pay for them immediately and have the gift of time to pay them out.’ (36–45 years, Female, NSW)

‘The sign-up process was very easy, it was all done online. I filled in a form with my details and what I was buying. We got an answer within 30 seconds.’ (30–35 years, Male, NSW)

‘It was really easy for [provider name], I just gave my details and credit card info and I got \$400 credit. The [other provider] was a big hassle and took about an hour and I had to give every detail about my life.’ (36–45 years, Female, SA)

How arrangements influence spending behaviour

133 90% of users believed that buy now pay later arrangements allowed them to ‘manage spending by spreading payments over time’. However, over half of users believed they were spending more than before they started using these arrangements (see Figure 3), and many users agreed that these arrangements allow them to buy items that would have otherwise been out of reach.

‘I don’t have a lot of spare money each fortnight so pay later lets me buy things I can’t really afford.’ (36–45 years, Female, Qld)

‘I spend more, knowing then that I could pay with future income. Hence I’m more likely to buy more expensive items than necessary.’ (30–35 years, Male, NSW)

- 134 Our consumer research also found:
- (a) 81% of users believed that buy now pay later arrangements allowed them to ‘buy more expensive items that I couldn’t afford to buy in one payment’;
 - (b) 70% of users believed that these arrangements allowed them to ‘be more spontaneous when I’m buying goods and services’; and
 - (c) 64% of users believed that these arrangements allowed them to ‘spend more than I normally would’.

How consumers make repayments

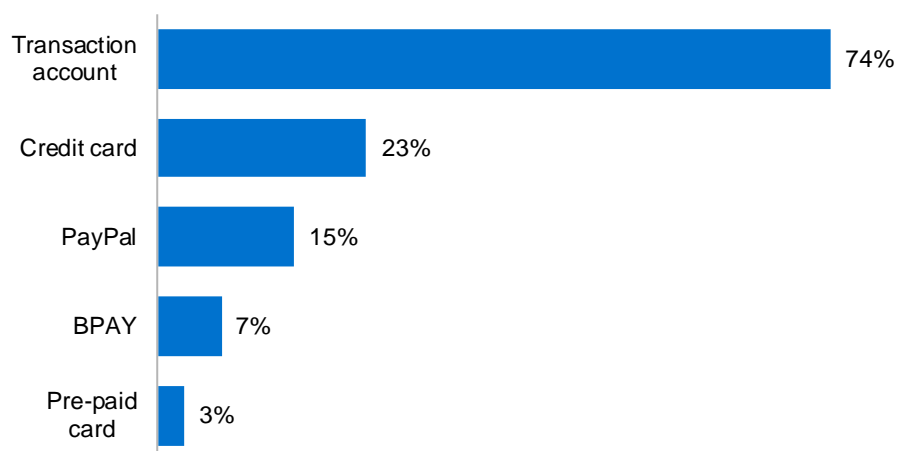
Repayment methods

135 All six buy now pay later providers in our review require consumers to nominate a bank account, debit card or credit card from which fees and repayments can be automatically debited. Some providers allow users to pay by BPAY, cheque or cash.

136 The percentage of buy now pay later transactions that are paid for with a credit card varies significantly between providers. This percentage, at an industry level, remained relatively steady from April 2016 to March 2018.

137 Our consumer research indicated that 74% of buy now pay later users used a debit card or direct debit from a transaction account to make payments, even though more than half (51%) of users had a credit card.

Figure 14: How buy now pay later users made repayments



Note: For the underlying data shown in this figure, see Table 11 in Appendix 2.

Keeping track of repayments

- 138 Our consumer research found that 75% of buy now pay later users reported that they used notifications, a mobile app or online account supplied by their buy now pay later provider to keep track of their repayments. Only a third of users (31%) tracked their repayments by using an independent tool (e.g. with a diary, spreadsheet or budgeting app).

How often and why do consumers miss repayments?

- 139 At an industry level, the percentage of buy now pay later transactions that incurred a missed payment fee remained relatively stable at between 9% and 14% from 1 April 2016 to 30 June 2018.
- 140 Our consumer research indicated that 74% of buy now pay later users reported never missing a repayment. Reasons for missing a payment included forgetting to put money in an account (11%), needing to prioritise paying other bills (9%), and buying too many items and losing track (5%).
- 141 The likelihood of missing a repayment did not vary significantly by gender, income, education, the buy now pay later provider, or the tools that the consumer used to keep track of their repayments.

Consequences of missing repayments

- 142 All six buy now pay later providers charge consumers a fixed fee every time they missed a repayment. These fees range from \$4.99 to \$15. One provider limits the total amount of missed payment fees that a consumer can be charged, and a second provider will be introducing a limit on these fees.

Note: See Table 2 for a summary of the missed payment fees charged by each provider.

- 143 For low-value buy now pay later transactions, the amount of a missed payment fee can be expensive for a consumer relative to the total price paid for the purchase.
- 144 Five of the six buy now pay later providers in our review suspend the use of arrangements for new purchases if a user has not remedied a missed payment. Brighte indicated that it will start suspending accounts with outstanding missed payment fees.
- 145 Some missed payments are referred to an external debt collection agency.

C The risk of over-commitment

Key points

Our survey, consumer research and stakeholder consultation identified a risk that some buy now pay later arrangements can increase a consumer's overall debt or contribute to financial over-commitment.

While each provider took steps to refuse some applications, the responsible lending obligations do not protect consumers when they use a buy now pay later arrangement.

What is over-commitment?

- 146 Over-commitment can occur when a consumer uses a credit arrangement that results in new or additional financial difficulty. While consumers may miss repayments if they are over-committed, they can also experience other challenges, such as difficulty affording essential goods and services (e.g. utilities or groceries) and financial stress.
- 147 Because consumers can pay by direct debit or prioritise repayments on a buy now pay later arrangement, a consumer can be over-committed even when they have been making repayments on time. This issue is not unique to buy now pay later arrangements.
- 148 Our stakeholder consultation, consumer research and our review of the procedures of buy now pay later providers identified that these arrangements, for some consumers, can increase their overall level of debt or contribute to a consumer becoming financially over-committed.
- 149 Our stakeholder consultation highlighted case studies where consumers had been allowed to use a buy now pay later arrangement despite limited or no income and substantial existing debt.

Case study 2: Buy now pay later adds to increasing debts

Sophia was a mother of two children in her early twenties. She had recently separated from her partner and was struggling to pay off mounting gas, electricity and phone debts.

Sophia had about \$10,000 of debt, including \$700 of debt with zipMoney for several pairs of shoes and clothing.

How can these arrangements contribute to over-commitment?

- 150 The features of the buy now pay later arrangements that are offered by each provider can create different types of risks for consumers.
- 151 Larger buy now pay later arrangements also translate to a larger overall financial commitment.
- 152 Buy now pay later arrangements with a longer repayment term and small repayment amounts may be less likely to cause over-commitment in the short term, but it can take longer for consumers to finish making repayments.

Example 1: Implications of longer-term arrangements

If a consumer buys something for \$1,000 and only makes the minimum \$40 monthly repayments, it will take them over two years to repay that amount. The consumer will also pay a \$6 fee each month, which means that it will take them two years and five months to repay the full amount.

The consumer can access further credit after repayments have been made, potentially extending the time it takes to repay the debt and the fees.

- 153 Buy now pay later arrangements with a shorter repayment term can mean that consumers finish making repayments relatively quickly, but this short timeframe requires them to make larger repayments. This can be more difficult for consumers with a lower disposable income.

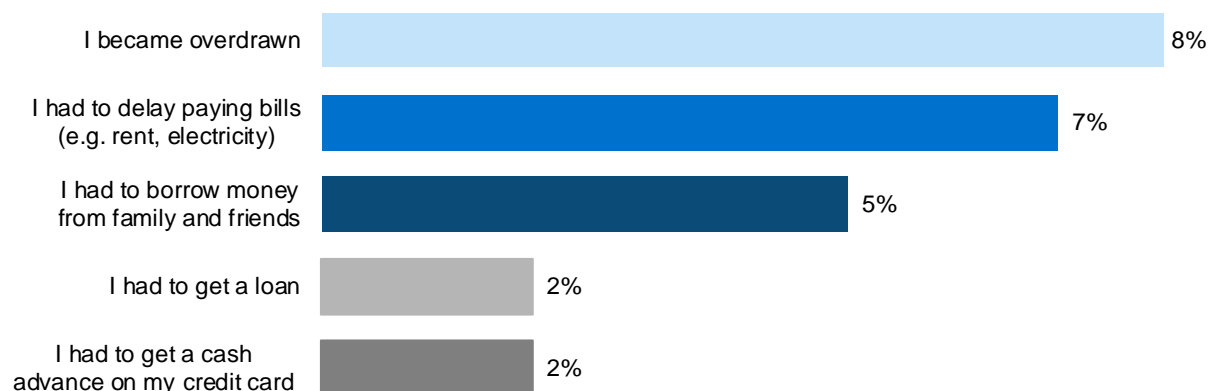
Example 2: Implications of short-term arrangements

If a consumer who earns \$1,250 a fortnight after tax uses a \$1,000 buy now pay later arrangement with fortnightly repayments of \$250, each repayment would be equal to 20% of their income.

With a larger portion of the consumer's income being absorbed by the repayments, more credit could be needed to cover living expenses.

Are consumers having difficulty making repayments?

- 154 Of the participants in our consumer research, 22% of users reported that they have had to be more careful with their usual spending as a result of using a buy now pay later arrangement. Some users reported experiencing a negative impact in making a scheduled buy now pay later repayment: see Figure 15.

Figure 15: Percentage of users who reported a negative financial impact in making a scheduled repayment

Note: For the underlying data shown in this figure, see Table 12 in Appendix 2. Respondents to this survey question could select more than one financial impact.

Do providers assess the financial situation of consumers?

155 While each buy now pay later provider in our review rejects some applications, the responsible lending obligations do not apply to buy now pay later arrangements.

156 In contrast, credit licensees must take reasonable steps to inquire about and verify a consumer's financial situation. The steps that are required are depend on the circumstances of each credit application.

Note: See Pt 3.2 of the National Credit Act.

157 These steps can include inquiries about the consumer's current amount of income or benefits, fixed and variable living expenses, debts, assets, and other circumstances such as their age, location, and any reasonably foreseeable change to their financial circumstances.

Note: See [Regulatory Guide 209](#) *Credit licensing: responsible lending conduct* (RG 209) at RG 209.28–RG 209.33.

158 Buy now pay later providers are not required to make or verify these inquiries. Only one of the six providers in our review made inquiries about the income, expenses, assets and debts of prospective customers.

159 Despite this, our consumer research suggested that nearly one in three (31%) users believed their buy now pay later provider checked to make sure they could meet the repayment terms.

160 Our stakeholder consultation highlighted case studies where consumers have been allowed to use a buy now pay later arrangement despite limited or no income and substantial existing debt.

Case study 3: Sold goods that the consumer didn't need

John received a carer's pension. He was cold-called by a merchant who sold him a solar power system financed through Certegy Ezi-Pay. John said he did not have a job at the time and the salesperson said that he would write down John's last job. 18 months later, he owed over \$6,100. John also owed over \$7,000 on a loan and \$3,000 in other debt.

John said he started using Afterpay in early 2018 and now owes them \$960. He said he doesn't recall being asked about his expenses when he signed up for this arrangement.

Case study 4: No inquiries about the consumer's financial position

Ben was unemployed, received a disability support pension, and lived with his father who assisted him as a carer. Ben said he had a shopping addiction.

Ben reported feeling overwhelmed with debt. He had a \$5,000 credit card debt, and he was able to accrue a \$1,500 debt with Afterpay, and a \$1,000 debt with zipMoney.

D Conduct of providers

Key points

Buy now pay later providers could do more to help consumers stay in control of their repayments and make informed decisions. Each provider in our review has demonstrated a readiness to work with ASIC by improving their practices in response to our recommendations.

Attempts by merchants to charge consumers a higher price for using a buy now pay later arrangement can be misleading and result in detrimental outcomes for consumers. ASIC is acting to address this behaviour, but law reform may be necessary.

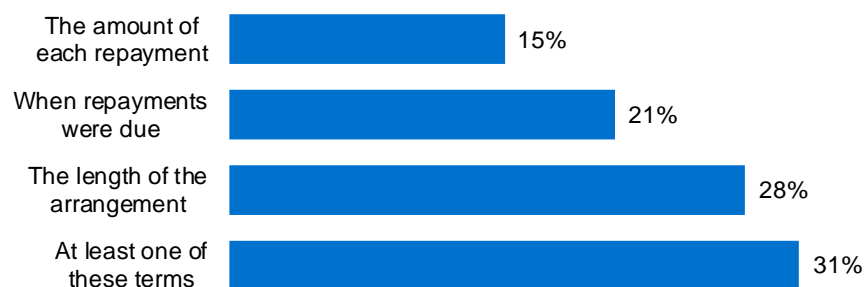
The consumer contracts of all six buy now pay later providers contained terms which we considered may be unfair. ASIC will continue to require providers to amend or remove terms that are potentially unfair to consumers.

Interacting with consumers

- 161 We identified instances where buy now pay later providers should have done more to act fairly with consumers.
- 162 While the providers in our review demonstrated a readiness to work with ASIC, we consider that it is necessary to extend product intervention powers over all credit facilities under the ASIC Act so that ASIC can take appropriate action if we identify a significant detriment to consumers that cannot be addressed through voluntary action.

Helping consumers understand key terms

- 163 We expect consumers to be able to adequately understand the terms of their buy now pay later arrangement.
- 164 Our consumer research found that just over half (56%) of consumers considered that they had been made fully aware of the terms and conditions when they signed up for the arrangement. Three in ten consumers (31%) indicated they did not understand at least one of the key repayment terms for their buy now pay later arrangement: see Figure 16.

Figure 16: Percentage of users who did not understand key repayment terms

Note: For the underlying data shown in this figure, see Table 13 in Appendix 2.

165 Our review of communications with consumers (e.g. consumer agreements, emails and text messages) found that buy now pay later providers set out the repayment terms and fees to consumers before a transaction and provided users with tools to keep track of repayments through online accounts, mobile applications and payment reminders. However, several consumer contracts could have been written in a way that is more accessible to consumers.

Complaints

166 We expect a complaints process to be visible and accessible for consumers.

167 All six providers in our review have a written complaint handling policy. But our consumer research suggests that many buy now pay later users have a limited understanding about their ability to complain. If a user had a complaint about their buy now pay later provider, only 57% of users think they would raise the complaint with their provider. A further 23% of users do not know where they would direct a complaint.

168 This could be exacerbated if providers do not make information about the complaints process accessible to consumers. For example, three of the six providers did not include any information on their websites or consumer contracts stating that users could complain to their provider and how they could complain.

169 Two buy now pay later providers in ASIC's review that were not members of an ASIC-approved EDR scheme have since become members in response to our feedback.

Helping consumers in financial hardship

170 We consider that it is important for consumers to understand that they can request assistance from their buy now pay later provider when they have trouble making their repayments due to an unexpected financial situation.

171 Our data indicates that three providers had received no hardship requests from July 2017 to March 2018, while one provider had received 10 hardship

requests during the same period. This suggests that consumers may have limited knowledge about the fact that they can request hardship assistance from their buy now pay later provider.

172 In our view, most providers did not adequately inform consumers that hardship assistance was available. For example, some providers did not send consumers information that made it clear that consumers could request assistance for financial hardship.

173 Although all providers have a detailed written hardship policy, we consider that such policies are likely to be ineffective unless consumers are informed that they can access hardship assistance under the policy.

Unfair contract terms

174 Our review found that buy now pay later providers included potentially unfair terms in their standard contracts with consumers: see Div 2 of Pt 2, Subdiv BA of the ASIC Act.

175 A term of a contract is unfair if:

- (a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
- (b) it is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term; and
- (c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

176 If a court finds that a term in a standard form contract is unfair, and makes a declaration to that effect, then the term is void as if it never existed. The term is void from the outset, not from the time of the court's declaration and the term is likely to be unfair and void in all identical contracts (although in some cases, the circumstances of a particular customer may affect a finding of unfairness for that particular contract). The remainder of the contract will continue to bind parties if it can operate without the unfair term.

Note: See s12GND and 12BF of the ASIC Act, and *Australian Competition and Consumer Commission v Chrisco Hampers Australia Ltd* (2015) 239 FCR 33 where the court declared a term void in all identical contracts.

177 We have written to each provider in our review to highlight potential unfair contract terms in their contracts with consumers. We will ensure that each buy now pay later provider amends their contracts to remove any potentially unfair contract terms.

Appendix 1: Methodology

Selection of review participants

- 178 In January 2018, we identified and approached seven providers of buy now pay later arrangements to be involved in our review. One provider initially agreed to participate in our review but subsequently withdrew due to resourcing issues that would have affected their ability to respond to ASIC's information requests in the required timeframe.
- 179 We selected the providers based on the following considerations:
- (a) our understanding of the market and the most prominent providers;
 - (b) complaints data from consumer groups and our internal systems;
 - (c) our intention to capture different business models; and
 - (d) analysis of financial statements available to us.

Information requests

- 180 In January 2018, we sent an information request (the first of two) for background information about each provider's business activities, including copies of policies and procedures, and consumer and merchant agreements.
- 181 In March 2018, we consulted with the providers about their ability to respond to our second information request, which sought qualitative and quantitative data about their operations over a two-year period from 1 April 2016 to 31 March 2018. This process allowed us to understand how each provider collects and stores information, which would help to inform the final survey.
- 182 In April 2018, we sent the second information request to the six providers involved in our review. The qualitative questions in the first part of the request helped to supplement our review of the policies and procedures from the first information request. These questions focused on the provider's business model, including:
- (a) business overview including operational and legal structure, minimum and maximum amount of credit offered, and fee structure;
 - (b) processes for assessing the creditworthiness of an application including information collected about a consumer;
 - (c) distribution channels and details of merchants offering the arrangement;
 - (d) methods available for repayments, capping of missed payment fees and the amount of these missed payment fees; and
 - (e) approach to hardship and complaints and dispute resolution.

- 183 In October 2018, we requested updated quantitative data from the six providers in our review, up to 30 June 2018. These questions focused on:
- (a) characteristics of consumers using the arrangements;
 - (b) volume and characteristics of transactions;
 - (c) amount of money generated from key sources of revenue; and
 - (d) the prevalence of missed payment fees.

Comparison with credit cards

- 184 In paragraph 50, we compare the data on multiple missed payments for buy now pay later arrangements to problematic debt indicators for credit cards.
- 185 Our measure for missed payments on buy now pay later arrangements is narrower than our measure for problematic credit card debt, because our credit card measure includes behaviours such as minimum monthly repayment behaviour and high balance use. Our credit card measure is also calculated on an annual basis, while our buy now pay later measure is calculated on a quarterly basis.
- 186 We used this measure for missed payments on buy now pay later arrangements because it is clear, understandable and practically relevant to consumers who may be experiencing problematic buy now pay later debt.

Stakeholder consultation

- 187 In February 2018, we began consulting with key stakeholders about the buy now pay later industry. We consulted with:
- (a) other regulators including the Reserve Bank of Australia, the Australian Competition and Consumer Commission, and the Australian Prudential Regulation Authority;
 - (b) both ASIC-approved EDR schemes, the Financial Ombudsman Service (FOS) and the Credit and Investments Ombudsman (CIO);
- Note: From 1 November 2018, the AFCA started receiving all complaints as the single point of contact for all EDR complaints about financial services.
- (c) community legal centres and consumer groups including Consumer Action Law Centre, Financial Rights Legal Centre, Legal Aid, Financial Counselling Australia, Good Shepherd Microfinance and Youth Action; and
 - (d) industry associations including Australian Retailers Association, National Retail Association, and Australian Retail Credit Association.

Consumer research

- 188 We commissioned an independent market research consultancy to conduct consumer research. The research aimed to:
- (a) profile users of buy now pay later arrangements;
 - (b) understand motivations for use;
 - (c) understand usage and repayment behaviour;
 - (d) explore if buy now pay later arrangements have impacted consumer spending and credit use; and
 - (e) determine the extent to which consumers understand the arrangement and relevant fees and charges.
- 189 This research was done in two stages. The first stage was an online qualitative discussion board, which informed the design of the subsequent online quantitative survey.
- 190 The online discussion board was conducted with 18 consumers who reported they had used a buy now pay later arrangement in the past six months:
- (a) Most participants had used more than one buy now pay later provider.
 - (b) Participants had used arrangements from a range of buy now pay later providers, including Afterpay, zipMoney, Oxipay, Openpay, Certegy, and Brighte.
 - (c) The sample was stratified by age, with 12 participants aged 18–34 years and six were aged over 35 years.
 - (d) The sample include a range of consumers based on income and household composition.
 - (e) Participants were required to answer a range of questions over a three-day period, from Wednesday 3 to Friday 5 April 2018.
 - (f) Participants were provided with a gratuity valued at \$80.
- 191 The purpose of the second stage of the consumer research (the quantitative online survey) was to quantify the outcomes of the online discussion board and determine the profile of buy now pay later users. Key elements of this stage were as follows:
- (a) A total of 7,308 people aged over 18 years were screened to achieve a final sample of 600 consumers who reported they had used a buy now pay later arrangement in the last 12 months.
 - (b) The sample of 7,308 Australians over 18 years represented a margin of error of +/- 1.1% at a 95% confidence level and the sample of 600 users a margin of error of +/- 4.0% at a 95% confidence level.
 - (c) The final sample was weighted by age by gender based on data from the ABS ([3235.0](#) Population by age and sex, Regions of Australia, 2016).

- (d) The survey took an average 15 minutes to complete and included both open and closed ended questions.
- (e) The survey was available online from 19–30 April 2018.

192

The following limitations applied to the consumer research:

- (a) There was an over-representation of Afterpay users in the participant sample for both the qualitative and quantitative research, particularly compared to Certegy users. This potentially reflects a lack of understanding among consumers of what constitutes a buy now pay later arrangement.
- (b) Standard trade-offs associated with self-reported data (e.g. subjective accounts reported by real people can be subject to a range of biases such as recall bias, hindsight bias and social desirability bias and may be subject to post-rationalisation of behaviours).
- (c) Qualitative research outcomes from the online discussion board cannot be generalised to the wider population and are illustrative only.
- (d) Participants in the online survey were sourced from an online research panel. While every effort is made to ensure that online panels are representative of the Australian population, they do not cover consumers who have no internet access.

Appendix 2: Accessible versions of figures

193 This appendix is for people with visual or other impairments. It provides the underlying information for the figures presented in this report.

Table 4: Revenue earned by buy now pay later providers (FY 2017–18)

| Provider | Merchant fees | Missed payment fees | Other fees |
|----------|---------------|---------------------|------------|
| Brighte | 94% | 0% | 6% |
| zipMoney | 37% | 2% | 61% |
| Certegy | 64% | 2% | 34% |
| Oxipay | 90% | 10% | 0% |
| Openpay | 59% | 12% | 29% |
| Afterpay | 75% | 25% | 0% |

Note: This table shows the data contained in Figure 2.

Table 5: Effect of buy now pay later arrangements on spending behaviour

| Effect on spending behaviour | Percentage of users who experienced this |
|------------------------------|--|
| I spend less | 7% |
| I spend about the same | 38% |
| I spend a bit more | 40% |
| I spend much more | 15% |

Note: This table shows the data contained in Figure 3.

Table 6: Estimated number of active buy now pay later users

| Year | Number of active users |
|------------|------------------------|
| FY 2015–16 | 400,000 |
| FY 2016–17 | 1,100,000 |
| FY 2017–18 | 2,000,000 |

Note: This table shows the data contained in Figure 4. This estimate is based on a sum of the total number of consumers with each buy now pay later provider. Consumers who had arrangements with two or more providers are counted more than once.

Table 7: Percentage of active users who were charged a missed payment fee (April 2016–June 2018)

| Provider | Minimum month | Average month | Maximum month |
|----------|---------------|---------------|---------------|
| Afterpay | 14.2% | 17.7% | 21.0% |
| Brighte | 2.1% | 4.0% | 6.1% |
| Certegy | 7.8% | 8.9% | 9.9% |
| Openpay | 11.8% | 15.4% | 18.1% |
| Oxipay | 6.0% | 17.2% | 23.9% |

Note: This table shows the data contained in Figure 10. This data covers five providers as zipPay arrangements do not incur missed payment fees at a transaction level.

Table 8: Percentage of buy now pay later users and credit card holders by age group compared to Australian population

| Age group | Australian population | Buy now pay later users | Credit card holders |
|-------------|-----------------------|-------------------------|---------------------|
| 18–24 years | 12% | 25% | 3% |
| 25–34 years | 19% | 34% | 18% |
| 35–44 years | 17% | 19% | 21% |
| 45–54 years | 17% | 12% | 22% |
| 55–64 years | 15% | 5% | 19% |
| 65+ years | 20% | 1% | 17% |

Note: This table shows the data contained in Figure 11.

Table 9: Age profile of buy now pay later users (FY 2017–18)

| Age group | Percentage of users |
|-------------|---------------------|
| 18–24 years | 26% |
| 25–34 years | 35% |
| 35–44 years | 20% |
| 45–54 years | 12% |
| 55–64 years | 4% |
| 65+ years | 1% |

Note: This table shows the data contained in Figure 12.

Table 10: Other credit facilities held by buy now pay later users

| Other credit facility | Percentage of users who held this product |
|--|--|
| Credit card | 51% |
| Personal loan | 21% |
| Overdraft dipped in and out of from time to time | 8% |
| Lease or rent-to-buy | 7% |
| Payday loan | 5% |
| None of these | 31% |

Note: This table shows the data contained in Figure 13.

Table 11: How buy now pay later users made repayments

| Repayment method | Percentage of users who made repayments using this method |
|-------------------------|--|
| Transaction account | 74% |
| Credit card | 23% |
| PayPal | 15% |
| BPay | 7% |
| Pre-paid card | 3% |

Note: This table shows the data contained in Figure 14.

Table 12: Percentage of users who reported a negative financial impact in making a scheduled repayment

| Negative financial impact | Percentage of users who said they experienced this |
|--|---|
| I became overdrawn | 8% |
| I had to delay paying bills (e.g. rent, electricity) | 7% |
| I had to borrow money from family and friends | 5% |
| I had to get a cash advance on my credit card | 2% |
| I had to get a loan | 2% |

Note: This table shows the data contained in Figure 15. Respondents to this survey question could select more than one financial impact.

Table 13: Percentage of users who did not understand key repayment terms

| Key repayment term | Percentage of users who did not understand this term |
|-------------------------------|---|
| The amount of repayments | 15% |
| When repayments were due | 21% |
| The length of the arrangement | 28% |
| All these terms | 31% |

Note: This table shows the data contained in Figure 16.

Key terms

| Term | Meaning in this document |
|---|---|
| ABS | Australian Bureau of Statistics |
| ADI | Authorised deposit taking institution |
| AFCA | Australian Financial Complaints Authority |
| ASIC | Australian Securities and Investments Commission |
| ASIC Act | <i>Australian Securities and Investments Commission Act 2001</i> |
| ASX | Australian Securities Exchange |
| buy now pay later arrangement (arrangement) | An arrangement that allows consumers to buy and receive goods and services immediately from a merchant, and repay a buy now pay later provider over time |
| buy now pay later provider (provider) | An entity that provides buy now pay later arrangements to consumers |
| buy now pay later user (user) | A person who has used a buy now pay later arrangement within the last 12 months |
| consumer | A natural person or strata corporation Note: See s5 of the National Credit Act |
| continuing credit contract | A credit contract under which multiple advances of credit are contemplated and the amount of available credit ordinarily increases as the amount of credit is reduced. Note: See s204 of the National Credit Code |
| credit contract | Has the meaning in s4 of the National Credit Code Note: See also s3–6 of the National Credit Code |
| credit licence | An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities Note: See s35(1) of the National Credit Act |
| credit provider | Has the meaning given in s8 of the National Credit Code |
| credit facility | Has the meaning given in s12BAA(7)(k) of the ASIC Act and reg 2B of the Australian Securities and Investments Commission Regulations 2001 |
| EDR | External dispute resolution |
| EDR scheme | An EDR scheme approved by ASIC under the National Credit Act Note: See s11(1)(a) in accordance with ASIC requirements in Regulatory Guide 139 <i>Approval and oversight of external complaints resolution schemes</i> (RG 139) |

| Term | Meaning in this document |
|---------------------------------|---|
| financial counsellor | Agencies that provide free and independent financial counselling and advocacy services to people in financial difficulty |
| financial hardship | When a consumer has difficulty making loan and debt repayments or meeting their other basic financial needs |
| National Credit Act | <i>National Consumer Credit Protection Act 2009</i> |
| National Credit Code | National Credit Code at Sch 1 of the National Credit Act |
| National Credit Regulations | National Consumer Credit Protection Regulations 2010 |
| merchant | A supplier of goods or services |
| product intervention power | The intervention power that will allow ASIC to make certain orders if it is satisfied that a credit product has resulted in, or will or is likely to result in, significant detriment to consumers Note: See Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 |
| responsible lending obligations | The legal obligations set out in Ch 3 of the National Credit Act |

Related information

Headnotes

Buy now pay later, consumer credit, credit contract, credit licence, EDR scheme, financial hardship, responsible lending obligations, unfair contract terms

Regulatory guides

[RG 139](#) *Approval and oversight of external complaints resolution schemes*

[RG 209](#) *Credit licensing: responsible lending conduct*

Legislation

ASIC Act and regulations, Pt 2.2, s12BAA(7)(k), 12GND, 12BF, reg 2B

Australian Consumer Law (Sch 2 of the *Competition and Consumer Act 2010*)

National Credit Act, s47, Pt 3.2

National Credit Code, s6

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

Cases

Australian Competition and Consumer Commission v Chrisco Hampers Australia Ltd (2015) 239 FCR 33

Reports and submissions

[ASIC's Corporate Plan 2018–22](#)

[REP 580](#) *Credit card lending in Australia*

[Submission to the design and distribution obligations and product intervention power: Revised exposure draft legislation](#) (August 2018)
(PDF, 518 KB)

Media and other releases

[16-027MR](#) *Payday lender penalised for overcharging consumers*
(9 February 2016)

[15-278MR](#) *Federal Court finds Fast Access Finance breaches National Credit Act* (1 October 2015)

[13-090MR](#) *ASIC accepts enforceable undertaking from Solar Rental Company* (29 April 2013)

Other references

ABS, [3235.0](#) Population by age and sex, Regions of Australia, 2016

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2019

Re: Application for authorisation AA1000439 lodged by the Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Flexigroup Limited [ACN 122 574 583]

Applicant

ANNEXURE CERTIFICATE

This is the annexure marked “**KF-2**” annexed to the statement of **Kevin Foo** dated 5 May 2020.

Annexure “KF-2”

ASIC submission to the Senate Inquiry into Credit and financial services targeted at Australians at risk of financial hardship



ASIC

Australian Securities &
Investments Commission

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

Submission by the Australian Securities and Investments Commission

November 2018

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- describing the principles underlying ASIC's approach
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Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

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Examples in this submission are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

| | |
|---|-----------|
| Executive summary | 4 |
| Operation and impact of certain financial products or services | 5 |
| Limits of current regulation | 7 |
| A Consumer leases | 8 |
| Overview | 8 |
| High costs charged by providers | 9 |
| Consumers who pay through Centrepay are charged more | 11 |
| Support for cap on price and for protected earnings amount | 12 |
| Leases with an indefinite term | 14 |
| B Small amount credit contracts | 16 |
| Overview | 16 |
| Impact of continuing poor behaviour by payday lenders | 17 |
| C ‘Buy now, pay later’ arrangements | 19 |
| Overview | 19 |
| Structure of buy now pay later businesses | 20 |
| Risks to consumers | 21 |
| Limits of current regulation | 22 |
| D High-risk unregulated credit products | 23 |
| Overview | 23 |
| Use of exemption for short-term credit to charge higher prices | 24 |
| Book up | 25 |
| E Debt management firms | 27 |
| Overview | 27 |
| Impact of poor conduct on consumers | 28 |
| Gaps in regulation compared to international approaches | 29 |
| Appendix: ASIC’s enforcement actions for consumer leases | 31 |
| Key terms | 33 |

Executive summary

- 1 The Australian Securities and Investments Commission (ASIC) is Australia’s national consumer credit regulator, with oversight of lenders, consumer lease providers and brokers who offer consumer credit products to Australians.
- 2 Our experience across a broad range of products and services (including emerging products such as ‘buy now, pay later’ arrangements) has highlighted the following issues:
 - (a) Businesses offering these products and services have a disproportionate impact on the most financially vulnerable and disadvantaged consumers. As these consumers have small or minimal funds available for discretionary expenditure, the conduct of these businesses can reduce financial inclusion for these consumers and promote continuing dependency on their products.
 - (b) These consumers will often be the target for the sale of multiple different products—for example, they may be sold both payday loans and high cost leases. The cumulative effect of these products is therefore greater than the sale of each one in isolation in eroding their income.
 - (c) The current regulatory regime limits ASIC’s ability to drive comprehensive and systemic changes to the behaviour of all those involved in offering these products and services. In particular, ASIC cannot mandate ‘good’ behaviour.
- 3 We support the following reforms:
 - (a) The enactment of the reforms to the laws applying to small amount credit contracts in the [Exposure Draft of the National Consumer Credit Protection Amendment \(Small Amount Credit Contract and Consumer Lease Reforms\) Bill 2017](#).
 - (b) The extension of the proposed product intervention (PIP) regime in the [Treasury Laws Amendment \(Design and Distribution Obligations and Product Intervention Powers\) Bill 2018](#) (PIP reforms) to all financial products regulated by the *Australian Securities and Investments Commission Act 2001* (ASIC Act).
 - (c) The extension of the proposed design and distribution obligations regime to credit contracts and consumer leases regulated by the ASIC Act.
- 4 We consider that these reforms would result in significant benefits to consumers, including that they would be:
 - (a) less likely to be sold high-cost low-value products or services;
 - (b) less likely to default on commitments such as rent or utilities; and
 - (c) better protected against unfair or exploitative practices.

Operation and impact of certain financial products or services

- 5 Some businesses target Australians at risk of financial hardship with credit and financial products or services that are exploitative in their pricing or operation. These products typically have the following characteristics:
- (a) the prices charged are often high or excessive compared to products available to mainstream Australians; and
 - (b) the products are not designed or sold to meet the needs of consumers.
- 6 Consumers who are in financial hardship are those least able to afford to pay high or unnecessary costs. The sale of these products or services can entrench financial disadvantage for these consumers, because:
- (a) it reduces their limited disposable income or may mean they have to choose which of two essential items they will spend their money on;
 - (b) it increases the risk of a debt spiral through continued dependency on high-cost products or services; and
 - (c) consumers can be sold a product or service that is more expensive or not as suitable for them as other products or services (as it is not tailored to meet their individual needs).
- 7 ASIC supports the approach taken in the 2016 Final Report of the Review of small amount credit contracts (SACC Review):
- The Panel’s recommendations are designed to increase financial inclusion, particularly through the proposals to introduce a cap on costs for consumer leases of household goods, and to introduce a new protected earnings cap for both consumer leases for household goods and [small amount credit contracts]. The intention of these proposals is to reduce the risk that consumers may be unable to pay for basic needs or default on other necessary commitments. Mitigating these outcomes can be expected to improve a consumer’s financial position through, for example, smoothing expenditure, limiting shortfalls in paying utilities or rent, creating a modest level of savings and reducing dependency on higher cost forms of finance. (SACC Review, p. 3)
- 8 Vulnerable consumers can have characteristics or financial circumstances that make them more susceptible to being sold financial products or services that do not meet their needs. These include:
- (a) a limited ability to access cheaper or better mainstream products and services;
 - (b) poorer negotiating skills, as they can find it very difficult to:
 - (i) say ‘No’ even if they do not need the product;
 - (ii) negotiate the terms on which the product or service is provided; or
 - (iii) complain when they learn or recognise that they have been taken advantage of; and

- (c) a reduced ability to make effective decisions due to financial stress.

Note: See World Bank, *World development report: Mind, society and behaviour*, December 2014, p. 81: '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.'

- 9 There is an increased risk of poor practices for Indigenous consumers because of the cultural practice known as 'gratuitous concurrence'. This is where a person will appear to agree to propositions put to them as a mark of respect of cooperation, rather than because they actually agree with the proposition: it is a cultural norm that discourages disagreement. However, this practice increases the likelihood of products being sold to these consumers without their active or informed consent.
- 10 There are other characteristics of low-income consumers that can make them attractive targets for these products:
- (a) Their income is secure if they are on a pension (which reduces the risk of default particularly if the business is able to obtain priority access to their pension through the Centrepay system).
- (b) In some instances, a group of consumers may live in the same physical location, making it easier and cheaper for the business to make sales in the community.
- 11 The combination of these factors means that it is not uncommon for some consumers to be targeted by multiple providers, and for individuals to be sold a range of different products.

Case study 1: Targeting of Palm Island residents

Palm Island is a small island off the coast near Townsville. The community has been targeted by providers of a range of high-cost products including:

- payday loans;
- consumer leases for household goods;
- funeral insurance;
- food hampers, paid for by instalments; and
- photography businesses (where consumers are signed up to pay for high-cost photographs, again paid for by instalments).

Palm Island is in the bottom 10% of regions for relative socio-economic disadvantage. The median personal weekly income is \$303. The sale of these products has a significant adverse impact on the community.

Limits of current regulation

- 12 ASIC believes that some poor consumer outcomes are best addressed through ‘bright line’ tests or rules that directly address the conduct of concern, by specifying the conduct that is permitted, or explicitly prohibiting the conduct of concern.
- 13 In [Report 426](#) *Payday lenders and the new small amount lending provisions* (REP 426) we found that payday lenders were more likely to comply with specific objective requirements than obligations that are expressed in more general terms. In our view, a ‘bright line’ test is likely to reduce uncertainty for industry.
- 14 For example, we support the approach in the SACC Review towards addressing the risk of debt spirals by limiting repayments to a percentage of income. We think this strict approach is preferable to the current presumptions, which in practice are ineffective at preventing the sale of payday loans to high-risk consumers.
- Note: Under s131(3A) of the *National Consumer Credit Protection Act 2009* (National Credit Act), a small amount credit contract is presumed to be unsuitable if at the time of the responsible lending assessment, the consumer is in default in paying an amount under another small amount credit contract, or if the consumer has been a debtor under two or more other such contracts within 90 days of the assessment.
- 15 The alternative approach means that what constitutes compliance is contestable or ultimately can only be determined by litigation. This creates a risk that different providers will adopt different standards, and that some will take a minimalist approach to compliance.
- 16 For products where the provider does not have to hold an Australian financial services (AFS) licence or an Australian credit licence (credit licence), ASIC can only take action for breaches of the ASIC Act (e.g. engaging in conduct that is misleading or deceptive, or that is unconscionable).
- 17 This limits ASIC’s capacity to drive good consumer outcomes, as we cannot take action for conduct that is unfair and causes consumer harm, but is not misleading or deceptive, or not unconscionable.
- 18 The extension of the PIP reforms to all products regulated by the ASIC Act would address these limitations. ASIC would be able to:
- (a) directly address the cause of consumer detriment;
 - (b) address this issue comprehensively for all industry participants engaging in that conduct; and
 - (c) act in a timely manner, following consultation.

A Consumer leases

Key points

Providers of consumer leases regularly charge low-income consumers amounts equivalent to interest rates of over 220%.

Consumers who receive Centrelink income pay more than other consumers as they are more likely to:

- be charged higher prices; and
- pay for two or three years rather than one year when there is no advantage in taking a longer-term lease.

Overview

- 19 The *National Consumer Credit Protection Act 2009* (National Credit Act) regulates consumer leases which involve a contract for the hire of goods for a fixed term of more than four months, and where the consumer has no contractual right or obligation to purchase the goods at the end of the lease.
- 20 Low-income consumers commonly use consumer leases to obtain household goods. In practice, at the end of a consumer lease contract, the provider will often allow the consumer to keep possession of the leased goods (e.g. by allowing the consumer to make an offer to buy the goods for a nominal amount). This makes consumer leases functionally similar to a credit contract under which a consumer buys the goods through a loan.
- 21 Many low-income consumers make the rental payments due on their leases through Centrepay, a voluntary deduction service for Centrelink recipients. The rental payments are deducted directly from the consumer's Centrelink payment, which gives the provider assurance that payments will be met, as the provider of the consumer lease will not need to compete with other expenses of the consumer. Centrepay deductions for consumer leases of household goods from July–December 2015 were around \$160 million (or \$320 million on an annualised basis).
- 22 Unlike lenders, providers of consumer leases are not subject to any restrictions or controls on prices, which means that they can charge very high amounts under a lease. Consumers can pay significantly more than the price of the goods and be charged more than would be permitted under a loan to buy the goods (notwithstanding the functional similarity between these products).

Case study 2: High cost leases for Centrelink recipients

In [Report 447](#) *Cost of consumer leases for household goods* (REP 447), we found that providers charged Centrelink recipients substantially higher amounts than providers who advertised to the public to attract business.

In a sample of 20 out of 39 leases with a two-year term, we found that Centrelink recipients were charged more than five times the retail price of the leased goods—the equivalent of an interest rate of over 248%.

Our recent inquiries have found that similarly high amounts continue to be charged, with two providers consistently charging consumers an equivalent interest rate of more than 200%.

- 23 Our inquiries found that consumers on low incomes or who receive Centrelink payments continue to be charged excessive amounts. This entrenches financial disadvantage.
- 24 Leases can run for two, three or four years, so consumers are locked into paying high portions of their income for extended periods.
- 25 ASIC has taken many enforcement actions against providers of consumer leases since the commencement of the National Credit Act: see the appendix to this submission.
- 26 For these reasons, we support implementing the recommendations in the SACC Review, particularly the recommendations on price and the introduction of a protected earnings amount.

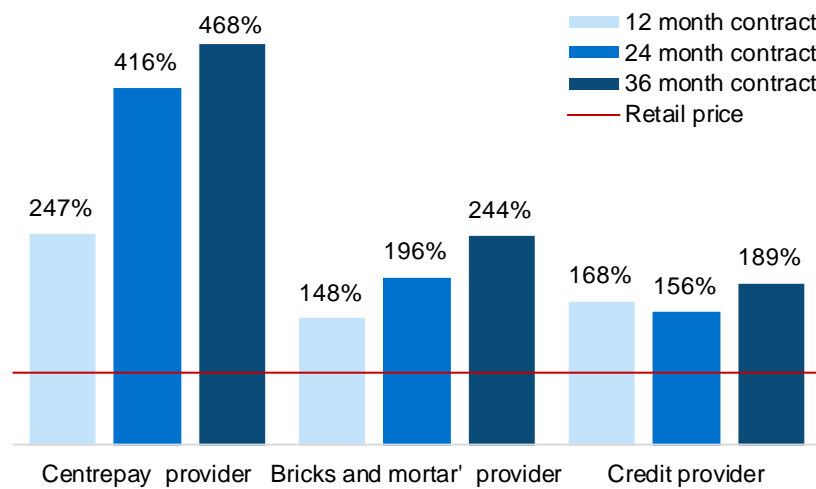
High costs charged by providers

- 27 As noted in REP 447, some providers of consumer leases charge prices that are excessive if not exploitative. Competition is ineffective in driving down prices in this market. Our findings showed that:
- (a) different providers charged significantly different amounts for the same goods; and
 - (b) the same provider would charge significantly different amounts for the same goods for different consumer segments.
- 28 Our recent inquiries show that low-income consumers continue to be charged high prices. Figure 1 shows the total cost paid by the consumer as a percentage of the retail price of the goods, based on the maximum price that the consumer would pay to three types of businesses:
- (a) *Centrepay lease provider*—This provider’s primary market is consumers who can pay through Centrepay. It has no retail outlets. The price is the maximum amount that can be charged (noting that some consumers pay less at the discretion of the provider).

- (b) *‘Bricks and mortar’ lease provider*—This is a provider with multiple retail outlets. It needs to attract consumers by charging more competitive prices.
- (c) *Payday loan or other loan provider*—This is the maximum amount that a consumer would be charged if they used a small amount credit contract, medium amount credit contract, or other credit contract under the National Credit Code to buy the goods.

Note: The cost is lower for a two-year lease as the caps for credit contracts allow a higher return on one-year contracts relative to contracts with a longer term.

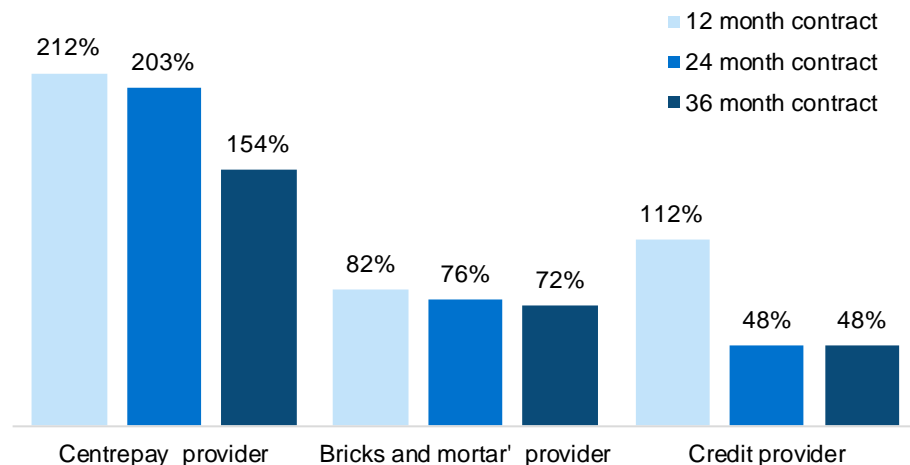
Figure 1: Total cost paid by consumers as a percentage of the retail price of the acquired goods



Note: For a description of the trends in this figure, see paragraph 30 (accessible version).

29 Figure 2 compares the amount paid by consumers for the same transactions. The cost of finance is expressed as an interest rate, given that the leases have the same result as the consumer buying the goods by instalments (as they often keep possession of the goods after the lease ends).

Figure 2: Cost of finance to consumers as an interest rate



Note: For a description of the trends in this figure, see paragraph 30 (accessible version).

- 30 Figures 1 and 2 show that:
- (a) the Centrepay lease provider is charging between 1.6 and 2.1 times more than the ‘bricks and mortar’ provider (despite not incurring the costs to rent storefronts and hold more inventory);
 - (b) the Centrepay provider is charging 1.4 times more than the consumer would pay if they used a payday loan with a one-year term to buy the goods; and
 - (c) consumers are consistently paying equivalent interest rates of more than 200% on leases with a one or two-year term.

Consumers who pay through Centrepay are charged more

31 Our inquiries suggest that some providers are taking advantage of the Centrepay payment system: consumers who pay through Centrepay (Centrepay consumers) have worse outcomes than consumers who make payments through direct debit or some other means (non-Centrepay consumers).

32 In particular, we found that Centrepay consumers:

- (a) pay substantially more as they are more likely to have a lease with a longer lease term than non-Centrepay consumers; and
- (b) are likely to be charged higher rental payments for the same goods than non-Centrepay consumers.

33 ASIC reviewed the distribution of lease terms by one provider across a recent six-month period. We found that:

- (a) only 27.9% of Centrepay consumers were provided with a one-year lease compared to 49.3% of non-Centrepay consumers; and
- (b) 17.4% of Centrepay consumers were provided with a three-year lease compared to 9.1% of non-Centrepay consumers.

34 As consumers often keep possession of the goods at the end of the lease, there is no advantage to taking a three-year lease instead of a one-year lease. However, there is a significant financial gain to the provider in being able to charge rent for a longer period of time.

35 Our inquiries also found that Centrepay consumers are likely to pay more than non-Centrepay consumers under a consumer lease with the same lease term. Data provided to ASIC across a recent calendar year indicates that a provider of consumer leases:

- (a) was more likely to exercise their discretion to charge more than their internal maximum price for leases provided to Centrepay consumers; and

- (b) for a 36-month lease, was twice as likely to charge Centrepay consumers a higher price (with 10.6% of Centrepay consumers charged a price above the internal maximum price compared to 5.2% of non-Centrepay consumers).
- 36 These price differences may suggest that providers are prepared to take advantage of Centrepay consumers given that these consumers:
- (a) are generally unable to access cheaper mainstream finance products and are therefore unlikely to challenge the costs charged by the provider; and
- (b) make purchasing decisions based on whether they can afford the individual rental payments (rather than the overall cost).
- 37 We also found that Centrepay consumers were charged higher prices even though their risk of defaulting on the rental payments was lower. Data provided to ASIC shows that during the 2017 calendar year:
- (a) 2.4% of Centrepay consumers missed two or more consecutive fortnightly rental payments, compared to 4.7% of non-Centrepay consumers; and
- (b) 0.74% of Centrepay consumers missed four or more consecutive fortnightly rental payments, compared to 2.2% of non-Centrepay consumers.
- 38 These findings demonstrate that there is a disconnect in the pricing models of providers when Centrepay consumers are being charged more even though there is a lower risk of default for these consumers.
- 39 In summary, ASIC is concerned about the targeting of financially vulnerable consumers by some consumer lease providers. It appears that they are taking advantage of the security of receiving payments through Centrepay to charge:
- (a) substantially high prices relative to other forms of credit; and
- (b) a high price for finance that is not justified given the low rates of default.

Support for cap on price and for protected earnings amount

- 40 ASIC supports the implementation of the recommendations in the SACC Review. In particular, we support Recommendation 11, the introduction of a proposed cap as a multiple of the 'base price' of the goods.
- 41 This is determined by adding 4% of the base price for each whole month of the lease term to the base price. The base price for new goods should be the recommended retail price or the price agreed in store, where this price is below the recommended retail price

42 The arguments in 2016 which support the introduction of the cap are still relevant today. The SACC Review stated:

The fact that the absence of a cap has permitted such high costs being charged in some cases to consumers who can least afford them dictates the need for reform and illustrates the unequal bargaining power in this market. (SACC Review, p. 4)

43 ASIC does not support any increase to the cap proposed by the SACC Review.

44 First, providers of consumer leases receive the benefit of any difference between the recommended retail price and any reduction in price that they can negotiate by buying goods in bulk.

Example: Providers benefit from discounts on the retail price

A consumer enters into a lease for goods with a recommended retail price of \$1,000 for 12 months. The provider negotiates to buy the goods for \$800 from a retailer.

This scenario would result in the following outcomes:

- Under the cap, the consumer would be charged \$1,480.
- If the provider bought the goods at the recommended retail price, they would only make a profit of \$480.
- In practice, the provider would make a profit of \$680, given the discount they have been able to negotiate.

45 Secondly, ASIC understands that in some circumstances providers can claim depreciation of the value of the leased goods as a business expense, reducing their tax liability. This benefit is not available to payday lenders.

46 Finally, it is common for providers whose business is largely dependent on Centrepay consumers to have limited overheads as they do not need to rent retail premises or hold substantial levels of inventory and in some instances can buy goods only when the consumer has agreed to enter into a lease.

47 ASIC also supports Recommendation 15, which would introduce a protected earnings amount to consumer leases of household goods, so that providers cannot require consumers to pay more than 10% of their net income in rental payments under the lease.

48 Our experience with similar existing obligations on payday lenders is that this recommendation is likely to result in significant benefits for consumers. It will also reduce the extent to which ASIC needs to take enforcement action against providers for failing to properly assess the consumer's capacity to make the rental payments under the proposed lease.

Case study 3: Local appliance rentals

Local Appliance Rentals Pty Ltd leases household items such as televisions, mobile phones, computers, furniture and whitegoods. Its primary market is consumers, mainly in remote and regional areas of Australia such as the Tiwi Islands, Katherine, Broome and Thursday Island, including consumers with limited alternative options for obtaining such items and Indigenous consumers who may not speak English as their first language.

The leases are typically for a 24-month term and most of its consumers use Centrepay to make payments. Consumers are able to gift the leased goods to a friend or family member at the end of the lease period.

ASIC was concerned that Local Appliance Rentals had engaged in poor responsible lending practices, including by:

- using internal benchmarks, rather than undertaking an adequate assessment of the unsuitability of a lease for an individual consumer;
- failing to make reasonable inquiries about a consumer's income, expenses and dependents; and
- providing leases even when the consumer's bank statements showed a lack of financial capacity through overdrawn balances and direct debits or withdrawals being refused.

For example, Betty, a customer, entered into a consumer lease through its Broome franchise. Betty had two dependants and was solely dependent on Centrelink for income. Betty received a top-up Centrelink payment known as a 'Remote Area Allowance' that recognises the higher cost of living in a remote area. Local Appliance Rentals treated this payment as income, but still assessed her living expenses as lower than would be the case given she was living in a remote area.

Jane, another customer, provided Local Appliance Rentals with three months of bank statements. These showed that her account was overdrawn six times and three withdrawals had been refused as she had exhausted her bank account. However, Jane was assessed as having a surplus of \$104 per fortnight, which was inconsistent with the information in the bank statements and without any explanation for this discrepancy.

Note: See [Media Release \(18-337\)](#) *Local Appliance Rentals to remediate customers and pays \$257,500*, 8 November 2018.

Leases with an indefinite term

49 The National Credit Act does not regulate leases with an indefinite term. Recommendation 24 in the SACC Review was that these leases should be regulated. The Government response to this recommendation stated:

The Government supports regulating indefinite term leases. As these products are currently exempted from the consumer protections in the Credit Act, providers are not required to hold an Australian Credit Licence or meet responsible lending obligations. This has resulted in opportunities for regulatory arbitrage and has been relied upon by fringe providers of

short-term and indefinite leases to avoid regulation, including where the consumer may be disadvantaged by the use of an unregulated lease relative to a consumer lease.

Note: See Treasury, [Media release](#), *Government response to the final report of the review of the small amount credit contract laws*, 29 November 2016.

- 50 We continue to see consumer harm arising from the use of indefinite term leases, primarily for motor vehicles. There is a risk that consumers can end up paying for the use of some goods without ever owning them, and ASIC's capacity to drive better standards across all of this market is limited.

Case study 4: Car lease with an indefinite term

A provider leases cars for an indefinite term. Its target market is consumers unable to obtain mainstream finance. It often leases low-value vehicles that are over 10 years old and that have travelled more than 200,000 kilometres.

For example, on a second-hand car worth \$5,000 the consumer could make rental payments of over \$3,000 a year. As a result, the consumer would be required under the lease contract to keep making these payments for as long as they wanted to keep using the car.

B Small amount credit contracts

Key points

ASIC supports the implementation of the reforms recommended by the SACC Review, particularly the introduction of a protected earnings amount.

We consider that consumer harm will continue until the proposed reforms commence.

Overview

- 51 ASIC supports the implementation of the reforms recommended by the SACC Review.
- 52 In particular, we support Recommendation 1 of the SACC Review, which proposed introducing a new protected earnings amount for small amount credit contracts equal to 10% of net income, broadened to cover all consumers, not just recipients of Centrelink benefits.
- 53 Our view is that a protected earnings cap will facilitate financial inclusion and reduce the risk that consumers may be unable to pay for basic needs or be forced to default on other necessary commitments. Such a cap will mitigate these outcomes and can be expected to improve a consumer's financial position by smoothing expenditure, limiting shortfalls in paying utilities or rent, and reducing dependency on higher cost forms of finance.
- 54 Our review of payday lending practices in [Report 426 Payday lenders and the new small amount lending provisions](#) (REP 426) supports the need for implementing Recommendation 1.
- 55 We reviewed 288 payday loan files and found that:
- (a) in 54.2% of files, the consumer had entered two or more small amount credit contracts (with this level of repeat use reflecting a risk of debt spirals); and
 - (b) in 7.6% of files, the consumer was in default on another small amount credit contract.
- 56 We consider that a 10% income cap would also encourage longer loan terms and, therefore, smaller and more affordable fortnightly repayments. This reduces the risk of a consumer becoming trapped in a cycle of dependency and repeat use, as they are more likely to be able to meet the smaller fortnightly repayments and cover their other living expenses with a reduced risk of default or of needing to access further credit.

- 57 Introducing a 10% income cap should not unduly restrict access to credit. For example:
- (a) a person on a low income of \$1,100 a fortnight who borrowed \$500 could make payments of \$110 over a three-month period; and
 - (b) a person on a higher income of \$1,825 a fortnight could be required to make payments of \$182.50 a fortnight and so could access five \$500 small amount credit contracts concurrently in a 12-month period.
- 58 Accordingly, our view is that the cap strikes an appropriate balance between enabling consumers to access emergency finance when required and enhancing their opportunity to improve their financial situation over time.
- 59 We also strongly support removing the rebuttable presumption that a small amount credit contract is unsuitable if a consumer has entered into two or more of these contracts in the last 90 days or is in default under such a contract. Instead, we support introducing a 'bright line' test that prohibits the provision of these contracts to consumers who have entered into two or more small amount credit contracts in the past 90 days.
- 60 Our experience is that bright line requirements give greater certainty to industry on what conduct is required to comply with the law and result in higher levels of compliance by payday lenders.

Impact of continuing poor behaviour by payday lenders

- 61 Table 1 sets out the other recommendations accepted by the Government on small amount credit contracts and the harm to consumers that would continue until the reforms are implemented.

Table 1: Recommendations and continuing harm to consumers

| Reform | Continuing harm |
|--|---|
| Require small amount credit contracts to have equal repayments and equal payment intervals | Some providers of small amount credit contracts continue to 'front-load' repayments so that consumers pay more through an artificial and unnecessary lengthening of the term of the contract. |
| Prevent providers from charging monthly fees on the residual term of the contract where the contract has been paid out in full early by the consumer | Some providers continue to charge consumers a 4% monthly fee to cover a period of time when the loan has been repaid. This does not give consumers an incentive to pay out their loan early when they have the capacity to do so. |
| Prohibit unsolicited invitations for payday loans to current and former payday loan consumers | Consumers continue to take out these contracts rather than seek alternatives that could improve their financial position, as providers send invitations to consumers for new loans when they will be most susceptible to the offer (e.g. when fluctuations in their income and/or expenses are detected, or when an existing loan is due to be repaid). |

| Reform | Continuing harm |
|--|--|
| Give ASIC the power to mandate content of warning statements | Consumers continue to take out small amount credit contracts rather than seek alternatives that could improve their financial position as the current warning statements have been largely ineffective. |
| Extend the civil penalty regime in Pt 6 of the National Credit Code (Sch 1 of the National Credit Act) to consumer leases and payday loans | <p>There are reduced incentives for providers of small amount credit contracts and consumer leases to comply with the law as:</p> <ul style="list-style-type: none"> • these providers are at less risk of losing their charges in the event of non-compliance; and • the adequacy of the systems for these providers to comply with the National Credit Act is not relevant to the amount of any penalty. |
| Introduce broad anti-avoidance protections to prevent providers of small amount credit contracts and consumer leases from circumventing the rules and protections contained in the National Credit Act | <p>There is continuing consumer detriment from avoidance practices as ASIC has limited powers to address avoidance activity or to ensure that the laws applying to small amount credit contracts and consumer leases:</p> <ul style="list-style-type: none"> • meet their intended objectives; and • operate in a competitively neutral way. |

C ‘Buy now, pay later’ arrangements

Key points

ASIC currently has limited jurisdiction to address potential risks to consumers when they use buy now pay later arrangements.

The popularity of these arrangements is growing rapidly, but the National Credit Act and National Credit Code were not drafted with these arrangements in mind.

Overview

- 62 Buy now pay later arrangements are a form of credit used to buy goods and services that have become widespread very quickly. Our data shows that about 2 million consumers have used a buy now pay later arrangement within the last 12 months.
- 63 Buy now pay later arrangements allow consumers to pay for a purchase by instalments without incurring any upfront charges (such as fees or interest). As there is no upfront charge to the consumer, these products are not regulated by the National Credit Act.
- 64 The provider of the arrangement earns their revenue from:
- (a) a payment by the merchant (as they can increase the volume of sales from these arrangements); and
 - (b) default or late fees where the consumer fails to make payments as agreed under the buy now pay later contract.
- 65 Because the responsible lending laws do not apply to these arrangements, buy now pay later providers are not required to consider the income and existing debts of a consumer when they decide whether to provide a loan. This means that:
- (a) buy now pay later providers can offer loans to consumers when they are unlikely to be able to afford the payments (e.g. because they have a low income and substantial existing debts); and
 - (b) a consumer who is in default with one buy now pay later provider can still access credit with that or another provider.
- 66 While each buy now pay later provider takes steps to refuse some credit applications, these steps can vary widely between each provider.

67 One of the largest buy now pay later providers, Afterpay, supports extending the proposed product intervention powers to these products. In a submission to the Inquiry by the Senate Economics Committee, it stated:

Afterpay supports extending ASIC’s intervention powers as it will further increase public confidence in our product and ensure additional consumer protection is provided in the case that our product is used in an unintended manner. (Submission to the Senate Standing Committee on Economics, p. 1.)

68 ASIC is currently conducting a detailed review of the buy now pay later industry and expects to publish a report by the end of 2018.

Structure of buy now pay later businesses

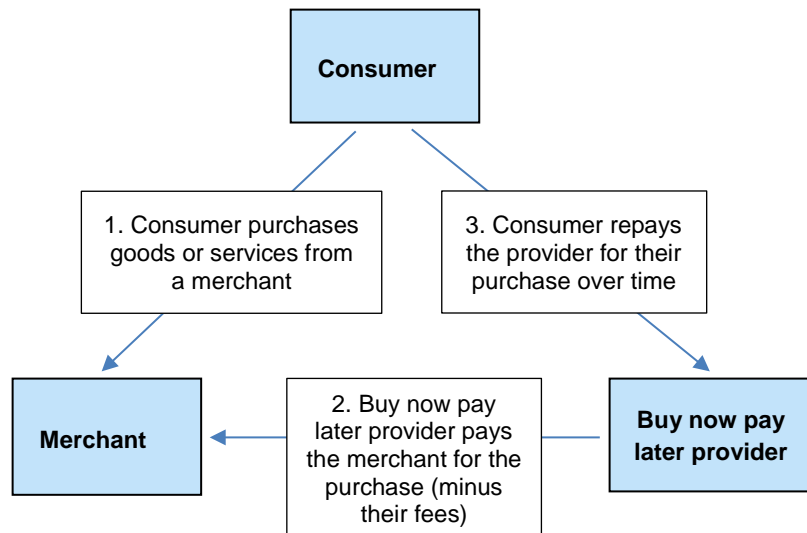
What is a buy now pay later arrangement?

‘Buy now pay later’ arrangements allow consumers to purchase goods and services immediately, and to pay for that purchase over time.

These arrangements usually involve a contract between the consumer and the buy now pay later provider, a contract between the consumer and the merchant, and a contract between the provider and the merchant: see Figure 3.

When a consumer uses a buy now pay later arrangement to buy goods or services, the merchant is typically paid upfront by the buy now pay later provider, who subsequently collects repayments from the consumer over time.

Figure 3: How a buy now pay later arrangement works



Note: For a description of this figure, see paragraph 69 (accessible version).

69 Figure 3 shows that in a buy now pay later arrangement:

- (a) a consumer purchases good or services from a merchant;
- (b) the buy now pay later provider pays the merchant for the purchase (minus their fees); and
- (c) the consumer repays the provider for their purchase over time.

- 70 As a base level of protection, we consider that ASIC's proposed product intervention power should include all credit regulated under the ASIC Act, so that we can act quickly to address any significant consumer detriment to consumers from these arrangements.
- 71 We consider that this would provide an appropriate level of regulation in this market that balances the following factors:
- (a) it would allow ASIC to respond quickly and effectively to address the causes of significant consumer detriment when they arise;
 - (b) it would minimise regulatory cost; and
 - (c) it would therefore foster consumer trust and confidence in buy now pay later arrangements, especially during this period of substantial growth.

Risks to consumers

- 72 There are risks to consumers from the use of buy now pay later arrangements particularly in the following situations:
- (a) *The consumer can borrow significant amounts*—Two providers currently offer up to \$30,000 of credit, and one provider offers up to \$17,500 of credit.
 - (b) *The consumer has a low-income*—There is a significant level of use of buy now pay later loans by younger consumers who are either students or only part-time employed.
 - (c) *The consumer is using multiple buy now pay later arrangements, together with payday loans*—In this case, the consumer may move between these forms of credit to meet their commitments.
- 73 These factors, either individually or in combination with each other, can increase the indebtedness of the consumer, making it difficult to meet other commitments, such as groceries, rent or utilities.
- 74 Because these arrangements can be obtained quickly and can be promoted in a way that focuses consumer attention on relatively small repayment instalments rather than the total purchase price, consumers can be at a higher risk of proceeding with a buy now pay later purchase without carefully considering the total debt that they would incur.
- 75 Some merchants use aggressive sales strategies to target low-income consumers, which can result in sales of goods and services to consumers that they do not need or would have trouble affording. The merchant can make the sale and pass the risk of default to the buy now pay later provider.

- 76 Some merchants also charge consumers a substantially higher price when they buy goods or services using a buy now pay later arrangement. These higher prices can be misleading to consumers when they are bundled into the purchase price for the goods or services and not disclosed to consumers, and the consumer understands they are being provided with credit that is ‘interest free’.

Limits of current regulation

- 77 The ASIC Act prohibits unconscionable, false, deceptive and misleading conduct in relation to buy now pay later arrangements, but we consider that these safeguards, in isolation, are inadequate for protecting against the potential risks to consumers.
- 78 We consider that the widespread use of these arrangements suggests there is a need for reforms to introduce consistent and comprehensive standards of conduct where there is consumer detriment. We therefore support the extension of the PIP reforms to these products, consistent with our view that they should apply to all financial products regulated by the ASIC Act.

D High-risk unregulated credit products

Key points

There are significant risks to consumers from some credit products that are only regulated by the ASIC Act (but not the National Credit Act).

We consider that the PIP reforms should be extended to all financial products regulated by the ASIC Act, as a piecemeal approach to these reforms can be used by providers seeking to exploit gaps in regulatory coverage.

Overview

- 79 It is proposed that the PIP reforms will apply to:
- (a) credit contracts and to consumer leases regulated by the National Credit Act; and
 - (b) short-term credit that is currently exempt from the National Credit Act as a result of the operation of s6(1) of the National Credit Code.

Note: In summary, s6(1) exempts loans where the term of the loan is 62 days or less, and the credit fees and charges does not exceed 5% of the amount of credit.

- 80 ASIC supports the decision to extend the PIP reforms to short-term credit through regulation. However, we consider that these reforms should be extended to all financial products regulated by the ASIC Act.

- 81 This is because:
- (a) businesses seeking to exploit gaps in regulatory coverage can easily choose to engage in ‘exemption-hopping’ practices if coverage is only piecemeal or on a case-by-case basis (as the development of avoidance models is responsive, and involves identifying and exploiting gaps in the regulatory framework); and
 - (b) credit offered in reliance on the short-term exemption is not the only form of credit that is both unregulated by the National Credit Act and that has a risk of consumer detriment.

- 82 The use of exemptions also results in a competitive disadvantage for businesses who offer credit products regulated by the National Credit Act. It can also provide incentives to market participants to structure business models to ensure that their products avoid the consumer protections under the National Credit Act, including:
- (a) not having to meet the entry standards to hold a credit licence;
 - (b) not having to assess the consumers’ capacity to meet the payments under the proposed loan; and

- (c) charging more than would be permitted by the price caps in the National Credit Act.

83 One form of credit that can cause harm to consumers is the informal credit arrangement common in Indigenous communities known as ‘book up’. There are no minimum standards for the operation of book up. As a result, some businesses offer it on unfair terms where they hold onto the consumer’s credit or debit card and their PIN, so that they can take all of the consumer’s income.

Use of exemption for short-term credit to charge higher prices

84 There is currently significant use of the exemption for short-term credit in s6(1) of the National Credit Code to charge consumers higher prices than payday providers are permitted.

Case study 5: Excessive charges through use of the exemption for short-term credit

The short-term credit exemption in s6(1) of the National Credit Code applies to loans provided where, in summary, the credit fees and charges do not exceed 5% of the amount of credit.

The definition of credit fees and charges does not include:

- some fees payable to third parties; or
- fees charged on default.

Gold-Silver Standard Finance offers loans for small amounts (up to \$1,000) that are exempt as they have a maximum term of 62 days or less, and the charges are equal to 5% of the loan amount.

A related company, Cigno, charges ‘financial supply’ and account fees for providing a ‘fast-tracked’ service for prompt payment to the consumer’s bank account. These fees can be up to 115% of the amount borrowed (e.g. \$115 on a loan of \$100).

The amount charged when the consumer defaults is not capped or limited and can result in significant further charges to consumers.

85 ASIC has identified transactions where the consumer has had to repay amounts significantly more than the amount borrowed as a result of ‘financial supply’ fees, account fees and default fees. These include, for example, loans where:

- (a) the consumer borrowed \$350 and ended up having to repay over \$2,000;
- (b) the consumer borrowed \$175 and ended up having to repay over \$1,000; and
- (c) the consumer borrowed \$100 and had to repay \$696.

86 By comparison, the maximum amount a payday lender can recover, in the event of default is roughly twice the amount borrowed. This fee limit was introduced to explicitly address the harm caused by business models where significant revenue was earned where the consumer defaulted, as this could be seen as encouraging the lender to overcommit the consumer.

Note: See s39B of the National Credit Code.

87 ASIC has also received multiple reports of misconduct about these loans, alleging that Cigno and/or Gold-Silver Standard Finance:

- (a) charged consumers excessive fees of up to ten times the loan amount;
- (b) did not adequately disclose fees to consumers;
- (c) made unsolicited offers of credit to consumers; and
- (d) did not consider a consumer's ability to repay fees, despite being aware of issues that were likely to affect the consumer's ability to repay (e.g. they had existing debts with multiple small amount credit contracts or utility providers).

88 ASIC supports regulation of transactions where lenders use the exemption for short-term credit to charge consumers more than would be permitted if the loan was provided by a payday lender. We therefore support the decision to specifically extend the PIP reforms to short-term credit through regulation.

89 However, we remain concerned that, in the absence of comprehensive coverage, businesses may seek to change their legal structure and move to a different exemption, while the underlying model remains substantially similar (with consumers continuing to be charged excessive amounts).

Book up

90 'Book up' is an informal credit arrangement most common in Indigenous communities whereby consumers are provided credit to purchase goods or services which is then repaid by instalments. It is particularly prevalent in regional and remote communities across Australia, where there is limited access to alternative financial products and services. The types of businesses providing book up include local convenience, grocery and clothing stores, food outlets, petrol stations, taxi services, and motor vehicle dealerships.

91 Book up practices can vary from store to store. Typically, providers:

- (a) require consumers using book up to leave their debit card at the store where the book up is taking place;
- (b) can sometimes ask a consumer to provide their PIN;
- (c) reduce outstanding balances by using the debit card and PIN to deduct payments as funds become available in the consumer's account without the consumer's oversight;

- (d) enter into a book up agreement verbally, with little or no documentation involved; and
- (e) allow a consumer to book up further items while previous book up debts remain outstanding.

92 Many stores operate book up in a balanced way that helps their local community. However, some businesses take advantage of consumers. The key problems identified with these businesses are as follows:

- (a) The business keeps physical possession of the consumers' debit cards and PINs. This enables them to withdraw money from a consumer's account at the provider's discretion (or in practice when the consumer expects to receive a payment, such as their Centrelink payments).
- (b) The business determines the amount of money to be deducted. In some instances, businesses have negotiated agreements with their local community to place limits on the deductions. However, it is more common for businesses to deduct the whole amount the consumer receives.
- (c) Generally, there is no written agreement about the amount of money to be booked up (e.g. no limit on the amount that will be lent and no discussion about affordability) or how or when the debt will be repaid.
- (d) Consumers are rarely provided with receipts or account statements. As a result, they will often be unaware of the amount of debt that they owe and how much they have repaid, and whether they have a credit or debit balance. This creates a significant risk of theft or overcharging.

93 As a result, consumers can become trapped in book up due to the size of the debt and the lack of documentation, which can result in the consumer having little knowledge about their financial position. This makes it difficult for a consumer to budget, repay their debt and regain control of their finances.

94 It also creates an uncompetitive dependency on a single business, as the consumer may be tied to purchases from that business. When a provider holds a consumer's debit or credit card, the consumer is unable to make purchases from other businesses, even if they are cheaper.

95 There is inconsistent regulation of book up depending on whether there is a charge for the provision of credit. If a book up provider's arrangements are captured by the National Credit Act, the provider must hold a credit licence and meet the licensing obligations under that Act. However, there is commonly no express or explicit fee or interest charge associated with the provision of book up.

96 Given that it is unusual for book up to be offered in a way that is regulated by the National Credit Act, ASIC would support the extension of the PIP reforms to these products (consistent with our view that they should apply to all products regulated by the ASIC Act). This would allow us to develop specific models for book up, in accordance with the consultation and implementation requirements in the legislation.

E Debt management firms

Key points

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

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

Overview

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

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

98 The conduct of these businesses has been the subject of criticism by a range of stakeholders including financial counsellors, credit providers, consumer legal centres and external dispute resolution (EDR) schemes in financial services, telecommunications, energy and water firms.

99 For example, the Energy & Water Ombudsman NSW (EWON) has expressed concerns about the level of fees charged to consumers to dispute default listings when a free complaint mechanism is available and when compliant defaults cannot be removed. It has stated:

It is of considerable concern to EWON that customers are not just paying fees to credit agents when a free service is available, but that these fees typically far exceed the debt amount and include a non-refundable upfront payment of around \$950. In cases where it is determined that the credit listing is compliant, customers therefore find the exercise of attempting to fix their credit situation has only worsened their immediate financial position and delivered no benefit in terms of credit rating to offset this negative outcome.

100 Conduct of concern by debt management firms includes:

- (a) unnecessarily increasing cost for both lenders and EDR schemes,
- (b) charging high fees for services of little value;

- (c) giving poor or inappropriate services that can leave consumers worse off;
 - (d) mis-selling services on the basis of misleading representations about the nature and effectiveness of the service; and
 - (e) engaging in unfair and, in some cases, predatory conduct in relation to consumers in financial hardship.
- 101 These concerns are exacerbated by the fact that consumers can, at no cost:
- (a) access their credit report;
 - (b) challenge an incorrect listing;
 - (c) receive help from financial counsellors or community legal services; and
 - (d) have an independent ombudsman scheme help resolve disputes with lenders, telecommunications and utilities providers.
- 102 In ASIC's view, many debt management firms can market their services to consumers in financial hardship as an appealing way to transfer responsibility for their difficulties to a third party.

Impact of poor conduct on consumers

- 103 ASIC has identified a range of poor conduct by debt management firms, including the provision of high-cost low-value services or, at worst, exploitative conduct.
- 104 We also found that some debt management firms would negotiate unrealistic arrangements with a consumer's debtors that could, in fact, worsen their financial position. These included arrangements in the following situations:
- (a) *Unrealistic settlement offers are made*—The debt management firm will advise the consumer to cease making payments to the creditors and offer low and unrealistic lump sum settlements to creditors. The combination of these behaviours can antagonise creditors and make it less likely they will agree to the settlement.
 - (b) *Unsuitable payment arrangements are offered*—The debt management firm may offer repayments that the consumer is unable to meet, which creates a risk of increasing their overall debt.
- 105 We found that:
- (a) fees were often high and heavily 'front loaded'—that is, fees were payable before services were provided or promises met; and
 - (b) fees and costs were opaque, making it difficult for consumers, often in significant financial hardship, to assess the cost of the services relative to the purported value, or to compare the services and cost of one firm to another.

- 106 We also found that consumers were charged for unnecessary services, particularly in relation to running disputes with EDR schemes:
- (a) Some debt management firms brought complaints to EDR schemes, where the creditor incurs costs, as a means to influence the creditor to remove a valid credit listing;
 - (b) Complaints were often framed in a templated format and that there was a lack of tailoring to the needs of individual consumers; and
 - (c) Debt management firms that provide credit repair services generated revenue by acting as intermediaries between consumers and EDR schemes that are freely accessible to consumers. These credit repair services were expensive and of limited value to many consumers.

Gaps in regulation compared to international approaches

- 107 There is no uniform regulatory framework that applies to the activities of debt management firms in Australia. Firms are generally not required to hold a credit licence or AFS licence to provide debt management services.
- 108 ASIC can and has taken action under the ASIC Act where a debt management firm has engaged in conduct in breach of that Act.

Case study 6: ASIC action against Malouf Group Enterprises

Malouf Group is a credit repair business that promoted itself via websites and TV ads. It operated under various business names including Credit Clean Australia, Credit Fix Australia, Credit Wash, and Clean Your Credit. Today Malouf Group operates only under the Credit Clean Australia name.

ASIC took action against the Malouf Group for using sales tactics that were unconscionable and misled vulnerable consumers that it would investigate and repair a consumer's credit file. In fact, normally Malouf did not even obtain the consumer's credit file, but only provided an information booklet on credit repair to the consumer containing a copy of the consumer's credit report, for which it charged consumers \$1,095. Consumers can obtain this information and their credit report for free.

The court found that examples of the tactics used by Malouf Group to induce consumers to enter into contracts were both 'disturbing and unconscionable', describing the conduct as 'cynical and calculated'.

Approximately 1,000 consumers out of 10,000 consumers who engaged Malouf Group's services had no negative listings on their credit file and therefore it was impossible for the credit file to be 'repaired'.

The court ordered Malouf Group to pay a pecuniary penalty of \$400,000 and its director, Mr Malouf, to pay \$100,000 for making false and misleading representations and by engaging in unconscionable conduct.

Note: See [Media Release \(18-114MR\)](#) *Credit repair business Malouf Group Enterprises and its director pay \$1.7 million for misleading and unconscionable conduct* (26 April 2018)

- 109 By comparison overseas jurisdictions have introduced sector-specific regulation to address the particular harms associated with the conduct of debt management firms. Examples include the following:
- (a) *Entry standards and conduct obligations*—In the United Kingdom, for example, debt advice or debt management services must hold a licence and meet a range of conduct and disclosure obligations under the *Financial Services and Markets Act 2000* (UK).
 - (b) *Controls on fees*—In the United States, some states enforce the Telemarketing Sales Rule, which includes:
 - (i) bans on upfront fees, so that a debt relief service can only collect fees when it successfully renegotiates, settles, reduces, or otherwise changes the terms of at least one of the consumer’s debts; and
 - (ii) requirements that the fee must be proportional to the fee charged for the entire debt relief service (if the firm uses a flat fee structure) or a percentage of savings achieved (if the firm uses a contingency fee structure).
- 110 The regulatory framework in Australia provides a lower level of protection than those in force overseas. We consider the extension of the PIP reforms to these products will allow ASIC to address conduct where there is a risk of significant consumer detriment.

Appendix: ASIC's enforcement actions for consumer leases

111 Since 2013, ASIC's action on consumer leases has resulted in fines and community benefit payments of \$3.4 million and remediation to consumers (refunds and debt write-offs) of almost \$27 million.

Table 2: Enforcement actions and outcomes for consumer leases

| Provider | Media release | Enforcement actions and outcomes |
|------------------------------|--|---|
| Thorn Australia Pty Ltd | 18-017MR 18-139MR | <p>ASIC accepted a court enforceable undertaking in January 2018 from Thorn Australia Pty Ltd (trading as Radio Rentals), to further address our concerns about compliance with its responsible lending obligations and the receipt and retention of excess payments from customers. Radio Rentals committed to:</p> <ul style="list-style-type: none"> • refund or write-off approximately \$6.1 million in default fees and charges; • hold the balance of refunds that cannot be returned to customers and donate unclaimed money it as a community benefit payment; and • appoint independent experts to review compliance and report to ASIC. <p>We also lodged civil penalty proceedings with the Federal Court of Australia, and on 16 May 2018 the Federal Court of Australia ordered a \$2 million penalty for breaches of the responsible lending obligations.</p> |
| King Quartet Pty Ltd | 17-243MR | <p>After ASIC identified a failure to comply with the responsible lending laws, King Quartet Pty Ltd (trading as the Rental Guys) refunded most of the affected customers and paid unclaimed refunds to a community organisation.</p> |
| Motor Finance Wizard | 17-150MR | <p>Following an ASIC probe, we accepted a court enforceable undertaking from Motor Finance Wizard in May 2017 to implement a wide-ranging remediation program, which included:</p> <ul style="list-style-type: none"> • over \$11 million in refunds and write-offs to 1,511 customers; • a \$100,000 community benefit payment; • re-assessments and varied terms on existing leases; and • the engagement of an independent expert to review its operations and report to ASIC. |
| S&S Enterprises Pty Ltd | 16-403MR | <p>In November 2016, ASIC cancelled the credit licence of S&S Enterprises Pty Ltd (trading as Rent To Own Appliances) after we found it had entered into credit contracts where it charged consumers an annual interest rate higher than the 48% maximum allowable under the National Credit Act.</p> |
| Make It Mine Finance Pty Ltd | 15-349MR | <p>In November 2014, we commenced civil action against Make It Mine, and in November 2015 the Federal Court awarded penalties totalling \$1.25 million for breaches consumer credit laws. In September 2015, Make It Mine agreed to ASIC imposing a condition on its credit licence, which required an independent external consultant to review and report to ASIC on the entity's policies and procedures to ensure compliance with consumer credit laws.</p> |

| Provider | Media release | Enforcement actions and outcomes |
|--|--|--|
| Amazing Rentals Pty Ltd | 15-141MR | <p>Following an investigation, ASIC accepted a court enforceable undertaking from consumer lease provider Amazing Rentals Pty Ltd, which required the provider, in relation to a particular store, to:</p> <ul style="list-style-type: none"> • cease operations at the store for a minimum of 12 months; • for leases that had commenced at the store, terminate the lease, refund consumers, cancel payment arrangements, and transfer ownership of the goods to the consumers; • refund to 34 consumers all credit charges (the difference between retail and lease cost); and • pay a community benefit payment and conduct an independent external compliance review. |
| Goldhype Pty Ltd | 15-019MR | <p>Following ASIC action, we announced on 11 February 2015 that Goldhype Pty Ltd (trading as Smart Link Rentals) and four other businesses agreed to refund over \$230,000 to 115 consumers for rental payments made to them when they were not licensed to provide consumer leases. We also imposed an additional condition on Smart Link Rentals' Australian credit licence.</p> |
| Rent The Roo Pty Ltd | 13-301MR | <p>After an ASIC surveillance found deficiencies in its operating and compliance practices, we issued Rent The Roo Pty Ltd (RTR) with an infringement notice totalling \$27,500 for a breach of the responsible lending laws. We accepted a court enforceable undertaking which included the appointment of an independent compliance consultant to review RTR's policies and procedures.</p> |
| Mr Rental Australia Pty Ltd | 13-288MR | <p>Following ASIC action, in October 2013 the lease agreements of more than 40 consumers were terminated, so that the consumers owed no further money and owned their rented goods.</p> |
| Ray Rentals Pty Ltd | 13-207MR | <p>After an ASIC investigation found unlicensed credit activity, we banned Victorian-based household goods rental company, Ray Rentals Pty Ltd, and its sole director, Mr Amandeep Sharma, from offering credit for four years.</p> |
| Mobile Rentals Pty Ltd, and five franchisees | 13-028MR 13-245MR | <p>After our surveillance identified widespread disregard for the credit laws, ASIC banned the director of Mobile Rentals for five years, cancelled its credit licence and imposed licence conditions against one franchisee to appoint an external independent expert. The remaining franchisees undertook not to engage in credit activities for 3 and a half years. Consumers were released from their obligation and were given ownership of their goods.</p> |
| Mr Rental Australia Pty Ltd | 13-022MR | <p>ASIC accepted a court enforceable undertaking from Mr Rental Australia Pty Ltd, a household goods rental business to provide refunds to approximately 1,560 consumers (anticipated to be in excess of \$300,000), and amend the standard form rental contract used by the 52 franchisees operating under the Mr Rental banner.</p> |
| Zaam Rentals Pty Ltd, and franchisees | 13-021MR | <p>Zaam Rentals targeted vulnerable consumers in remote Indigenous communities in Mildura, Victoria, and surrounding areas in New South Wales. ASIC banned the director and former director from engaging in credit activities for 6 years and 4 years respectively and cancelled its credit licence for failing to comply with the responsible lending obligations. We also accepted court enforceable undertakings from the franchisees to not engage in credit activities for 3 and a half years.</p> |

Key terms

| Term | Meaning in this document |
|-----------------------------|--|
| ASIC Act | <i>Australian Securities and Investments Commission Act 2001</i> |
| Australian Consumer Law | Sch 2 to the Competition and Consumer Act |
| Bankruptcy Act | <i>Bankruptcy Act 1966</i> |
| consumer lease | A consumer lease to which the National Credit Code applies Note: See s169–171 of the National Credit Code. |
| credit activity | Has the meaning given in s6 of the National Credit Act |
| credit licence | An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities |
| credit repair | A type of service offered by debt management firms that promises to clear negative information from credit reports held by credit reporting bodies, so that a consumer is more likely to get credit or access to other services in the future |
| debt management firm | A firm that charges fees for services to consumers in financial hardship or with listings on their credit reports |
| EDR scheme | An external dispute resolution scheme approved by ASIC under the National Credit Act (see s11(1)(a)) in accordance with ASIC requirements in Regulatory Guide 139 <i>Approval and oversight of external complaints resolution schemes</i> (RG 139) |
| EWON | Energy & Water Ombudsman NSW |
| Government | Australian Government |
| INFO 112 | An ASIC information sheet (in this example numbered 112) |
| National Credit Act | <i>National Consumer Credit Protection Act 2009</i> |
| National Credit Code | National Credit Code at Sch 1 to the National Credit Act |
| National Credit Regulations | National Consumer Credit Protection Regulations 2010 |
| Panel | The Panel of the SACC Review |
| payday lender | A credit provider that provides payday loans |

| Term | Meaning in this document |
|------------------------------|---|
| payday loan | Has the meaning given to 'small amount credit contract' in Sch 3 to the <i>Consumer Credit Legislation Amendment (Enhancements) Act 2012</i> |
| PIP reforms | Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill 2018 |
| protected earnings amount | The amount of money a lender cannot access for the purposes of loan repayments |
| REP 465 | An ASIC report (in this example numbered 465) |
| s131(3A) (for example) | A section of the National Credit Act (in this example numbered s131(3A)), unless otherwise specified |
| SACC Review | Review of the small amount credit contract laws, the terms of reference for which were released on 7 August 2015 and the final report by the Panel provided to the Government on 3 March 2016 |
| small amount credit contract | Has the meaning given in Sch 3 to the <i>Consumer Credit Legislation Amendment (Enhancements) Act 2012</i> |

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2019

Re: Application for authorisation AA1000439 lodged by the Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Flexigroup Limited [ACN 122 574 583]

Applicant

ANNEXURE CERTIFICATE

This is the annexure marked “**KF-3**” annexed to the statement of **Kevin Foo** dated 5 May 2020.

Annexure “KF-3”

**Report of the Senate Inquiry into Credit and financial services targeted at
Australians at risk of financial hardship**

The Senate

Economics
References Committee

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

February 2019

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Senate Economics References Committee

Committee members

| | |
|---|----------------------|
| Senator Chris Ketter (<i>Chair</i>) | Queensland, ALP |
| Senator Jane Hume (<i>Deputy Chair</i>) | Victoria, LP |
| Senator the Hon Kristina Keneally | New South Wales, ALP |
| Senator Jenny McAllister | New South Wales, ALP |
| Senator Amanda Stoker | Queensland, LP |
| Senator Peter Whish-Wilson | Tasmania, AG |

Substitute member

| | |
|---|---------------------|
| Senator Sarah Hanson-Young | South Australia, AG |
| <i>(Substitute member to replace Senator Peter Whish-Wilson from 6 December 2018)</i> | |

Secretariat

Mr Mark Fitt, Secretary
Dr Anne Holmes, Senior Research Officer
Ms Hannah Dunn, Administrative Officer

PO Box 6100
Parliament House
Canberra ACT 2600

Ph: 02 6277 3540
Fax: 02 6277 5719
E-mail: economics.sen@aph.gov.au

Table of Contents

| | |
|--|------------|
| Senate Economics References Committee | iii |
| Acronyms and Abbreviations | vii |
| Recommendations | ix |
| Chapter 1 | |
| Committee view..... | 1 |
| The committee's approach to this inquiry..... | 1 |
| The reality of financial hardship in Australia..... | 2 |
| Credit products targeted at Australians at risk of financial hardship | 3 |
| Financial services targeted at Australians at risk of financial hardship | 8 |
| Online and digital marketing of financial products..... | 12 |
| Centrepay..... | 13 |
| The need to support and expand financial counselling services | 15 |
| Alternative financial products for financially stressed Australians | 16 |
| Chapter 2 | |
| Background..... | 19 |
| Conduct of the inquiry..... | 19 |
| Structure of this report..... | 20 |
| Background to the inquiry | 20 |
| Chapter 3 | |
| Payday loans and consumer leases..... | 31 |
| Payday loans | 31 |
| Consumer leases | 34 |
| Impact on consumers | 36 |
| Conduct of providers | 40 |
| Centrepay..... | 46 |
| Nature and adequacy of current regulatory arrangements..... | 49 |

Chapter 4

| | |
|---|-----------|
| Debt management | 55 |
| Market participants and products | 55 |
| Impact on consumers | 56 |
| Conduct of providers | 59 |
| Nature and adequacy of the current regulatory arrangements..... | 62 |

Chapter 5

| | |
|---|-----------|
| Buy now pay later | 65 |
| Market participants and products | 65 |
| Impact on consumers | 68 |
| Conduct of providers | 70 |
| Nature and adequacy of the current regulatory arrangements..... | 70 |

Chapter 6

| | |
|---|-----------|
| Alternatives for consumers in financial difficulties | 75 |
| The Australian Financial Complaints Authority | 75 |
| Financial counselling..... | 76 |
| Financial literacy | 81 |
| Microfinance as an alternative..... | 81 |

Coalition Senators Dissenting Report85

Additional Comments by the Australian Greens.....91

Appendix 1 - Submissions, additional information, answers to questions on notice and tabled documents.....93

Appendix 2 - Public hearings97

Acronyms and Abbreviations

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

Recommendations

Recommendation 1

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

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

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

Recommendation 4

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

Recommendation 5

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

Recommendation 6

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

Recommendation 7

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

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

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

Recommendation 9

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

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

Recommendation 10

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

Recommendation 11

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

Recommendation 12

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

Recommendation 13

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

Recommendation 14

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

Recommendation 15

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

Recommendation 16

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

Recommendation 17

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

Recommendation 18

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

Recommendation 19

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

Recommendation 20

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

Chapter 1

Committee view

The committee's approach to this inquiry

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

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

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

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

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

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

The reality of financial hardship in Australia

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation 1

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

Credit products targeted at Australians at risk of financial hardship

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation 2

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

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

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

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

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

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

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

1.23 Each of these issues is addressed in turn below.

Noncompliance

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

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

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

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

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

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

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

Recommendation 3

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

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

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

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

Recommendation 4

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

Blackmail security

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

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

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

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

Medium amount credit contracts

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

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

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

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

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

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

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

Recommendation 5

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

Sales staff and credit

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

Recommendation 6

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

Anti-avoidance

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

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

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

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

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

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

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

Recommendation 7

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

Financial services targeted at Australians at risk of financial hardship

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation 8

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

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

Other financial products

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

1.56 This growth has largely outstripped the regulatory response.

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

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

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

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

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

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

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

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

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

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

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

Recommendation 9

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

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

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

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

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

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

Recommendation 10

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

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

Recommendation 11

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

Online and digital marketing of financial products

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

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

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

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

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

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

Recommendation 12

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

Centrepay

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

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

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

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

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

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

1.79 As the Salvation Army observed:

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

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

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

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

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

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

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

1.81 The impact is particularly severe on marginalised groups:

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

Recommendation 13

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

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

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

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

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

Recommendation 14

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

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

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

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

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

The need to support and expand financial counselling services

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

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

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

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

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

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

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

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

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

Recommendation 15

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

Recommendation 16

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

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

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

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

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

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

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

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

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

Recommendation 17

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

Alternative financial products for financially stressed Australians

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

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

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

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

1.102 Good Shepherd Microfinance highlights the benefits of NILS:

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

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

Recommendation 18

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

Recommendation 19

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

Recommendation 20

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

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

Chapter 2

Background

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

2.2 The terms of reference for the inquiry are:

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

- (a) the impact on individuals, communities, and the broader financial system of the operations of:
 - (i) payday lenders and consumer lease providers,
 - (ii) unlicensed financial service providers including ‘buy now, pay later’ providers and short term credit providers, and
 - (iii) debt management firms, debt negotiators, credit repair agencies and personal budgeting services;
- (b) whether current regulation of these service providers meets community standards and expectations and whether reform is needed to address harm being caused to consumers;
- (c) the present capacity and capability of the financial counselling sector to provide financial counselling services to financially stressed and distressed members of the community; and
- (d) any other matters.

Conduct of the inquiry

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

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

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

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

Structure of this report

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

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

Background to the inquiry

Financial exclusion and financial hardship

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.19 However, old problems also persist:

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

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

Regulation and research

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

Legislation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Work by the Australian Securities and Investments Commission

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Organisations relevant to people in financial difficulties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 3

Payday loans and consumer leases

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

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

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

Payday loans

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

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

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

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

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

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

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

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

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

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

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

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

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

3.11 The Finance Industry Delegation observes:

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

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

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

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

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

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

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

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

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

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

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

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

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

3.17 A representative of ASIC also suggested that:

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

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

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

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

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

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

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

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

12 ASIC, *Submission 21*, pp. 25–26.

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

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

3.20 Financial Counselling Hunter Valley Project Inc also expressed concern:

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

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

Consumer leases

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

3.23 AFCA expressed concern about regulation of consumer leases:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.28 A witness emphasised the services offered with leasing:

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

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

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

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

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

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

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

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

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

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

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

Impact on consumers

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

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

3.34 However, Financial Counselling Australia noted that:

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

3.35 A Legal Aid lawyer expressed a similar view:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

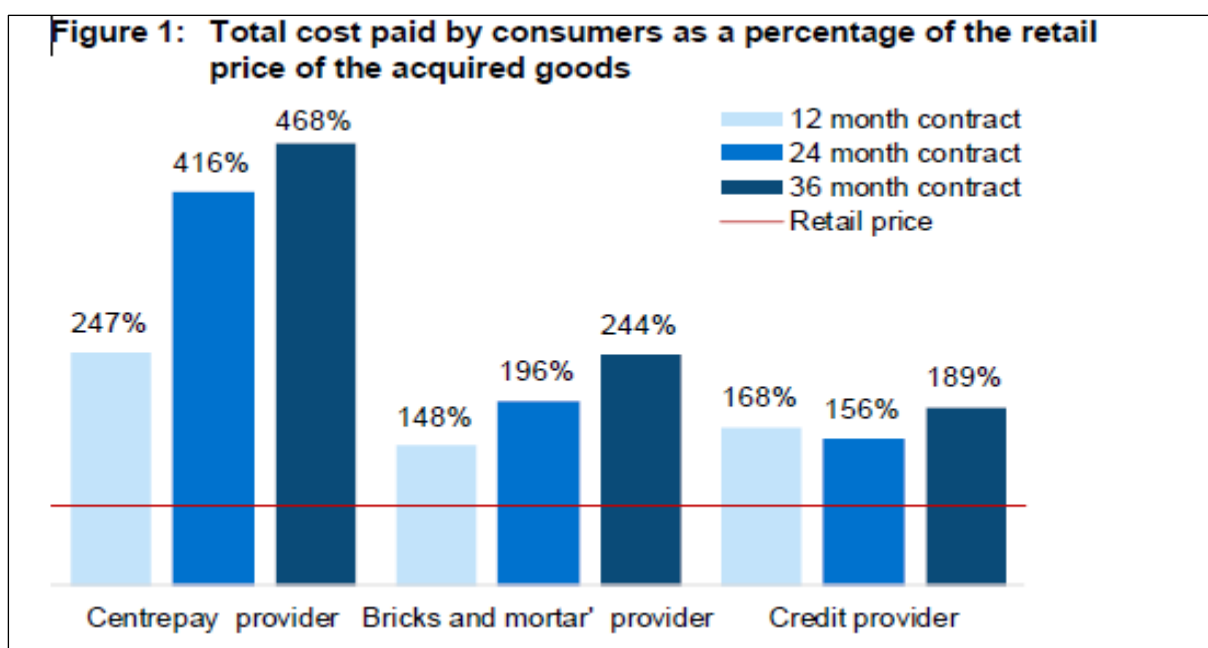
3.40 The Mentone Community Assistance and Information Bureau Inc found that:

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

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

The ongoing deductions from Centrelink accounts...³⁶

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



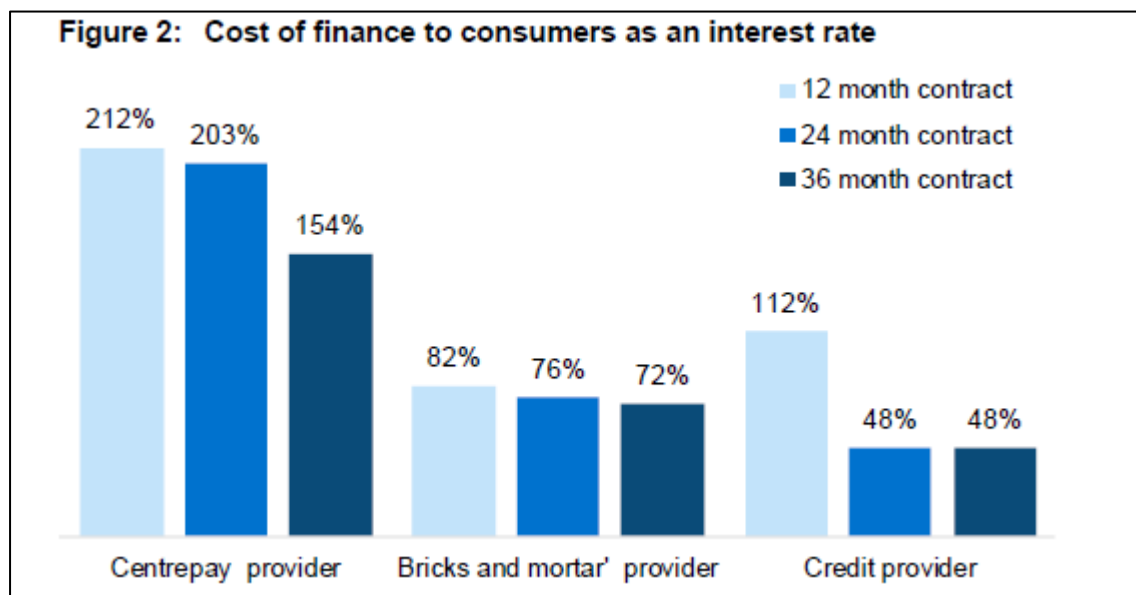
Source: ASIC, *Submission 21*, p. 10

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

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

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

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



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

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

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

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

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

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

Conduct of providers

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

Marketing and consumer behaviour

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.53 In particular, marketing targets the young:

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

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

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

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

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

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

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

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

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

Practices of lenders

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

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

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

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

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

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

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

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

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

55 *Submission 46*, p. 1.

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

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

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

3.59 Financial Counselling Australia also cited specific cases:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.71 His colleague added:

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

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

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

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

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

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

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

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

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

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

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

Centrepay

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

Centrepay's original purpose was to ensure that essential costs such as rent, electricity and water were paid and not to provide a payment collection service for non-essential, profit driven goods and services.⁸⁰

3.76 Similarly, AFCA voiced its reservations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.84 A witness told the December hearing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nature and adequacy of current regulatory arrangements

Current regulation

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

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

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

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

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

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

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

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

Changes included in current draft legislation

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

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

3.95 With regard to SACCs, the SACC Bill would:

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

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

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

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

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

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

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

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

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

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

3.99 Separately, the Credit Regulations would be amended:

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

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

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

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

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

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

Other proposed changes

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

3.101 More generally, ASIC noted:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Views on proposed changes

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

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

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

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

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

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

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

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

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

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

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

Compliance with, and enforcement of, current regulation

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 4

Debt management

Market participants and products

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

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

The details of each are set out below.

4.2 According to ASIC's submission:

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

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

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

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

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

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

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

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

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

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

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

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

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

Impact on consumers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conduct of providers

4.20 ASIC's view is that:

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

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

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

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

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

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

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

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

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

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

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

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

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

4.25 AFSA's submission gives an example, referred by the Consumer Action Law Centre, of a debtor who wanted to obtain his credit file. He rang a credit report provider who also had a debt agreement arm:

The debtor was confused and unwittingly agreed for the company to prepare a debt agreement proposal for him, something he would be charged for.

When the debtor realised what he had allegedly agreed to he attempted to cancel the agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nature and adequacy of the current regulatory arrangements

Current regulation

4.32 AFCA observed that:

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

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

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

4.34 A consumer advocate put it colloquially:

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

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

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

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

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

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

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

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

Changes under way

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

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

Other proposed changes

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

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

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

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

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

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

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

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

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

Compliance with, and enforcement of, current regulation

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

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

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

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

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

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

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

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

Chapter 5

Buy now pay later

Market participants and products

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

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

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

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

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

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

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

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

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

4 Afterpay, *Submission 26*, pp. 4–5.

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

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

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

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

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

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

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

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

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

5.10 ASIC agreed that this could work:

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

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

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

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

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

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

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

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

Credit or not credit?

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

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

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

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

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

5.15 However, Afterpay said:

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

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

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

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

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

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

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

Impact on consumers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.22 They point out that the rate of customers having negative effects from buy now pay later commitments (one in six) is similar to the rate in the credit card sector.²⁵

5.23 Mr Paul Holmes from Queensland Legal Aid pointed out that there may be an artificial lowering of the reported defaults under buy now pay later schemes. Because it is not regulated as credit it does not have hardship provisions. A customer who has multiple credit products is likely to seek the hardship provisions of other products, and pay the buy now pay later account first:

So what you end up having is a cost shifting of the hardship...part of the reason the default rates are very low is people are paying that first and often...[because] they've got hardship over here from these other regulated products.²⁶

5.24 Dr Paul Harrison pointed out that the newness of the product and the ease of access was attracting young people:

This new form...of offering money to people is very new to everybody...There are public social norms now around: 'Avoid credit,' whereas there is not a lot going on about: 'Avoid getting into difficulty with a buy-now-pay-later type of approach.'... It's also more difficult to get credit...So, for a young person who has not got a strong credit rating or who hasn't had a lot of experience with credit, this is much easier to transact.²⁷

22 Care Inc, *Submission 11*, p. 4.

23 Mr Benjamin Paris, Non-Executive Director, Personal Insolvency Professionals Association, *Committee Hansard*, 12 December 2018, p. 47.

24 Mr Nick Molnar, Chief Executive Officer and Co-Founder, Afterpay, *Committee Hansard*, 22 January 2019, p. 11.

25 Mr Larry Diamond, Co-Founder and Chief Executive Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 9.

26 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 27.

27 Dr Paul Harrison, Director, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, pp. 6–7.

Conduct of providers

5.25 There were questions raised about the companies' insistence that their algorithms prevented overcommitment by consumers and the evidence from a number of other sources of very many consumers with multiple buy now pay later debts which they could not service, often in conjunction with other credit products. Clearly, more needs to be done to ensure consumers are protected, and company algorithms alone are not sufficient.

5.26 Criticisms of the behaviour of individual providers of buy now pay later were relatively rare. There was more concern about the nature of the product: in particular, that it allowed people to consume on impulse.

5.27 Dr Paul Harrison's analysis of consumer decision making is discussed in Chapter 3. He emphasised that 'the goal is to get consumers to make the decision as quickly as possible'. In recent years shopping has gone on line, and the technology has been speeded up.²⁸

5.28 Further, with buy now pay later, the purchase and the paying for it have been bundled into one product to ensure the impulse is acted on immediately:

...there's a halo effect that occurs when...consumers see a product that they want to buy and see the ease with which [they're] able to get credit or some kind of financial assistance in that moment.

5.29 Consumers in such situations do not stop and think that there are two different products and one might be better purchased elsewhere.²⁹

5.30 While consumers are responsible for their own behaviour, when problems are widespread it is necessary to look for systemic causes. In particular, the targeting of buy now pay later products to young people does raise some questions:

I think we are seeing too much evidence in our applications to suggest that many consumers are actually already vulnerable by the time we're seeing them. I agree. The borrower does have some responsibility but when the borrower is 18 and trying to pay rent, are they capable of making those decisions which have potentially a decade's worth of impact?³⁰

Nature and adequacy of the current regulatory arrangements

Current regulation

5.31 Representatives of ASIC explained current regulation:

Buy now pay later products are generally not credit under the National Consumer Credit Protection Act because that Act defines consumer credit in a particular way and has exemptions for arrangements that meet certain

28 Dr Paul Harrison, Director, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, pp. 2–3.

29 Dr Paul Harrison, Director, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, p. 3.

30 Ms Corinne Proske, General Manager, Retail and Online, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 42.

criteria. Buy-now pay later-products generally fall within the exemptions that exist in that piece of legislation. However, buy now pay later products are credit as defined in the ASIC Act, and the ASIC Act contains the general consumer protection provisions that exist, including prohibitions against misleading or deceptive conduct and unconscionable conduct.³¹

5.32 ASIC noted that because they are not subject to the responsible lending obligations, buy now pay later operators are not required to consider the income or existing debts of customers. This means that they can offer finance to consumers who cannot afford to repay; and that a consumer who is in default can still get credit from another provider.³²

5.33 AFCA pointed out the same anomaly:

Responsible lending laws do not apply to these arrangements, and this, we believe, does cause real difficulty. We believe that some form of affordability assessment should be undertaken and consumers of these services should have the ability, as many other consumers do, to bring matters to us as the ombudsman if they feel that they've been treated unfairly.³³

5.34 Choice also noted that a quarter of Afterpay's income in the last financial year was from late fees, and suggested that such lenders should be subject to responsible lending obligations.³⁴

Changes under way

5.35 The legislation providing for Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 is currently before the Parliament. ASIC argues for the extension of the product intervention power to the buy now pay later sector, rather than bringing the sector into the National Credit Act. Representative of ASIC commented:

We think that the extension of product intervention powers to this sector will enable us to intervene and require things to be done in a much more targeted and more effective way because it will allow us to address the potential consumer harm more directly...³⁵

5.36 It would also be flexible:

The product intervention power, as currently drafted, would allow...an entity-specific intervention, where it was just that entity with their product that was the issue. But, if the problem was sector wide or even a broader

31 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, ASIC, *Committee Hansard*, 24 January 2019, p. 13.

32 ASIC, *Submission 21*, p. 19.

33 Mr David Locke, Chief Ombudsman and Chief Executive Officer, Australian Financial Complaints Authority, *Committee Hansard*, 24 January 2019, p. 2.

34 Choice, *Submission 22*, p. 2.

35 Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers, ASIC, *Committee Hansard*, 24 January 2019, p. 15.

group that's still not sector wide but a broader group, the intervention can be on that broader basis.³⁶

5.37 Treasury noted that the bill was structured to allow further products to be brought in easily.³⁷

5.38 The government has also introduced amendments to the *Competition and Consumer Act 2010* which would create a consumer data right and will enable sellers of credit products to check the indebtedness of applicants for credit. This was welcomed by the industry.³⁸

Other proposed changes

5.39 The Consumer Action Law Centre and Choice called for buy now, pay later providers to be brought into the scope of the National Credit Act.³⁹ Mr Paul Holmes of Legal Aid Queensland agreed:

...all of these products should be treated in the same way, because they have the ability to have the same adverse impact.⁴⁰

5.40 Zip.co called for:

...a sector-specific regulatory regime centred on three key pillars around responsibility, transparency and customer support: one, where we see minimum standards for up-front due diligence to ensure customers can afford the repayments; two, that customers understand what they are signing up for; and, three, that hardship safeguards are in place to help customers should their financial circumstances change.⁴¹

5.41 This would be close to, but not identical with, coverage under the National Credit Act:

It's very close to full, responsible lending compliance. I think our view of regulation for the sector should be fit for purpose for the products it's regulating, so we would advocate for a scaled-down version of responsible lending. In fact, we would advocate income verification and caps on the amount of repayment that it could take up of a consumer's income.⁴²

36 Mr Greg Kirk, Senior Executive Leader, Strategy Group, ASIC, *Committee Hansard*, 24 January 2019, p. 15.

37 Ms Kate O'Rourke, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 24 January 2019, p. 32.

38 Mr Peter Gray, Co-Founder and Chief Operations Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 16; Mr Anthony Eisen, Executive Chairman and Co-Founder, Afterpay, *Committee Hansard*, 22 January 2019, p. 15.

39 Consumer Action Law Centre, *Submission 37*, p. 5; Choice, *Submission 22*, p.2.

40 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 27.

41 Mr Larry Diamond, Co-Founder and Chief Executive Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 10.

42 Mr Peter Gray, Co-Founder and Chief Operations Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 12.

5.42 Afterpay also did not want the industry to come under the National Credit Act, and instead supports the extension of the product intervention power:

...it is easier to regulate Afterpay like traditional credit products, but that is a blunt and simple solution to a more complex issue—and one that risks stifling innovation...traditional protections and traditional regulation does not deliver positive customer outcomes...Afterpay has publicly supported reforms that would see ASIC's intervention powers extend to cover the buy-now pay-later sector and create a regulatory framework for different business models within the same industry...

In addition to this...we would seek [regulation] so we can better share information around positive and negative behaviours of our users and understand when people are using multiple products and appropriately.⁴³

5.43 However, Zip.co asserted that compliance with the National Credit Act:

...would have a very minimal impact on our day-to-day operation. We're already undertaking the majority of the things we would need to do to comply with the National Credit Code.⁴⁴

5.44 Certegy would be affected if the SACC cap were to be imposed on buy now pay later products, because it tended to fund more expensive products:

Yes. I don't necessarily think that limiting a cap on the amount that can be borrowed will address the concerns that are raised throughout the committee. In particular, again, the fit-for-purpose nature of this product is for consumers who would like to buy items for their home or essential items and choose a product that assists with their budgeting arrangements, instead of putting that particular purchase on a credit card.⁴⁵

5.45 Dr Paul Harrison argued that slowing down the process of online purchasing and paying was important. He did not believe a cooling down requirement would work, because that took effect only after the decision had been made and acted on. Rather, he advocated regulation requiring a 'double opt-in', where the consumer had to make two decisions, separated in time.⁴⁶

43 Mr Nick Molnar, Chief Executive Officer and Co-Founder, Afterpay, *Committee Hansard*, 22 January 2019, p. 11.

44 Mr Peter Gray, Co-Founder and Chief Operations Officer, Zip.co, *Committee Hansard*, 22 January 2019, p. 15.

45 Ms Rebecca James, Chief Executive Officer, Flexigroup Limited, *Committee Hansard*, 22 January 2019, p. 34.

46 Dr Paul Harrison, Director, Centre for Employee and Consumer Wellbeing, Deakin University, *Committee Hansard*, 22 January 2019, p. 2.

Chapter 6

Alternatives for consumers in financial difficulties

6.1 This chapter looks at what schemes exist to assist consumers with credit complaints or financial hardship. It also examines products that could act as alternatives to high cost credit options considered earlier in the report.

The Australian Financial Complaints Authority

6.2 The Australian Financial Complaints Authority's (AFCA's) role is to 'provide consumers and small businesses with fair, free and independent dispute resolution for financial complaints'. It also has responsibilities to identify and resolve systemic issues and it reports serious contraventions to the relevant regulator.¹

6.3 AFCA can hear complaints only about member companies. Membership is a condition of holding a financial licence, so many small amount credit contract (SACC) providers are covered. Complaints can be about such matters as allowing consumers to overcommit themselves, because this could involve a breach of the responsible lending obligations. So, potentially, it can be of great assistance to consumers.

6.4 It is not compulsory for buy now pay later operators to be members of AFCA, although eight of them, including the biggest ones, have voluntarily become members.²

6.5 AFCA does not cover most debt management functions.

6.6 AFCA hears complaints about specific transactions rather than examining a consumer's total financial situation, except where that is relevant to an investigation. Many consumers would struggle to be able to access its services.³

6.7 Still, as a free service, AFCA performs a useful function:

...for many consumers who are in financial hardship it is simply not a realistic option for them to ever be able to go to court and litigate. It's really by bringing matters through to an independent ombudsman service that is free for them—that is actually the only remedy that many people have other than going to the financial firm itself.⁴

1 Australian Financial Complaints Authority, *About AFCA: what we do*, <https://www.afca.org.au/about-afca/> (accessed 4 February 2019).

2 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

3 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

4 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

Financial counselling

The usefulness of financial counselling

6.8 The committee received considerable evidence regarding the effectiveness of financial counselling.

6.9 The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry noted that:

...financial services laws will always involve a measure of complexity. Asymmetry of knowledge and power will always be present. Accordingly, there will likely always be a clear need for disadvantaged consumers to be able to access financial and legal assistance in order to be able to deal with disputes with financial services entities with some chance of equality of arms.⁵

6.10 The committee received contributions from financial counselling organisations which were providing a range of services, from assistance with budgeting through personal support to legal representation. Occasionally services will refer clients from one service, for example budgeting, to another, like a legal service if it appears there has been improper conduct by a lender. For example, the Consumer Credit Legal Service describes itself as working collaboratively with financial counsellors.⁶ In this chapter, unless otherwise indicated, all the services are treated as a single group.

6.11 The Salvation Army submission presented evidence on the usefulness of financial counselling, referencing a number of studies. For example, one study quoted showed a positive impact on debt resolution, wellbeing, financial capability and advocacy; while another found:

...that Moneycare has helped community members in addressing their financial hardships, building financial resilience, improving their mental health, and their overall wellbeing and spirituality. Seventy-nine percent of respondents reported improvement in their financial resilience and 67% reported improvement in their mental health within the first three months of connection with Moneycare.⁷

6.12 The Consumer Action Law Centre also reported positive evaluations carried out by the University of Melbourne.⁸

6.13 The Royal Commission pointed out that financial counselling was not confined to service for individuals:

The legal assistance sector and financial counselling bodies are also recognised by ASIC as playing an important broader role in the financial

5 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, vol. 1, pp. 491–2.

6 Ms Roberts Grealish, Senior Solicitor, Consumer Credit Legal Service (WA) Inc, *Committee Hansard*, 12 December 2018, p. 22.

7 Salvation Army, *Submission 9*, pp. 5–6.

8 Consumer Action Law Centre, *Submission 37*, p. 36.

services sector, for example by bringing issues to the attention of the regulator or providing a balancing consumer voice in policy development.⁹

6.14 Financial counselling is highly skilled, resource intensive work. A witness referred to a case which had involved at least 100 hours of 'solicitor represented' work.¹⁰ Care Inc said there was an urgent need for a greater investment in the training and skills of financial counsellors:

Many of our client group have complex financial situations usually compounded by challenging life circumstances which can include domestic violence, mental health issues, addiction and loss of employment. The presence of so many high cost financial products and predatory lenders such as payday loans and consumer leases contribute to the complex financial lives of so many of our clients.

To adequately address the needs of clients, financial counsellors need to be highly skilled and knowledgeable. There is an urgent need for a greater investment in the financial counselling sector to address this need and ensure we can work effectively to improve the financial circumstances and longer term financial capability of people in financial difficulty.¹¹

Extent of unmet demand for financial counselling

6.15 Several submissions suggested there was unmet demand for financial counselling. Several forecast increasing demand with the increasing use of short term, high interest credit products. Most called for greater resources. In many cases those calls were linked to calls for better regulation of credit in order to reduce demand.¹²

6.16 Financial Counselling Australia reported that they had recorded 582 turn-aways since July this year [i.e. to December 2018]:

We did an unmet needs survey as part of our submission for this inquiry, and that showed, for the services that were able to collect this data, that, for every five people who came to see a financial counsellor, three could get assisted and two were turned away, and that really worries us...¹³

6.17 A counsellor from the same organisation gave a specific example:

She had been trying to get an appointment with a financial counsellor in my area for a couple of months and hadn't been able to, so last week she got a Zip money loan, and that's unfortunate. She's already stressed about that.

9 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, vol. 1, p. 492.

10 Ms Roberts Grealish, Senior Solicitor, Consumer Credit Legal Service (WA) Inc, *Committee Hansard*, 12 December 2018, p. 22.

11 Care Inc, *Submission 11*, p. 7.

12 See, for example, Queensland Council of Social Service, *Submission 15*; Legal Aid Queensland, *Submission 3*; Professor Ian Ramsay, Associate Professor Paul Ali and Ms Lucinda O'Brien, *Submission 17*.

13 Ms Fiona Guthrie, Chief Executive Officer, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, p. 1.

She could have applied for a NILS loan, and I would have been able to advise her about that had I been able to fit her in...¹⁴

6.18 Meanwhile, the Salvation Army notes that it does not promote its Moneycare services for fear of being overwhelmed.¹⁵ A representative told the committee:

We'd love to work with people much earlier. Unfortunately, most people come to us when it's very late in the process, things are too far down the track and there are fewer options. We would love to have a promotional campaign, 'Come and see a financial counsellor,' but, because of the large demand on our services already, we can't handle any more people than we are handling at the moment....

We could readily double in size and that demand would be taken up quite quickly.¹⁶

6.19 The Financial Counsellors' Association of New South Wales estimated that there are 950 financial counsellors in Australia, and 2.5 million people living in households of high financial stress. It further pointed to some coming sources of new demand: the drought, and the National Redress Scheme for survivors of child sexual abuse recommendation that survivors have access to financial counselling, for which no new funds have been provided.¹⁷

6.20 AFCA supported better funding of financial counselling:

We believe that a proper, sustainable funding model for financial counsellors is critical. We see, on a daily basis, situations where consumers have tried to access these services but the delay is too long or there are gaps in provision.¹⁸

6.21 UnitingCare Australia pointed to an increasing number of applicants for assistance being found to be ineligible because they are not receiving a social security card or a healthcare card, and suggested that tests for assistance are too low.¹⁹

6.22 Unmet demand may be worse than it appears. The Australian Financial Security Authority reports that more than half of bankrupts with registered trustees and debtors in debt agreements were unaware that they could have accessed free financial counsellor services.²⁰

14 Mrs Sandra Blake, Financial Counsellor, Financial Counselling Australia, *Committee Hansard*, 12 December 2018, p. 2.

15 Salvation Army, *Submission 9*, p. 21.

16 Mr Tony Devlin, National Manager, Moneycare Program, The Salvation Army Australia, *Committee Hansard*, 22 January 2019, p. 22.

17 Financial Counsellors' Association of New South Wales, *Submission 13*, pp. 4–5.

18 Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

19 UnitingCare Australia, *Submission 49*, p. 7.

20 Australian Financial Security Authority, *Submission 4*, p. 5.

6.23 The Royal Commission noted that 'the legal assistance sector and financial counselling services frequently struggle to meet demand, which is increasing'.²¹

Funding arrangements for financial counselling

Current funding

6.24 Funding for financial counselling services is provided by the Commonwealth, state governments, some community benefit funding included in ASIC enforceable undertakings, and some community funding.

6.25 The Department of Social Services provides funds for several counselling programs under the Financial Wellbeing and Capability program:

- Commonwealth Financial Counselling and Financial Capability, which supports 44 providers of direct case work;
- the National Debt Helpline (NDH), a telephone financial counselling service and website that provides free, confidential and independent information, advice and referral for people experiencing financial difficulty—it is co-funded by state governments; and
- Commonwealth Financial Counselling for people affected by Problem Gambling, which funds services provided by 33 services.²²

6.26 The program has been the subject of a tender process which was referred to in several submissions. Consultations began in February 2017. In January 2018 the program was extended to December 2018, and further consultations took place. Applications for grants were invited in July 2018. Applications for funding under the Commonwealth financial counselling and financial capability programs closed on 22 August 2018. Despite the long time taken for the process, the final tendering and selection processes were conducted in a compressed time frame.²³ A number of community groups indicated their frustration with tender process.

6.27 The outcome of the tendering process for the NDH has been controversial. Since its establishment, the NDH has been delivered by a separate organisation in each state, including the Consumer action Law Centre in Victoria and the Financial Rights Legal Centre in Victoria, which between them received 45 per cent of all calls to the Helpline. Financial Counselling Australia co-ordinated the operation. In New South Wales and Victoria, state governments provide 70–75 per cent of the funding.²⁴

6.28 The result of the Commonwealth's tender process was that new providers will receive the Commonwealth funding in New South Wales and Victoria (but it appears the existing providers were re-funded in the other states). Consumer Action Law

21 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, vol. 1, p. 492.

22 Department of Social Services, *Submission 63*, pp. 4–5.

23 Ms Elizabeth Heferen-Webb, Deputy Secretary, Department of Social Services, *Committee Hansard*, 24 January 2019, p. 25.

24 Consumer Action Law Centre and Financial Rights Legal Centre, *Submission 42*, p. 2.

Centre and Financial Rights Legal Centre will still operate the Helpline, but there are unanswered questions as to how the 1800 007 007 phone number, which is owned by the Commonwealth Department of Social Services, will be used and how new providers will be integrated—especially as they do not appear to incorporate legal expertise.²⁵

6.29 Mr Gerard Brody, of the Consumer Action Law Centre, commented:

...it appears that there still may be a very confused and inefficient service model as the Department of Social Services is insisting on there being more than one service provider here in Victoria, and in New South Wales and Western Australia. We consider there must be a joined up approach to funding the National Debt Helpline between states and the federal government, and that existing arrangements should be maintained until that has been achieved.²⁶

6.30 Mr Brody, Chief Executive Officer of the Consumer Action Law Centre believed that:

...they [the Commonwealth] didn't understand the co-funded nature of the model. I don't think they engaged with the state governments throughout the tender process about what this would mean for the operation of the helpline after the tender process.²⁷

6.31 The National Association of Community Legal Centres and Financial Counselling Australia put to the Royal Commission a proposal for funding of \$157 million per annum to create a properly funded network of community financial counselling and community legal services. This would comprise \$1 million for the National Debt Helpline, \$130 million for 1000 financial counsellors, and \$26 million for an additional 200 community financial advisers. It is proposed to fund it by an industry levy, as is done in the UK.²⁸

6.32 The Royal Commission did not comment on where the funds should come from, but noted that:

...the desirability of predictable and stable funding for the legal assistance sector and financial counselling services is clear and how this may best be delivered is worthy of careful consideration.²⁹

25 Consumer Action Law Centre and Financial Rights Legal Centre, *Submission 42*, p. 3, p. 4.

26 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 12 December 2018, p. 24.

27 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 12 December 2018, p. 28.

28 Consumer Action Law Centre and Financial Rights Legal Centre, *Submission 42*, p. 4; see also support from Ms Roberta Grealish, Senior Solicitor, Consumer Credit Legal Service (WA) Inc, *Committee Hansard*, 12 December 2018, p. 22, and support for this kind of model from Mr David Locke, Chief Ombudsman and Chief Executive Officer, AFCA, *Committee Hansard*, 24 January 2019, p. 2.

29 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, vol. 1, p. 493.

Financial literacy

6.33 It would be easy to think that if people understood what they were getting into they would be more cautious with credit products. This often leads to calls for more education in financial literacy. Many of the professionals in the field were not convinced.

6.34 A representative of the Queensland Council of Social Service said:

I think financial literacy is really important, and having it delivered and tailored to the needs of the community would be really critical as well for it to actually have an effect, but that's not really going to solve all of the problem. In our submission we also highlighted that some of the structural inequities in Australia. The level of Newstart, for example, means that people just can't afford to make ends meet.³⁰

6.35 A legal worker said:

My view is that financial literacy will always have a place; but, in this space, what we're dealing with is a cohort who are in crisis and in extremely vulnerable situations who are not going to take that information in. What I would say though about the financial literacy of that group is that, in my experience, they're some of the best money managers around—they're certainly better than me—because they've usually stretched what is a very finite amount of money in the most extraordinary ways, and then they've hit the point where they can't do it anymore and they can turn to these products.³¹

6.36 An academic with experience in financial counselling wrote:

To assume that low income earners are less financially literate than the general population is to make the mistake of confusing circumstances with behaviour and knowledge. By way of example, to label a single parent who is receiving no, or minimal child support, who is unable to work full time as they need to be available for parenting duties, is paying market rent as they do not qualify for public housing as 'not financially literate' because they have little savings and are borrowing from a small amount short term lender is an incorrect assumption.³²

Microfinance as an alternative

6.37 Microfinance services are generally provided by community organisations. Funds for lending are provided by banks, and some funding for administration is provided by the Department of Social Services and state governments. Examples are the scheme run by the Brotherhood of St Laurence with funds from ANZ bank, and the scheme run by Good Shepherd Microfinance with funds from Westpac.

30 Ms Carly Hyde, Policy Lead, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, p. 31.

31 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 26.

32 National Credit Providers Association, *Submission 51*, Attachment 2, p. 2.

6.38 Essentially, microfinance services provide appropriate loans at a lower price than the market price. Some are No Interest Loans Schemes (NILS), and some charge low interest.

6.39 The Good Shepherd Microfinance NILS model operates through 178 community organisations at 628 locations across Australia. In 2017–18 it made over 27,000 loans. Loans are available for a limited range of purchases: fridges, washing machines and furniture, education and medical expenses. They can go up to \$1,500. They are available to people who have a healthcare or pension card or who have an income of under \$45,000. There is no credit check, but the borrower must have a willingness and a capacity to repay the loan.

6.40 Good Shepherd Microfinance's Step-Up Loan program offers loans of between \$800 and \$3,000 to people on low incomes. Around 78 per cent of the loans are to purchase a second hand car or for car repairs.

6.41 Good Shepherd Microfinance's Speckle loans are small loans from \$200 to \$2,000 with repayment periods ranging from three months to one year. Interest rates and fees are half the cost of major payday lenders, and dishonour fees and default fees are far lower. Borrowers have to have an annual income of \$30,000, excluding government benefits.³³ The product is a direct competitor in the SACC market:

We chose to test the theory of, 'Can you offer a responsible payday loan?' I think we are pleased to say that you can. Working with consumers, we have priced it at half the regulatory rate—of two per cent, in terms of fees—and we have a very different fee structure, in terms of when people run into hardship.³⁴

6.42 Contributors to the inquiry commented that some of the value in microfinance is that the loans are often delivered with a financial literacy and education component.³⁵ Also, they are:

...delivered through the community sector, and the community sector know their clients; there is a trusted relationship there.³⁶

6.43 There were suggestions that there was insufficient funding to meet the demand for microfinance:

Clients we speak to are often unaware of the microfinance product, and that's partly because it's not widely advertised, and that's partly because there's not an awful lot of money to lend in that microfinance space.³⁷

33 Good Shepherd Microfinance, *Submission 50*, [p. 1].

34 Ms Corinne Proske, General Manager, Retail and Online, Good Shepherd Microfinance, *Committee Hansard*, 12 December 2018, p. 38.

35 Ms Carly Hyde, Policy Lead, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, p. 31.

36 Ms Rose McGrath, Senior Policy Officer, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, p. 31.

6.44 But representatives of the Queensland Council of Social Service believed that the problem was not a lack of capital for lending, but a lack of administrative funding to support enough local centres:

This is especially a problem in Queensland because the delivery of the NILS products to the community organisations is that a lot of it is mainly volunteers. Relative to other states, we are not as well funded in the delivery of NILS products—and even step-up loans, for example, and those types of products. There are large parts of Queensland that haven't gotten NILS provision.³⁸

Senator Chris Ketter
Chair

37 Mr Paul Holmes, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland, *Committee Hansard*, 22 January 2019, p. 28.

38 Ms Rose McGrath, Senior Policy Officer, Queensland Council of Social Service, *Committee Hansard*, 22 January 2019, p. 31.

Coalition Senators Dissenting Report

General comments

1.1 Coalition Senators wish to draw attention to the proposed Government's 'open banking' regime, with the Treasury Laws Amendment (Consumer Data Right) Bill 2018 introduced into the House of Representatives on 13 February 2019.

1.2 Coalition Senators acknowledge that the open banking regime is a core part of the Government's unwavering commitment to better consumer outcomes in the financial services sector. Open banking will allow customers to access their data and direct their data to be sent to trusted and accredited service providers of their choice. Customers will control who holds their data and how it is used.

1.3 Having better access to their data will enable customers to make better and more informed choices about the financial products that are right for them. In turn, informed markets are innovative markets. Open banking will drive competition within the financial services sector, promoting innovation and allowing new and better products and services to be developed. Innovation has already led to better consumer outcomes in the UK, which is the world leader in open banking.

The reality of financial hardship in Australia (recommendation 1)

1.4 Coalition Senators reject recommendation 1 of the Chair's report, which recommends "protecting penalty rates" and "reviewing the adequacy of government payments including Newstart".

1.5 Coalition Senators wish to make it clear that, under the system set up by Australian Labor Party Prime Minister Kevin Rudd in 2009, it is the independent industrial tribunal, the Fair Work Commission, which sets minimum pay and conditions, including penalty rates and the minimum wage. Coalition Senators endorse the system of having an independent tribunal set penalty rates, a position that until recently enjoyed bi-partisan support. In the lead up to the 2016 Federal Election, Opposition Leader Bill Shorten said "I'll accept the independent tribunal". Further, he noted that "the way minimum wages get set in this country is through evidence, it's through the submissions of workers, their representatives and employers".¹ Not long after their election loss, the ALP abandoned this position, and has since introduced legislation that would undermine the decisions of the Fair Work Commission.²

1.6 Coalition Senators highlight that the Government has a strategy to boost the living standards of all Australians through policies that promote economic growth,

1 Michael Koziol, 'Labor won't fight any Fair Work Commission decision to cut Sunday penalty rates: Bill Shorten', *The Sydney Morning Herald*, 21 April 2016, <https://www.smh.com.au/politics/federal/labor-wont-fight-any-fair-work-commission-decision-to-cut-sunday-penalty-rates-bill-shorten-20160421-gobpo5.html> (accessed 22 February 2019).

2 Fair Work Amendment (Restoring Penalty Rates) Bill 2018, available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6135 (accessed 22 February 2019).

boost job creation and support income growth. Australia's targeted tax transfer system plays an important role in protecting low income Australians and, as the Productivity Commission has noted, the tax and transfer system has consistently acted to substantially reduce income inequality. The national minimum wage, which was increased by 3.5 per cent last year, has been stable at around 54 per cent of median full-time earnings since 2008, while the number of Australians under age 65 on welfare is now at its lowest level in thirty years. Unlike other developed countries, Australia had relatively strong growth in incomes across all deciles. Australia exhibits a high degree of income mobility with 90 per cent of Australians moving at least three income deciles in the last 15 years.

1.7 Coalition Senators emphasise that the Newstart Allowance is intended to be a short term, transitional payment designed to assist people to get back into the labour market. The Government has continually promoted policies which improve employment opportunities for those on Newstart Allowance and other working age income support payments. The Government has committed to continuing to index these payments each year.

1.8 Coalition Senators stress that the best form of welfare is a job.

Credit products targeted at Australians at risk of financial hardship (recommendations 2–8)

1.9 Coalition Senators note that recommendation 1.7 from the Royal Commission's final report, which recommends removing point of sale exemptions from the *National Consumer Credit Protection Act 2009* (echoed in recommendation 6 of the Chair's report) has already been accepted by the Government, which is now in the process of implementing this recommendation.

Financial services targeted at Australians at risk of financial hardship (recommendation 8–11)

1.10 Coalition Senators note that the amendment that the Government has tabled for the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill 2018 includes Buy Now Pay Later products.

Centrepay (recommendations 13–14)

1.11 Coalition Senators note that over 640,000 welfare recipients use Centrepay each month to make around two million deductions. This system helps families and pensioners pay their rent, their electricity and household gas accounts, pay for education expenses and pay their fines, and for essential household goods such as fridges and washing machines.

1.12 Coalition Senators wish to emphasise that Centrepay is free and voluntary. It helps individuals to budget, and people can start, change or cancel their Centrepay deductions at any time. The Government has already moved to make changes to protect welfare recipients, including by removing unregulated consumer lease businesses from Centrepay and ensuring that businesses that use Centrepay to finance families need to apply, comply and act in accordance with tightened policy and terms.

The need to support and expand financial counselling services (recommendations 15–17)

1.13 Coalition Senators note that, as part of the Royal Commission response, the Government announced that it would be commencing an immediate review that will focus on the coordination and funding of financial counselling services. It will consider gaps and overlaps in current services and the adequacy of appropriate delivery models for future funding.

Alternative financial products for financially stressed Australians (recommendations 18–20)

1.14 Coalition Senators note that recommendation 19, which recommends "that the government consider what tax and other incentives could be used to encourage mainstream credit providers to offer low interest products to vulnerable Australians", could result in giving tax cuts to banks.

1.15 Coalition Senators wish to draw attention to the fact that, as part of the Royal Commission response, the Government announced that it would be commencing an immediate review that will focus on the coordination and funding of financial counselling services. It will consider gaps and overlaps in current services and the adequacy of appropriate delivery models for future funding.

1.16 Coalition Senators recognize the important work of financial counsellors and note that the Government is providing \$64.2 million over the next four and a half years for financial counselling services.

Inconsistent approach to consumer protections

1.17 Coalition Senators wish to highlight the hypocrisy of the Australian Labor Party's approach to issues pertaining to consumer protections. The ALP has doggedly opposed reform measures introduced into the 44th and 45th Parliaments that are designed to protect consumers.

1.18 Coalition Senators wish to highlight the ALP's staunch opposition to the Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018 ('the Package'). These essential reforms to the superannuation system included in the Package included the banning of exit fees, the capping of fees for low-balance accounts, and the elimination of opt-out insurance for low-balance accounts, inactive accounts, or account for those under 25.

1.19 Coalition Senators note the importance of these reforms, and the widespread support they have received. As noted by Brendan Coates, a Fellow at the Grattan Institute, Labor's obstinacy could cost young workers at least \$400 million per year.³

1.20 Coalition Senators commend the Government for its determination to eliminate opt-out insurance for people under-25 or those with balances below \$6,000,

3 Brendan Coates, 'Labor and the Greens are standing in the way of cheaper super', *ABC News*, 19 February 2019, <https://www.abc.net.au/news/2019-02-19/labor-greens-standing-in-way-cheaper-superannuation/10822876> (accessed 22 February 2019).

in spite of the steadfast opposition from the ALP and the Australian Greens. These measures are addressed in Treasury Laws Amendment (Putting Members' Interests First) Bill 2019, which was introduced into the house on 20 February 2019.

1.21 In the same vein, Coalition Senators wish to highlight the ALP's opposition to the Cashless Debit Card, a measure that is designed to protect vulnerable Australians and those around them.

1.22 Welfare quarantining measures have, until late last year, enjoyed bi-partisan support. The ALP had previously supported the rollout of the Income Management program and initial trial sites of the Cashless Debit Card. They also initiated their own expansions of the Income Management program into new sites, including Bankstown, Rockhampton, Logan, Shepparton, Playford, the APY lands and the Ngaanyatjarra (NG) Lands. By opposing this policy now, they are attempting to claw back the inner-city "green left" vote at the expense of vulnerable people and communities that have already seen the benefits of this program.

1.23 Coalition Senators are disappointed by the prevaricating by the Leader of the Opposition and the Social Services Shadow Minister who have given mixed messages about the future of this important policy. They are shamelessly playing politics with people's lives.

1.24 While this inquiry was established in the noble name of consumer protection, it is clear that those who instigated it have a well-documented history of opposing much more important reforms that protect many more members of the Australian community.

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

1.25 Coalition Senators wish to draw attention to the Australian Labor Party's lacklustre response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry ('the Royal Commission').

1.26 The Royal Commission's final report was handed to the Governor-General Peter Cosgrove by Commissioner Kenneth Hayne on 1 February 2019. The Government issued a response to all 76 recommendations in the final report on 4 February 2019, the same day that the report was made public.

1.27 After taking 15 days to come up with a response to the Royal Commission's findings, the ALP trotted out 3 measly pieces of legislation that addressed a mere 5 recommendations in the report. This "response" is an utter embarrassment, and fails to dignify a Royal Commission that conducted 7 rounds of public hearings over no fewer than 68 days, called more than 130 witnesses, reviewed over 10,000 public submissions, and cost an estimated \$75 million.

1.28 The ALP's proclivity for wasting taxpayer time and money is not merely limited to the manifestly inadequate response to the Royal Commission. The ALP has wasted taxpayers' time and significant sums of their money with the conduct of this inquiry, which has not produced a single substantive finding or original recommendation.

1.29 Coalition Senators note that, by contrast, the current Coalition Government is adding to its already strong record on financial services reform. When the Royal Commission handed down its final report, its recommendations supported multiple pieces of legislation already introduced by this Government. Legislation that was before the Senate has now been passed as a result of support from the Royal Commission's recommendations. This is hard evidence that this Coalition Government was taking the necessary steps to reform the financial services industry.

Senator Jane Hume
Deputy Chair

Additional Comments by the Australian Greens

1.1 The Australian Greens welcome the findings of this committee. We are pleased that Australians at risk of financial hardship have had the opportunity to have their experience examined and that this committee has considered what regulatory frameworks are necessary to protect them.

1.2 We know many Australians struggle to make ends meet. The rising costs of living, wage stagnation, attacks on penalty rates and the inadequacy of government assistance create a ripe environment for predatory lending practices. The Australian Greens strongly believe we need to address the underlying causes of financial hardship, as well as dealing with the excesses of payday lenders who leverage the vulnerability of Australians in financial hardship.

1.3 While we welcome Recommendation 1, which urges the protection of penalty rates and a review of government payments including Newstart, the Greens remain committed to the call of the social services sector to immediately raise the rate of Newstart and Youth Allowance by \$75 a week. We know that current payments are wholly inadequate and call for the rate to be urgently raised.

1.4 We support Recommendation 2 and the adoption of the SACC legislation. However, we also believe this legislation could go further and that maximum interest rate caps should be significantly reduced from 48 per cent. Even if the maximum cap was halved to 24 per cent per annum, a two per cent per month interest rate is still substantially above credit card interest rates, but is a significant reduction from four per cent per month, 48 per cent per annum. This change, in concert with the rest of the report recommendations, would help reduce the impact of payday lenders on vulnerable Australians.

1.5 Buy now pay later services are emerging technologies creating diversity in the market that challenges the monopoly of the big banks and credit card companies. Buy now pay later services are used largely by younger people who are much less likely to use traditional credit products than their parent's generations. Research by Alpha Beta showed that steady declines over the decade leave only 41 per cent of millennials using credit cards compared with two thirds of older generations. Their research indicated that the greater financial pressure on younger people means that they are less likely to use traditional credit products, more likely to budget and use buy now pay later services as a budgeting tool.

1.6 These new models require fit for purpose regulation, especially given the diversity of standards amongst the current and emerging cohort of buy now pay later services. It should be the role of ASIC to understand and regulate this new sector appropriately. We are concerned that the right regulatory balance is struck to allow the convenience and obligation free use of buy now pay later services to continue, and to protect consumers from potential excesses, rorts and exploitation.

1.7 We broadly support the remainder of the report's recommendations and are particularly pleased to see recommendations in support of the Banking Royal Commission, and others designed to bolster financial counselling services and for

community and financial legal services. Vulnerable Australians should be able to access services to support them when they are in need. Equally, they should be able to depend on regulatory frameworks and enforcement regimes that address the predatory behaviour of payday lenders. We believe the recommendations of this report begin to tackle loopholes, compliance, and breaches in the existing regulatory framework.

Senator Sarah Hanson-Young
Senator for South Australia

Appendix 1

Submissions, additional information, answers to questions on notice and tabled documents

Submissions

- 1 Mr Barry Jones
- 2 Financial Counselling Hunter Valley Project Inc
- 3 Legal Aid Queensland
- 4 Australian Financial Security Authority
- 5 TasCOSS
- 6 Australian Collectors & Debt Buyers Association
- 7 Anglicare Tasmania
- 8 Australian Finance Industry Association
- 9 The Salvation Army
- 10 Finance Sector Union
- 11 Care Inc
- 12 Australian Restructuring Insolvency & Turnaround Association
- 13 Financial Counsellors' Association of NSW Inc
- 14 Personal Insolvency Professionals Association
- 15 Queensland Council of Social Service
- 16 Australian Retail Credit Association
- 17 Professor Ian Ramsay, Associate Professor Paul Ali & Ms Lucinda O'Brien
- 18 Zip Co Limited
- 19 NORA Network
- 20 Consumer Credit Legal Service (WA) Inc
- 21 Australian Securities and Investments Commission
- 22 CHOICE
- 23 Anglicare Australia
- 24 National Retail Association
- 25 Consumer Household Equipment Rental Providers' Association
- 26 Afterpay
- 27 Moneybox Loans Pty Ltd
- 28 Australian Institute of Commercial Recovery
- 29 Customer Owned Banking Association
- 30 Uniting Church in Australia, Synod of Victoria and Tasmania
- 31 Financial Rights Legal Centre
- 32 Foundation for Alcohol Research and Education

- 33 Consumer Credit Law Centre SA
- 34 Community Legal Centres Queensland
- 35 Mentone Community Assistance and Information Bureau Inc.
- 36 NSW Financial Inclusion Network
- 37 Consumer Action Law Centre
- 38 Anglicare Sydney
- 39 Legal Aid NSW
- 40 Australian Banking Association
- 41 Finance Industry Delegation
- 42 Consumer Action Law Centre and Financial Rights Legal Centre
- 43 Cr Dominic WYKanak
- 44 COTA Australia
- 45 Name Withheld
- 46 Name Withheld
- 47 Name Withheld
- 48 Name Withheld
- 49 UnitingCare Australia
- 50 Good Shepherd Microfinance
- 51 National Credit Providers Association
- 52 Cash Converters
- 53 Min-it Software and Financiers Association of Australia
- 54 Name Withheld
- 55 NSW Small Business Commissioner
- 56 BaptistCare
- 57 Financial Counselling Australia (FCA)
- 58 Australian Financial Complaints Authority (AFCA)
- 59 Confidential
- 60 Maurice Blackburn Lawyers
- 61 AUSTRAC
- 62 NILS Network of Tasmania
- 63 Department of Social Services
- 64 MyBudget
- 65 Ms Michelle Matheson
- 66 Diverse Rentals
- 67 MyCRA Lawyers
- 68 City Finance
- 69 Ms Maria Rees

Additional information

- 1 Additional information provided by Ozerentals Pty Ltd on 6 December 2018.
- 2 Additional information provided by Debt Negotiators on 18 December 2018.
- 3 Additional information provided by Newsagents Association of NSW and ACT Ltd (NANA) on 20 December 2018.
- 4 Additional information provided by Cash Converters on 16 January 2019.
- 5 Additional information provided by Afterpay Touch Group Limited on 21 January 2019.
- 6 Additional information provided by Financial Counselling Australia on 21 January 2019.
- 7 Additional information provided by Consumer Action Law Centre on 21 February 2019.
- 8 Additional information provided by Cash Converters on 21 February 2019.

Answers to questions on notice

- 1 Finance Sector Union: Answers to questions on notice from public hearing dated 12 December 2018 (received 16 January 2019).
- 2 Australian Securities and Investment Commission: Answers to questions on notice from public hearing dated 24 January 2019 (received 1 February 2019).
- 3 Australian Financial Complaints Authority: Answers to questions on notice from public hearing dated 24 January 2019 (received 8 February 2019).
- 4 Australian Financial Security Authority: Answers to questions on notice from public hearing dated 24 January 2019 (received 8 February 2019).
- 5 Treasury: Answers to questions on notice from public hearing dated 24 January 2019 (received 8 February 2019).
- 6 Department of Social Services: Answers to questions on notice from public hearing dated 24 January 2019 (received 8 February 2019).
- 7 Queensland Council of Social Service: Answers to questions on notice from public hearing dated 22 January 2019 (received 11 February 2019).
- 8 Department of Human Services: Answers to questions on notice from public hearing dated 24 January 2019 (received 21 February 2019).

Appendix 2

Public hearings

Wednesday 12 December 2018 - Melbourne

Senators in attendance: Senators Hume, McAllister.

Witnesses:

BLAKE, Mrs Sandra, Financial Counsellor, Financial Counselling Australia

BRODY, Mr Gerard Gavan, Chief Executive Officer, Consumer Action Law Centre

BRYANT, Mr Robert, Chairman, National Credit Providers Association

BUDISELIK, Mr Sam, Interim Chief Executive Officer, Cash Converters International Ltd

COX, Ms Karen, Chief Executive Officer, Financial Rights Legal Centre

CUMINS, Mr Peter, Executive Deputy Chairman, Cash Converters International Ltd

GLENN, Mrs Melissa, Executive Committee, Personal Insolvency Professionals Association

GODINHO, Dr Vinita, General Manager, Advisory, Good Shepherd Microfinance

GREALISH, Ms Roberta, Senior Solicitor, Consumer Credit Legal Service (WA) Inc

GUTHRIE, Ms Fiona, Chief Executive Officer, Financial Counselling Australia
Henry, Private capacity

KING, Mr Steven, President, Consumer Household Equipment Rental Providers Association

MANNERS, Ms Alice, Chief of Digital and Marketing, Cash Converters International Ltd

McKENZIE, Mr Timothy, Business Development Manager, Consumer Household Equipment Rental Providers Association

MITCHELL, Ms Gemma, Managing Solicitor, Consumer Credit Legal Service (WA) Inc

NAGLE, Mr Peter, Consultant, Credit Repair Australia

NAGY, Ms Miranda, Principal Lawyer, Maurice Blackburn Lawyers

PARIS, Mr Benjamin, Non-Executive Director, Personal Insolvency Professionals Association

PATTISON, Mr Clive, Research and Campaigns Officer, Finance Sector Union

PROSKE, Ms Corinne, General Manager, Retail and Online, Good Shepherd Microfinance

RUDD, Mr Michael, Director, National Credit Providers Association

SYMES, Mr Richard George, Chief Executive Officer and Founder, Credit Repair Australia

TURCO, Ms Georgia, Paralegal, Consumer Credit Legal Service (WA) Inc

WOOD, Mr Richard, Credit Manager, Good Shepherd Microfinance

Tuesday 22 January 2019 - Brisbane

Senators in attendance: Senators Hanson-Young, Hume, McAllister, Stoker.

Witnesses:

BEAMAN, Mr Matthew, Group General Council, FlexiGroup Limited

DEVLIN, Mr Tony, National Manager, Moneycare Program, The Salvation Army Australia

DIAMOND, Mr Larry, Co-Founder and Chief Executive Officer, Zip.co

EISEN, Mr Anthony, Executive Chairman and Co-Founder, Afterpay

FORSBERG, Mr Peter, Chief Financial Officer, Thorn Group Limited

GRAY, Mr Peter, Co-Founder and Chief Operations Officer, Zip.co

HALSE, Major Brad, National Head of Government Relations, The Salvation Army Australia

HARRISON, Dr Paul, Director, Centre for Employee and Consumer Wellbeing, Deakin University

HOLMES, Mr Paul, Senior Lawyer, Civil Justice Services (Consumer Protection), Legal Aid Queensland

HYDE, Ms Carly, Policy Lead, Queensland Council of Social Service

JAMES, Ms Kylie (Rebecca), Chief Executive Officer, FlexiGroup Limited

LORD, Mr Timothy, Chief Credit Officer, FlexiGroup Limited

LUCE, Mr Tim, Chief Executive Officer, Thorn Group Limited

McGRATH, Ms Rose, Senior Policy Officer, Queensland Council of Social Service

MOLNAR, Mr Nick, Chief Executive Officer and Co-Founder, Afterpay

Thursday 24 January 2019 - Canberra

Senators in attendance: Senators Hume, McAllister.

Witnesses:

ALLISON Ms Leigh, Acting National Manager, Deduction and Confirmation, Department of Human Services

BERGMAN, Mr David, National Manager, Insolvency and Trustee Services, Australian Financial Security Authority

FIELD, Mr Philip, Lead Ombudsman, Banking and Finance, Australian Financial Complaints Authority

FOREMAN Ms Lisa, Group Manager, Families and Communities, Department of Social Services

HEFREN-WEBB Ms Elizabeth, Deputy Secretary, Department of Social Services

KIRK, Mr Greg, Senior Executive Leader, Strategy Group, Australian Securities and Investments Commission

LOCKE, Mr David, Chief Ombudsman and Chief Executive Officer, Australian Financial Complaints Authority

LUU, Ms Nghi, Acting Principal Adviser, Financial System Division, Markets Group, Department of the Treasury

LYNCH, Ms Kate, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury

MATTHEWS Mr Gavin, General Manager, Older Australians, Department of Human Services

MIKULA, Mr Christian, Senior Specialist, Deposit Takers, Credit and Insurers, and Regional Commissioner, ACT, Australian Securities and Investments Commission

O'ROURKE, Ms Kate, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury

SAADAT, Mr Michael, Senior Executive Leader, Deposit Takers, Credit and Insurers, Australian Securities and Investments Commission

SHAW, Mr Paul, National Manager, Regulation and Enforcement, Australian Financial Security Authority

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2019

Re: Application for authorisation AA1000439 lodged by the Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Flexigroup Limited [ACN 122 574 583]

Applicant

ANNEXURE CERTIFICATE

This is the annexure marked “**KF-4**” annexed to the statement of **Kevin Foo** dated 5 May 2020.

Annexure “KF-4”

ASIC’s submission to the ACCC in respect of the NETCC determination



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address (inc courier deliveries):
Level 7, 120 Collins Street,
Melbourne VIC 3000

Mail address for Melbourne office:
GPO Box 9827,
Brisbane QLD 4001

Tel: +61 1300 935 075
Fax: +61 1300 729 000

www.asic.gov.au

General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 31 31
Canberra ACT 2601

Sent by email to: adjudication@accc.gov.au

11 October 2019

Confidential / Not for publication

Dear Madam / Sir

RE: New Energy Tech Consumer Code

We refer to the Application dated 30 April 2019, lodged with the Australian Competition and Consumer Commission (**ACCC**) for authorisation of the New Energy Tech Consumer Code (**NETCC**).

Paragraph 24 of the NETCC proposes to ensure that any deferred payment arrangement offered by signatories are provided through a licensed credit provider under the National Consumer Credit Protection Act 2009 (**National Credit Act**) and that the arrangement is regulated by the National Credit Act and National Credit Code (**National Credit Code**) (together, **the National Credit Regime**). The effect of this proposal would be to prohibit signatory vendors from offering their existing buy now pay later (**BNPL**) arrangements to consumers (**the Prohibition**).

The ACCC is seeking submissions about the feasibility and desirability of amendments to the proposed NETCC that may allow for BNPL arrangements to be offered if providers are able to demonstrate that they are sufficiently regulated and offer consumers adequate protections similar to those available under the National Credit Act and National Credit Code.

ASIC provides the following response in confidence and is not to be referred to or made public without our express permission.

A. Executive Summary

ASIC's work to date on BNPL

- 1 In November 2018, ASIC released Report 600: *Review of buy now pay later arrangements (REP600)*. REP600 was ASIC's first review of the BNPL industry.
- 2 In REP600, ASIC observed two BNPL providers that operate in the NET market; Brighte Capital Pty Ltd (**Brighte**) and Certegy Ezi-pay Pty Ltd (**Certegy**). Both BNPL providers offer continuing credit contracts of amounts up to \$30,000 with repayments over 2–60 months. Both allow consumers to repay early.
- 3 REP600 found that, in relation to BNPL as a whole:
 - (a) BNPL is a rapidly growing industry
 - (b) The BNPL industry is diverse and evolving
 - (c) Some BNPL arrangements result in the price of goods being inflated
 - (d) BNPL arrangements have influenced the spending habits of some consumers
 - (e) Over-commitment can be a risk for some consumers
 - (f) BNPL providers take some steps to act fairly with consumers, but can do more
 - (g) BNPL providers included potentially unfair terms in their contracts with consumers.
- 4 The rapid growth of the BNPL industry means that it will remain an area of ongoing focus for ASIC. We stated in REP600 that we would continue to monitor and measure the harms we found and whether additional safeguards are required remains an open question.
- 5 Significantly in relation to the proposed Prohibition, ASIC stated in REP 600 it may be that BNPL providers should be required to comply with the National Credit Act.¹ This would mean that providers would be required to be licensed. ASIC has not yet formed a view that this is necessary. We are engaging in ongoing monitoring of this industry to help us to assess whether we should advise the Government to consider further law reform.

¹ REP 600 para 72.

Summary of ASIC's position regarding the Prohibition

- 6 ASIC makes the following observations on BNPL in the 'new energy tech'² (**NET**) market:
- (a) **Currently lawfully exempt** – Currently, two BNPL providers in the NET market rely on an exemption under s6(5) of the National Credit Code so that the National Credit Regime does not apply to them.
 - (b) **Different consumer protections** – Although it is subject to some consumer protection requirements, the regulation of BNPL is not equivalent to the regulation of credit provided under the National Credit Regime.
 - (c) **Consumer outcomes** – BNPL products in the NET market are generally lower cost than products regulated under the National Credit Regime. However, BNPL providers could do more to lift standards, especially in relation to responsible lending.
 - (d) **Proposed amendments to NETCC** – ASIC considers that BNPL providers in the NET market could be subject to a modified version of the responsible lending requirements that are part of the National Credit Act and this could be included in the NETCC as an alternative to the Prohibition.
- 7 Each of the above points are addressed in further detail in Section B below.

Surcharging conduct

- 8 ASIC would support the inclusion in the NETCC a requirement in relation to 'surcharging conduct' to further strengthen the obligation on merchants not to increase the cost of the NET product to recoup BNPL costs.
- 9 This is discussed in Section C below.

B. Considerations regarding the Prohibition

Currently lawfully exempt

- 10 The National Credit Act and National Credit Code do not seek to regulate all consumer lending and there are lawful exemptions to the National Credit Regime.
- 11 In REP600 we said that BNPL arrangements (such as those provided by Brighte and Certegy in the NET market) were exempt from the

² 'New energy tech' products include solar generation and energy storage systems, electrical vehicle charging and other emerging energy products and services.

National Credit Act where they operate in accordance with the exemption provided under s6(5) of the National Credit Code. Under that exemption, a provider of a 'continuing credit contract' can only charge the consumer a maximum of \$200 in the first year and \$125 in each subsequent year, regardless of the amount of credit provided³.

- 12 ASIC is engaged in a review of the wider BNPL market, including whether BNPL providers should be subject to the National Credit Regime.

Different consumer protections

BNPL products are regulated...

- 13 BNPL products are regulated by ASIC under various provisions, including the consumer protection provisions of the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*, ASIC's product intervention powers (**PIP**) and forthcoming design and distribution obligations (**DDO**).
- 14 BNPL arrangements are subject to the consumer protection provisions in Part 2 Division 2 of the ASIC Act. These protections include:
- (a) A prohibition on misleading or deceptive conduct under s12DA;
 - (b) A prohibition on unconscionable conduct under s12CB;
 - (c) Section 12BF makes void unfair contract terms;
 - (d) A prohibition on undue harassment and coercion in connection with the supply of the BNPL product or payment for the BNPL product under s12DJ; and
 - (e) An implied contractual warranty of due care and skill and reasonably fit for purpose under s12ED.
- 15 BNPL arrangements are also subject to the PIP introduced in April 2019 and will be subject to the DDO to be phased in over two years.

... but not under the National Credit Regime

- 16 While BNPL products are regulated by ASIC as set out above, BNPL consumers do miss out on the protections of the National Credit Regime.
- 17 Some of the key pillars of the National Credit Regime are:

³ NCCP Regulations, reg 51

- (a) **Responsible lending** – credit providers and credit assistance providers must make enquires into the consumers requirements and objectives, must ascertain and verify a consumer's financial situation, and assess whether the credit contract is not unsuitable.
- (b) **External dispute resolution** – consumers are protected by external dispute resolution (**EDR**).
- (c) **Disclosure, terms and enforcement** – the National Credit Code covers entry into, terms and enforcement of credit contracts and consumer leases. Enforcement includes requirements in relation to offering a process for consumers to make a claim of hardship.
- (d) **Licensing** – credit providers and credit assistance providers are required to be licensed or be representatives of a licensee and are subject to general conduct obligations, including competence and training, financial requirements, compensation and insurance. ASIC may ban individuals or entities from engaging in credit activities and banning.

18 We discuss below that BNPL providers have taken some steps to provide equivalent protections and some areas where BNPL providers could do more.

Responsible lending

- 19 BNPL providers are not subject to the responsible lending requirements in the National Credit Act.
- 20 BNPL Provider 1 performs a credit assessment that considers a consumer's financial position, including their income and expenses. BNPL Provider 2 assesses applications using a proprietary algorithm in addition to threshold eligibility criteria. The eligibility criteria may be overridden in some circumstances where the consumer's financial position has been individually assessed and they are considered to be able to make repayments.

External dispute resolution

- 21 The BNPL providers in ASIC's 2018 review are currently members of the Australian Financial Complaints Authority (**AFCA**).
- 22 We understand that AFCA has received one complaint relevant to NET in relation to BNPL Provider 1 regarding responsible lending and disclosure which has been resolved. There are no NET related complaints against BNPL Provider 2 currently before AFCA.

Hardship

- 23 Both BNPL providers in the NET market have detailed written hardship policies for assisting consumers who have difficulty making repayments.
- 24 As a result of ASIC's work in writing REP 600, BNPL providers began a review of their hardship practices. ASIC has not assessed the hardship programs of the BNPL providers.

Disclosure

- 25 BNPL providers are not subject to the disclosure requirements under the National Credit Code. ASIC is continuing to monitor consumer understanding of key BNPL contract terms.

Licensing of BNPL providers

- 26 The two main BNPL providers in the NET market hold an Australian Credit License (**ACL**) or are part of a corporate group that holds an ACL. This means they are subject to the general conduct obligations of licensees, but only in relation to their licensed credit activities (not BNPL products). ASIC also is not able to impose licence conditions in relation to BNPL products or ban individuals or entities from dealing in BNPL products.
- 27 Brighte was granted an ACL on 8 February 2019. In addition to their BNPL arrangement, Brighte offers a traditional interest-based loan that is regulated under the National Credit Regime.
- 28 Although not licensed in their own right, Certegy is part of the 'Flexigroup'. Flexigroup Limited is the ultimate holding company of Flexigroup Capital Pty Ltd (**Flexigroup Capital**), Certegy and Oxipay Pty Ltd. Flexigroup Capital was granted an ACL on 22 March 2013. Flexigroup Capital provides consumer leases and finance that is regulated under the National Credit Regime.

Consumer outcomes

Cost

- 29 Our analysis suggests that BNPL finance for solar products is cheaper than competing interest-based finance. Table 1 compares unsecured interest finance (for example, finance regulated under the National Credit Regime) and the two BNPL providers in the NET market.

Table 1: Cost of credit for different finance options

| Unsecured interest finance (6.8% p.a.) | | BNPL Provider 1 | | BNPL Provider 2 | |
|---|----------------|-----------------|----------------|-----------------|----------------|
| Total fees | Cost of credit | Total fees | Cost of credit | Total fees | Cost of credit |
| \$1,261 | 14% | \$583 | 7% | \$565 | 6% |

Source: ASIC using BNPL cost structures as at May 2018

- 30 Table 1 assumes for all products the loan term is four years and the amount financed is \$8,700. These differences in costs are even more pronounced for larger purchases and longer terms.
- 31 This suggests that the Prohibition would reduce consumer access to more affordable credit and impose higher overall costs on consumers. Reducing access to cheaper credit options may reduce competition between finance providers to offer lower prices. The Prohibition would also discourage the development of cheaper interest-free credit options for NET products.
- 32 However, as set out in Section C, we have observed conduct in the NET market where some NET vendors may be increasing the cost of their products and services, or not providing a discount, where the consumer chooses to use a BNPL arrangement.

Default rates

- 33 Table 2 shows the default rates for BNPL providers in the NET market and licensed providers of consumer credit in the NET market in respect of NET specific loans (e.g. green loans).

Table 2: Default rates for different finance options

| Provider | Arrears Rate 30+ days | Arrears Rate 90+ (*91+) days |
|---------------------|-----------------------|------------------------------|
| BNPL Provider 1 | 1.02% | 0.4%* |
| BNPL Provider 2 | 10.62% | 6.65% |
| Licensed Provider 1 | 0.67% | 0.23% |
| Licensed Provider 2 | 12.56% | 4.71% |
| Licensed Provider 3 | 0.74% | 0.42% |

Source: ASIC

- 34 To put these rates into perspective, 90+ days arrears rates for personal loans provided by the Commonwealth Bank of Australia as disclosed in its 2019 Annual Report are 1.56%.⁴
- 35 We note that the default rates vary amongst BNPL providers and licensed providers. We also note that the default rates for BNPL Provider 2 (which does not assess consumer's income and expenses) is one of the higher amongst the finance providers in the NET market. We suggest an amendment to the NETCC below to address this concern.

Proposed amendments to NETCC

- 36 The ACCC has requested submissions about the feasibility and desirability of amendments to the NETCC that may allow for BNPL arrangements to be offered if providers are able to demonstrate that they are sufficiently regulated and offer consumers adequate protections similar to those available under the National Credit Regime.
- 37 The Applicants have proposed two alternative amendments and Brighte has proposed one amendment to the Prohibition.

Applicants' First and Second Proposed Amendments

- 38 On 6 September 2019 and in subsequent correspondence providing clarification, the Applicants proposed that the proposed clause 24(b) of the NETCC be amended (**Applicants' First Proposed Amendment**) to read (in effect):
- (b) the deferred payment arrangement is:
 - (i) regulated by the NCCPA and the National Consumer Code ("NCC"); or
 - (ii) complies with:
 - (A) a regulator approved Code of Conduct; or
 - (B) an industry code that delivers substantively equivalent consumer protections to those contained in the NCCPA.
- 39 On 25 September 2019, the Applicants' provided submissions proposing an alternative amendment to clause 24(b) (**Applicants' Second Proposed Amendment**) that any deferred payment arrangement is:

⁴ Commonwealth Bank of Australia Annual Report at page 44;
<https://www.commbank.com.au/content/dam/commbank/about-us/shareholders/pdfs/annual-reports/CBA-2019-Annual-Report.pdf>.

either regulated by the NCCPA and the National Consumer Code (“NCC”) or complies with a regulator approved code of conduct (such as those meeting ASIC RG 183) that is verified by the Administrator, in consultation with the Industry Council, as delivering substantively equivalent consumer protections”.

Effect of First and Second Proposed Amendments

40 We note that as an amendment to para 24(a) was not proposed by the Applicants, that the BNPL provider would be required to hold an Australian Credit Licence.

ASIC position on amendments

41 ASIC does not support the Applicants' First or Second Proposed Amendments due to uncertainties regarding both the timing of commencement of any BNPL code and the meaning of the proposed wording.

42 Additionally, ASIC does not support the requirement in the Applicants' Second Proposed Amendment that an ASIC approved code would have to be further approved as having substantively equivalent protections by the NETCC Administrator.

ASIC approval of codes

43 A key difference between the Applicants' First and Second Proposed Amendments is that the more recent proposal requires that the BNPL code must be both approved by ASIC **and** have substantively equivalent protections to the National Credit Act. We consider that ASIC's code approval process is sufficient to ensure that any BNPL code approved by ASIC would not require further review by the NETCC Administrator as proposed by the Applicant's Second Proposed Amendment.

44 ASIC has powers to approve Codes under s 241 of the National Credit Act and s 1101A of the *Corporations Act 2001*. Under both sections, ASIC must not approve a code unless it is satisfied that:

(a) the code of conduct, or the code of conduct as proposed to be varied, is not inconsistent with this Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities; and

(b) it is appropriate to approve the code of conduct or variation, having regard to the following matters:

- (i) the ability of the applicant to ensure that persons who hold out that they comply with the code of conduct will comply with the code of conduct as in force from time to time;
- (ii) the desirability of codes of conduct being harmonised to the greatest extent possible;
- (iii) any other matter ASIC considers relevant.

45 ASIC's process for approving Codes is set out in [Regulatory Guide 183 Approval of financial services sector codes of conduct \(RG 183\)](#). RG 183 does not specifically deal with the approval of codes under the National Credit Act. As s1101A and s241 are very similar, RG 183 is mostly applicable to approval of codes under s241. RG 183 notes ASIC will have regard to the regulatory objectives in s1 of the *Australian Securities and Investments Commission Act 2001* including promoting the confident and informed participation of consumers in financial markets.

Timing of adoption of code

46 In relation to the Applicants' reference to a regulator approved Code of Conduct in both the Applicants' First and Second Proposed Amendments, ASIC has not yet been asked to consider approval of a Code of Conduct for the BNPL industry. ASIC is not aware of any industry code currently in place in the BNPL industry.

47 Accordingly, it appears likely that at the time of adoption of the NETCC there will not be a code in place that will meet the definition in either of the Applicants' proposed amendments. This would mean that BNPL products would effectively be prohibited until such a code was put in place. ASIC considers that this would create an undesirable lack of certainty for BNPL providers and consumers.

48 ASIC suggests that if a reference to an industry code is included as a criterion for allowing BNPL products, to minimise uncertainty, there should be a transition period from commencement of the NETCC before this requirement takes effect.

Industry Code of Conduct with substantively equivalent protections

49 The meaning of 'substantively equivalent protections' is unclear.

50 According to the Macquarie Dictionary, the meaning of 'substantively' is 'essentially or actually'. The meaning of equivalent is 'equal in value, effect or significance'.

- 51 For some protections, such as the requirements in relation to hardship or being a member of an EDR scheme, the requirement to be substantively equivalent is reasonably clear. However, in relation to other requirements, such as responsible lending, it is unclear how much deviation from the written requirements in the National Credit Act would be permissible for the test to be met.
- 52 It is also unclear who would be required to determine if the Code meets the test of being 'substantively equivalent'.
- 53 Further, it is unclear what aspects of the National Credit Act would be required to be fulfilled. The following would have to be clarified as to whether they were part of the requirements:
- (a) General conduct obligations on credit licensees;
 - (b) Compensation arrangements;
 - (c) Citing Australian Credit Licence number in documents;
 - (d) Requirements in the National Credit Code in relation to related sale contracts; and
 - (e) Requirements in relation to compensation orders.
- 54 The requirement in the Applicants' First Proposed Amendment is limited to protections 'contained in the NCCPA'. It would have to be clarified whether this includes the protections in the National Credit Code (a schedule to the National Credit Act). Some of the requirements in the National Credit Code in relation to disclosure and interest rates are not readily applicable to a BNPL context.

Brighte proposed amendment

- 55 On 29 August 2019, Brighte proposed an amendment to paragraph 24 to the effect that if a deferred payment arrangement was a BNPL arrangement, then certain obligations would apply, including that the code signatory will ensure that:
- (a) the BNPL provider has an ACL;
 - (b) they are reasonably satisfied that the credit provider has policies that:
 - (i) require the clear and transparent disclosure of the credit provider's fees and charges;
 - (ii) require the credit provider to resolve any complaints you may have using:
 - (A) an internal dispute resolution process; and
 - (B) if the complaint remains unresolved, an external dispute resolution process (which may include the

scheme operated by the Australian Financial Complaints Authority); and

- (iii) require the credit provider to give appropriate consideration to your personal financial situation before credit is extended to you;
- (c) the credit provider has processes in place to identify hardship and if the consumer is experiencing payment difficulties that the credit provider offers alternative and flexible payment arrangements;
- (d) the term of the BNPL arrangement contract is no longer than the expected life of the product or system;
- (e) that the consumer receives clear and accurate information about:
 - (i) their credit provider;
 - (ii) that the arrangement is a voluntary finance option;
 - (iii) the proposed total cost under the BNPL arrangement compared with outright purchase; and
 - (iv) a statement that questions and complaints about the payment arrangement should be directed to the licensed credit provider with whom you will be contracted.

Responsible lending

- 56 In relation to responsible lending, Brighte's proposal would require that NETCC signatories ensure they are reasonably satisfied that the credit provider has policies that require the credit provider to give appropriate consideration to the consumer's personal financial situation before credit is extended.
- 57 ASIC is concerned that 'appropriate consideration' is not a sufficiently clear test. For this reason, ASIC does not support Brighte's proposed amendment.

ASIC's proposed amendment

- 58 Many of the additional consumer protections provided by the National Credit Regime have been adopted on a voluntary basis by BNPL providers. However, the above analysis of the differences in consumer protections and consumer outcomes show that there are some areas where NET market BNPL providers could do more for consumers.
- 59 BNPL providers in the NET market offer credit limits of up to \$30,000 and terms up to 60 months. This can be a significant and long-term obligation for some consumers.

- 60 The default rates of one of the providers is evidence that some loans provided may be unaffordable for some consumers. This could be improved by greater assessment of affordability by providers prior to giving finance.
- 61 **Annexure 1** is a proposed amendment to section 24 of the NETCC. This amends the Prohibition to allow suppliers to organise finance with credit providers who undertake processes equivalent to the requirements imposed by the following sections of the National Credit Act, which are the responsible lending requirements that apply to credit providers:
- (a) s 128 (obligation to assess unsuitability);
 - (b) s 129 (assessment of unsuitability);
 - (c) s 130 (reasonable inquiries about the consumer);
 - (d) s 131 (when the credit contract must be assessed as unsuitable);
 - (e) s 132 (giving the consumer the assessment); and
 - (f) s 133 (prohibition on entering, or increasing the credit limit of, unsuitable credit contracts).
- 62 Using the wording of the currently operating responsible lending provisions has the advantage of guidance being available.
- 63 As the NETCC will apply to suppliers of NET products, the proposed clause cannot directly address BNPL providers. ASIC has considered whether suppliers will be able to assess whether the BNPL provider complies with the responsible lending obligations. ASIC considers that the proposed wording would mean that the supplier would have to determine if the BNPL has policies that comply, not assess whether the BNPL provider has complied in respect of each contract. The later would likely be unworkable.
- 64 The remaining differences in consumer protections for BNPL products and regulated products in the NET market (disclosure, terms and enforcement) are not able to be addressed by the NETCC.

Codifying voluntary protections

- 65 The proposed amendment also codifies a number of the additional consumer protections that have been adopted on a voluntary basis by BNPL providers, including:
- (a) Hardship assessment and payment plans; and
 - (b) IDR and EDR.

66 The proposed amendment also provides that credit should be provided by a licensee or a related entity of a licensee. This would include both of the two BNPL providers currently operating in the NET market.

Missed payment fees

67 ASIC's proposal also includes a cap on missed payment fees. The exemption under which BNPL providers operate in the NET market includes maximum amount of fees in the first year (\$200) and each year thereafter (\$125). However, the exemption does not limit on missed payment fees.

68 As the exemption is intended to apply for low-cost credit, excessive missed payment fees can subvert the intention of the exemption.

69 ASIC's proposal provides that code signatories must take steps to ensure that credit providers are not permitted to charge missed payment fees in excess of \$50 per year. This amount is based on what ASIC considers is reasonable in light of the limit on annual fees for the exemption in s6(5) of the National Credit Code.

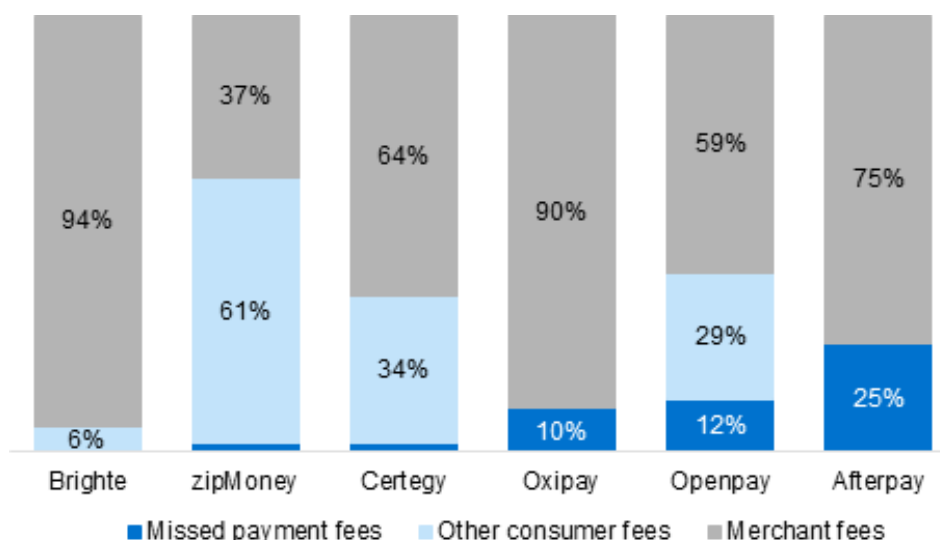
C. Surcharging conduct

70 BNPL providers charge merchants when consumers use a BNPL arrangement to purchase the merchant's goods or services, typically known as a merchant fee. In effect, it is the merchant that is paying for or subsidising the consumers cost of credit in exchange for the ability to make its own products more marketable to the consumer by allowing them to be paid over smaller instalments, whilst still receiving the sale price (minus the merchant fee) upfront from the BNPL provider.

71 In REP600, we found that merchant fees can be a significant source of revenue for some BNPL providers: see Figure 2.

Figure 2: Revenue earned by buy now pay later providers (FY 2017-18)

Confidential – Not for Publication



Note: figures rounded to nearest 1%

Source: ASIC REP600

72 An important feature of a BNPL arrangement is that it should be at no cost or low-cost for the consumer. In REP600, we outlined the detriment that arises when merchants attempt to pass on merchant fees to consumers or charge higher prices for using a BNPL arrangement. These higher prices can be misleading to a consumer if they are not disclosed, because they can obscure the actual cost of using a BNPL arrangement. ASIC has received evidence that some merchants are continuing to cause harm to consumers through this practice.

73 ASIC understands that agreements between merchants and BNPL providers prohibit this conduct, which is referred to as 'surcharging conduct'.

74 Evidence that ASIC collected in early 2019 suggests that some solar power merchants are introducing additional surcharges that varied as a percentage increase of the cash price from 2.71% to 46.75% across seven solar merchants. This represents a substantial financial detriment to consumers.

75 Paragraph 2(m) of the NETCC, states that providers must be clear about any additional cost for finance or an alternative purchasing arrangement for NET products when the cost is being recovered in the overall price (e.g. where the price of financed NET product is greater than the price that would apply if immediate payment is made).

76 While ASIC supports the disclosure required in paragraph 2(m) of the NETCC, in relation to BNPL products, ASIC believes that vendors should not engage in surcharging conduct at all. ASIC would

support the inclusion in the NETCC of a prohibition on surcharging conduct.

- 77 ASIC suggests consideration should be given to whether any prohibition of surcharging conduct in relation to BNPL products should also be addressed in paragraph 2 (regarding advertising and promotion) and paragraphs 8 and onwards (regarding quotes).

Yours sincerely,



Tim Gough

**Senior Executive Leader – Credit, Retail Banking and Payments
Australian Securities and Investments Commission**

D. Annexure 1 – proposed alternative to clause 24

The amended portion is underlined.

24 We may offer you New Energy Tech with a deferred payment arrangement as an alternative to upfront payment upon delivery or installation. If you are a Residential Customer and this deferred payment arrangement includes an interest component, additional fees or an increased price (see paragraph 2.m)), we will ensure that:

- (a) this payment arrangement is offered through a credit provider (whether ourselves or a third party) that is either:
- (i) licenced under the National Consumer Credit Protection Act (2009) (Cth) ("NCCPA") and the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code ("NCC"); or
 - (ii) a related body corporate (as defined in s5 of the NCCPA) of a licensee under the NCCPA and the deferred payment arrangement is exempt from the NCC and:
 - (A) the credit provider cannot charge missed payment fees in excess of \$50 per annum
 - (B) we are reasonably satisfied that the credit provider has policies that require the credit provider to:
 - (I) resolve any complaints you may have using an internal dispute resolution process and if the complaint remains unresolved, an external dispute resolution process (which may include the scheme operated by the Australian Financial Complaints Authority)
 - (II) have processes to identify whether you are experiencing payment difficulties due to hardship
 - (III) offer you alternative and flexible payment options if you are experiencing payment difficulties so that you can meet your repayments
 - (IV) comply with the following sections of the NCCPA as if the credit provider was a licensee and the credit contract was regulated by the NCCPA and the NCC:
 - s 128 (obligation to assess unsuitability)
 - s 129 (assessment of unsuitability)
 - s 130 (reasonable inquiries about the consumer)

- s 131 (when the credit contract must be assessed as unsuitable)
 - s 132 (giving the consumer the assessment) and
 - s 133 (prohibition on entering, or increasing the credit limit of, unsuitable credit contracts)
- (b) the term of the deferred payment contract or lease is no longer than the expected life of the product or system
- (c) ensure that you receive the following clear and accurate information:
- (i) the name of the ~~licensed~~ credit provider to whom you will be contracted for the arrangement
 - (ii) a clear statement that the deferred payment arrangement is a voluntary finance option
 - (iii) the proposed total cost under the deferred payment arrangement compared with the cost of that same New Energy Tech product, system or service if you were to purchase it outright on that day
 - (iv) the disclosures required under the NCC (if applicable), including in relation to fees and charges, or the credit provider's fees and charges
 - (v) whether at the conclusion of the deferred payment arrangement
 - (A) you own any elements of the New Energy Tech or
 - (B) you have any entitlement to any ongoing services or pricing and/or
 - (C) you have the option to purchase any elements of the new Energy Tech and if so relevant details, including any associated costs and
 - (vi) a statement that questions and complaints about the payment arrangement should be directed to the ~~licensed~~ credit provider with whom you will be contracted.

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2019

Re: Application for authorisation AA1000439 lodged by the Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Flexigroup Limited [ACN 122 574 583]

Applicant

ANNEXURE CERTIFICATE

This is the annexure marked “**KF-5**” annexed to the statement of **Kevin Foo** dated 5 May 2020.

Annexure “KF-5”

ASIC media release regarding its intentions for regulatory work as a result of COVID-19 dated 14 April 2020



ASIC media releases are point-in-time statements. Please note the date of issue and use the internal search function on the site to check for other media releases on the same or related matters.

Tuesday 14 April 2020

20-086MR Details of changes to ASIC regulatory work and priorities in light of COVID-19

ASIC has previously stated it would temporarily change its regulatory work and priorities to allow it and regulated entities to focus on the impact of COVID-19. This will include the deferral of some activities and redeployment of staff to address issues of immediate concern, including maintaining the integrity of markets and protecting vulnerable consumers.

ASIC can now provide details on many of the activities that will be affected (see [Details of ASIC's regulatory work and priorities in response to COVID-19](#)). We will provide further advice on changes to ASIC work implementing the recommendations of the Financial Services Royal Commission in light of changes to the Parliamentary timetable and any future Government decisions on those measures.

ASIC is committed to working constructively and pragmatically with the firms we regulate, mindful that they may encounter difficulties in undertaking their regulatory work due to the impact of COVID-19.

ASIC has delayed a number of activities not immediately necessary in light of these significantly changed circumstances, including consultations, regulatory reports and reviews.

Onsite supervisory work, such as the enhanced approach of ASIC's Close and Continuous Monitoring Program, is now not possible. However, ASIC will continue to monitor firms remotely, including through close working and information sharing arrangements with APRA. We will also continue to draw on established working arrangements with senior executives to both supervise and support firms.

In response to COVID-19 ASIC:

- has stepped up its markets supervision work to support the fair and orderly operation of markets, ensure investors are appropriately informed, and protect against manipulation and abuse;
- will heighten its support for consumers who may be vulnerable to scams and sharp practices, receive poor advice, or need assistance in finding information and support should they fall into hardship; and
- will identify other actions needed to support firms such as facilitating the timely completion of capital raisings and other urgent transactions, providing regulatory relief, where appropriate, and identifying measures to support small business.

Enforcement action will continue. However, it is recognised that there may be some changes to the timing and process of investigations to take into account the impact of COVID-19. There will also be changes due to, among other things, constraints created by variations to usual court procedures.

Key functions will remain available to those who rely on them, including registry operations and services, receipt of whistleblower, breach and misconduct reports, and general contact points for industry.

ASIC Chair James Shipton said, "ASIC recognises that participants in the Australian financial services sector are under enormous strain due to the effects of COVID-19. We also acknowledge that they are taking special measures to support

their customers who are adversely affected. We expect them to continue to act fairly and in the best interest of consumers in these extraordinary times.

“To assist firms, ASIC will limit the regulatory activity that they will need to respond to as much as possible. We are also working with the financial industry to identify other areas where we can provide support.

“However, it is important to note that this is not an abrogation of our regulatory work, but a recognition that some existing activities and new tasks must take precedence over work we would otherwise be doing.

“In fact, COVID-19 has increased the workload of our organisation as there is a heightened risk of significant consumer harm, the possibility of serious breaches of the financial services laws, and challenges in ensuring market integrity and the continued funding of companies and the economy.

“ASIC is being especially vigilant in addressing predatory practices, scams and fraud,” Mr Shipton said.

Despite the challenges posed by COVID-19, ASIC expects entities to treat customers fairly, avoid adding further financial harm or burden to consumers, and act to maintain the integrity and efficiency of markets.

In addition, financial services and credit licensees and participants in financial services markets continue to have legal obligations including, where applicable, to:

- act fairly, honestly and efficiently;
- report material breaches of the law;
- maintain records of the financial services they provide; and
- ensure appropriate supervision of the provision of financial services and credit activities, even where staff are working remotely.

ASIC is committed to working with the regulated population, and representatives of industry and consumers to maintain the proper functioning of markets and financial systems in the best interests of consumers and the Australian economy.

ASIC will provide feedback on specific issues to affected stakeholders and will provide further general updates and sector specific information, including FAQs, on [ASIC's COVID-19 information page](#).

Last updated: 20/04/2020 09:29

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2019

Re: Application for authorisation AA1000439 lodged by the Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Flexigroup Limited [ACN 122 574 583]

Applicant

ANNEXURE CERTIFICATE

This is the annexure marked “**KF-6**” annexed to the statement of **Kevin Foo** dated 5 May 2020.

Annexure “KF-6”

Table attached to the ASIC media release



Changes to regulatory work and priorities in response to COVID-19

ASIC has previously stated it would temporarily change its regulatory work and priorities to allow it and regulated entities to focus on the impact of COVID-19. This will include the deferral of some activities and redeployment of staff to address issues of immediate concern, including maintaining the integrity of markets and protecting vulnerable consumers.

ASIC can now provide details on many of the activities that will be affected (see below). We will provide further advice on changes to ASIC work implementing the recommendations of the Financial Services Royal Commission in light of changes to the Parliamentary timetable and any future Government decisions on those measures.

For more information, see:

- [ASIC 20-086MR Details of changes to ASIC regulatory work and priorities in light of COVID-19](#)
- [ASIC's COVID-19 information page](#).

Jump to a section

[Cross-sector](#)

[Financial advice](#)

[Managed funds](#)

[Superannuation](#)

[Credit, retail banking and payments](#)

[Insurance](#)

[Market infrastructure and supervision](#)

[Insolvency practitioners](#)

[Corporations](#)

[Financial reporting and audit](#)

[Business-as-usual](#)

Cross-sector

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|---|---|---|--|
| 1 | <p>Internal dispute resolution review</p> <p><i>ASIC's review of internal dispute resolution (IDR) standards to align with new statutory requirements for IDR, reflect the standards for effective complaints handling in AS/NZS 10002:2014 and refine our requirements in some key areas based on our experience in administering the policy.</i></p> | <p>ASIC is deferring the release of the updated standards until further notice. ASIC will continue to monitor entities and ensure they comply with existing IDR arrangements. ASIC will provide feedback to interested stakeholders on the findings of this review.</p> | <p>20-070MR <i>ASIC recalibrates its regulatory priorities to focus on COVID-19 challenges</i></p> <p>19-249MR <i>ASIC update on Royal Commission implementation</i></p> |
| 2 | <p>Close and Continuous Monitoring (CCM) program</p> <p><i>ASIC's enhanced onsite supervision program to review specific practices within the targeted regulated entities to identify deficiencies at an early stage and promptly elevate them to the key decision makers of the relevant entities.</i></p> | <p>ASIC is deferring this onsite work until further notice, including deferral of publication of ASIC's observation of firms' practices from the CCM program. ASIC will continue to work closely with other Council of Financial Regulators agencies to monitor our largest financial institutions in other forms, particularly where there is a risk of consumer detriment or to market resilience. ASIC will progress its preparation for future thematic onsite reviews.</p> | <p>20-070MR <i>ASIC recalibrates its regulatory priorities to focus on COVID-19 challenges</i></p> |
| 3 | <p>Report on executive remuneration</p> <p><i>ASIC review of executive remuneration structures, grants and vesting of variable remuneration, and whether these are driving the right behaviours and accountabilities of executives in Australia's listed companies.</i></p> | <p>ASIC will provide feedback to the individual entities the subject of this review and continue to monitor executive remuneration developments. Otherwise it is deferring this work until further notice.</p> | <p>20-070MR <i>ASIC recalibrates its regulatory priorities to focus on COVID-19 challenges</i></p> |

[Back to top](#)

Financial advice

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|---|---|--|--|
| 4 | <p>Temporary relief to facilitate advice to individuals financially affected by COVID-19 about early access to superannuation</p> <p><i>Relief to ensure affordable and appropriate advice about early access to superannuation.</i></p> | <p>ASIC is providing temporary relief to allow advice providers not to give a Statement of Advice to clients when giving advice about early access to superannuation and to permit registered tax agents to give advice about early access to superannuation without needing to hold an AFS licence.</p> <p>To ensure that advisers are acting in the interests of their clients, ASIC will monitor the advice provided under this relief.</p> | <p><u>20-085MR</u> <i>ASIC grants relief to industry to provide affordable and timely financial advice during the COVID-19 pandemic</i></p> |
| 5 | <p>Temporary relief extending the period for giving time-critical Statements of Advice</p> <p><i>Relief to ensure advisers can give appropriate and affordable advice at this time.</i></p> | <p>ASIC is providing temporary relief to extend the period of time for giving a time-critical Statement of Advice under section 946C(3) (a) of the Corporations Act to 30 business days after the advice is given.</p> <p>To ensure that advisers are acting in the interests of their clients, ASIC will monitor the advice provided under this relief.</p> | <p><u>20-085MR</u> <i>ASIC grants relief to industry to provide affordable and timely financial advice during the COVID-19 pandemic</i></p> |
| 6 | <p>Temporary relief to allow a Record of Advice to be given instead of a Statement of Advice in certain circumstances</p> <p><i>Relief to ensure advisers can give appropriate and affordable advice at this time.</i></p> | <p>ASIC is providing temporary relief to enable advisers to provide a Record of Advice instead of a Statement of Advice to the existing clients in a broader range of circumstances.</p> <p>To ensure that advisers are acting in the interests of their clients, ASIC will monitor the advice provided under this relief.</p> | <p><u>20-085MR</u> <i>ASIC grants relief to industry to provide affordable and timely financial advice during the COVID-19 pandemic</i></p> |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|---|--|---|--|
| 7 | <p>Review of life insurance advice reforms</p> <p><i>The purpose of this project is to review whether legislative reforms to remuneration for life insurance advice (LIF reforms), which commenced in January 2018, have better aligned the interests of financial advisers and consumers (LIF review).</i></p> | <p>ASIC is deferring its review of life insurance advice as part of the LIF review until further notice. ASIC intends to give insurers additional time to comply with our data collection notices in relation to the LIF review and will collate that data for future use by the review.</p> <p>For further information</p> <p><u>ASIC's COVID-19 information for financial advisers and advice licensees</u></p> | <p><u>20-047MR</u> <i>ASIC update on enforcement and regulatory work: September 2019 to February 2020</i></p> <p><u>19-249MR</u> <i>ASIC update on Royal Commission implementation</i></p> |
| 8 | <p>Review of changes to grandfathered commissions</p> <p><i>The purpose of this project is to comply with the direction of the Treasurer (under section 14 of the ASIC Act 2001) that ASIC investigate the transition away from grandfathered conflicted remuneration in the financial advice industry.</i></p> | <p>ASIC is deferring work on grandfathered conflicted remuneration until further notice. ASIC will not ask product issuers for data at this time.</p> <p>In the meantime, as ASIC has communicated to product issuers, ASIC expects product issuers to turn-off their grandfathered commission arrangements as soon as possible and by no later than 1 January 2021. All rebates and/or reductions in fees should be passed on to consumers as quickly as possible.</p> <p>For further information</p> <p><u>ASIC's COVID-19 information for financial advisers and advice licensees</u></p> | <p><u>19-218MR</u> <i>ASIC to review industry transition towards ending grandfathered remuneration for financial advice</i></p> <p><u>ASIC Corporate Plan 2019-2023</u></p> |

[Back to top](#)

Managed funds

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|---|---------|-------------|--|
|---|---------|-------------|--|

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|---|--|--|
| 9 | Commencement of changes to fees and costs disclosure requirements for managed funds and superannuation (Regulatory Guide 97) | <p>ASIC is currently working on amendments to address issues that have arisen since the release of the revised Regulatory Guide 97. ASIC is also considering amending the transitional arrangements for Product Disclosure Statements (PDSs) to allow entities to come into the new disclosure regime from 30 September 2020 and requiring any PDS given after 30 September 2022 to comply with the new disclosure regime.</p> <p>Further details about the revised transition arrangements will be announced on ASIC's website.</p> | ASIC Corporate Plan 2019-2023 |
| 10 | Platform fees consultation paper (RG 97) <i>This work aims to establish a standardised approach to fees and costs disclosure for platforms.</i> | <p>ASIC will continue to develop its proposals on fees and costs disclosure for platforms. However, we are deferring the public consultation paper until further notice.</p> | 19-328MR <i>ASIC releases updated RG 97 on fees and cost disclosure</i> |
| 11 | Managed discretionary accounts (MDA) policy review <i>This review is considering financial capital requirements (NTA) for managed discretionary accounts providers.</i> | <p>ASIC will continue to develop its proposals on financial requirements for MDA operators. However, we are deferring the public consultation paper until further notice.</p> | 20-070MR <i>ASIC recalibrates its regulatory priorities to focus on COVID-19 challenges</i> |
| 12 | Timeshare stage 2 <i>This stage of the review will focus on cooling-off arrangements and the secondary sales market of timesharing schemes.</i> | <p>ASIC is deferring its public consultation paper for up to one year. ASIC will continue to develop its proposals on selling practices in timeshare (cooling off versus deferred sale) and on secondary sales.</p> <p>ASIC will proceed with release of an updated regulatory guide and instrument to introduce the remainder of our proposed amendments to the policy settings for timeshare schemes.</p> | 19-339MR <i>ASIC report offers insights into consumer harm from timeshare schemes</i> Timesharing update |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|--|--|---|
| 13 | <p>Recurrent managed funds data pilot</p> <p><i>ASIC assessment of recurrent data collection as a means of improving ASIC's understanding of the managed funds sector, its characteristics, trends and risks.</i></p> | <p>ASIC will continue its analysis of the pilot data but is deferring its industry engagement activities in relation to the recurrent managed funds data pilot until further notice. ASIC is also considering how it can best access data about the managed funds industry at this time to support its regulatory work in relation to managed funds.</p> | <p>Letter of invitation to nominate for ASIC's recurrent managed funds data collection Pilot Group dated 6 September 2018</p> |

[Back to top](#)

Superannuation

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|---|--|---|
| 14 | <p>Temporary no-action position on 'intra-fund advice' about early access to superannuation by individuals financially affected by COVID-19</p> <p><i>Relief to ensure affordable and appropriate advice about early access to superannuation.</i></p> | <p>ASIC is providing a temporary no-action letter to superannuation trustees providing personal advice to members about early access to superannuation subject to the following conditions:</p> <ul style="list-style-type: none"> the member seeks the advice after first being provided with relevant factual information and general advice; and if the trustee engages external providers to provide advice, this must be done at a cost to the fund that is consistent with the trustee's best interests duty. <p>To ensure that superannuation trustees are acting in the interests of their members, ASIC will conduct limited surveillance to monitor the advice provided under this relief.</p> | <p>20-085MR ASIC grants relief to industry to provide affordable and timely financial advice during the COVID-19 pandemic</p> |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|---|--|---|
| 15 | <p>Portfolio Holdings Disclosure</p> <p><i>Portfolio Holdings Disclosure obligations in s1017BB of Corporations Act require most registered scheme entity licensees to publish information about their fund's portfolio holdings on the fund's website.</i></p> <p><i>[CO 14/443] Deferral of choice product dashboard and portfolio holdings disclosure regimes</i></p> | <p>ASIC will defer the first reporting date for portfolio holdings disclosures, recognising that current conditions may make it difficult for trustees to prioritise the development of appropriate disclosures.</p> <p>Further details about this deferral will be announced on ASIC's website.</p> <p>For further information</p> <p>ASIC's COVID-19 - information for superannuation trustees page</p> | <p>19-295MR ASIC extends relief for portfolio holdings disclosure</p> |
| 16 | <p>Annual member meetings for superannuation funds</p> <p><i>Section 29P–29PE of the Superannuation Industry (Supervision) Act 1993 requires RSE licensees to hold annual members' meetings.</i></p> | <p>ASIC is not intending to defer this requirement or provide relief at this time. However, we will closely monitor conditions and revisit this issue if appropriate.</p> <p>For further information</p> <p>ASIC's COVID-19 - information for superannuation trustees</p> | <p>N/A</p> |
| 17 | <p>Insurance in super</p> <p><i>ASIC's review is looking at industry's progress on improving insurance outcomes for consumers.</i></p> | <p>ASIC will continue work on this review as capacity allows, but publication of any report will be deferred until further notice.</p> | <p>19-352MR Superannuation Industry urged to focus on improving insurance outcomes for members</p> <p>18-261MR ASIC reviews insurance in superannuation</p> |
| 18 | <p>Trustee oversight of advice fee deductions</p> <p><i>This project addresses the erosion of superannuation balances resulting from inappropriate financial advice fees paid from member superannuation accounts.</i></p> | <p>ASIC, in agreement with APRA, is deferring public communication of the industry-level findings for six months.</p> <p>For further information</p> <p>ASIC's COVID-19 - information for superannuation trustees page</p> | <p>ASIC and APRA publish joint letter on superannuation fees (2 April 2019).</p> |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|--|--|---|
| 19 | <p>Surveillance of compliance with changes to fees and costs disclosure for superannuation (RG 97)</p> <p><i>This review is of industry compliance with changes to fees and costs disclosure for superannuation. The review supports APRA's heatmap work.</i></p> | <p>ASIC is continuing to monitor and may take action where it identifies non-compliance with the current regime. However, ASIC is deferring its review to align with the timing of the implementation of the revised fees and costs disclosure requirements.</p> | <p>19-328MR ASIC releases updated RG 97 on fees and cost disclosure</p> |
| 20 | <p>Commencement of changes to fees and costs disclosure requirements for managed funds and superannuation (RG 97)</p> | <p>See above under 'Managed funds'.</p> | |
| 21 | <p>Platform fees consultation paper (RG 97)</p> | <p>See above under 'Managed funds'.</p> | |

[Back to top](#)

Credit, retail banking and payments

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|--|---|--|
| 22 | <p>Review of lender responses to consumers experiencing financial difficulty</p> <p><i>To examine how lenders identify and respond to customers experiencing financial difficulty.</i></p> <p><i>ASIC commenced this project during 2019 by commissioning consumer research that examines the experiences of consumers engaging with credit providers about their financial difficulties.</i></p> | <p>ASIC is deferring the next stage of this work until 30 September 2020.</p> <p>Instead, ASIC will actively engage with stakeholders on financial difficulty, in particular around hardship requests resulting from the impact of COVID-19. The learning from our work to date will inform our stakeholder engagement.</p> | <p>N/A</p> |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|---|---|--|
| 23 | <p>Buy now pay later products – follow up work</p> <p><i>Follow up report on industry performance and regulation of buy now pay later services.</i></p> | <p>This work will continue but ASIC is deferring the finalisation and release of the follow-up report until further notice. ASIC will be engaging with the sector on their responses to COVID-19.</p> <p>ASIC will also be engaging with consumer representatives and closely monitoring the use of small amount and alternative credit products, especially by vulnerable consumers.</p> | <p>20-047MR <i>ASIC update on enforcement and regulatory work: September 2019 to February 2020</i></p> <p>19-249MR <i>ASIC update on Royal Commission implementation</i></p> |
| 24 | <p>School banking review</p> <p><i>ASIC's review of school banking programs to understand how these programs are implemented, how they are marketed to school communities and how students engage with the programs and the accounts established through these programs.</i></p> | <p>ASIC is providing school banking providers additional time until 31 July 2020 to respond to ASIC's review findings. ASIC will continue work on drafting the school banking review report.</p> | <p>19-266MR <i>ASIC seeks public input to review of school banking</i></p> <p>18-313MR <i>ASIC announces review of school banking</i></p> |
| 25 | <p>Review of the ePayments Code</p> <p><i>ASIC's review of the ePayments Code to assess its fitness for purpose, noting significant developments in financial technological innovation and the need to ensure the Code is simple to apply and easy to understand.</i></p> | <p>This work will continue, but ASIC is deferring the release of its second consultation paper on the Code until the second-half of 2020.</p> <p>Stakeholders are welcome to contact ASIC with any questions or concerns at ePaymentsCode@asic.gov.au.</p> | <p>19-049MR <i>ASIC consults on coverage of ePayments Code review</i></p> |
| 26 | <p>Debt collection industry review</p> <p><i>Comparing oversight and auditing practices by credit providers of contingent collectors and debt purchasers to determine best practice models and guidelines.</i></p> | <p>ASIC is deferring the collection of data for this review until 30 September 2020. ASIC will continue to consult with consumer representatives and monitor developments in the debt collection industry.</p> | N/A |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|---|---|--|
| 27 | <p>Guarantee and co-debtor loans industry review</p> <p><i>Scoping review of residential mortgage guarantees and co-debtor loans.</i></p> | ASIC will continue to monitor developments and analyse the information it has already received. ASIC is deferring the collection of further data for the purposes of this work. | N/A |
| 28 | <p>Fees in deposit and savings account industry review</p> <p><i>Review of industry practice in relation to how exception fees are charged.</i></p> | ASIC will continue to monitor developments and analyse the information it has already received. ASIC is deferring the collection of further data for the purposes of this work. | N/A |
| 29 | <p>Recurrent mortgage data collection pilot</p> <p><i>Collection of granular loan-level information from organisations involved in the pilot. This data will help ASIC identify trends and systemic practices in Australia's home lending market which have the potential to cause significant consumer detriment.</i></p> | ASIC will continue its analysis of the pilot data but is deferring its industry engagement activities until further notice. | Mortgage data pilot info page |

[Back to top](#)

Insurance

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|---|---------|-------------|--|
|---|---------|-------------|--|

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|--|--|---|
| 30 | <p>Natural disaster working group</p> <p><i>ASIC is monitoring insurers' responses to recent natural disasters, including recent severe bushfires, storms and hailstorms affecting parts of Australia.</i></p> | <p>ASIC will continue to monitor claims handling and outcomes, utilising existing data sources and reports of misconduct, and will take further action if necessary. Detailed data requests will be deferred until further notice. Insurers should be prepared to respond to future data collection notices.</p> | <p><u>20-006MR</u> <i>ASIC encourages fair and effective insurance claims handling for people affected by the bushfires – warns against unscrupulous “service providers”</i></p> <p><u>19-323MR</u> <i>ASIC fee relief for bush-fire affected customers</i></p> |
| 31 | <p>Consumer credit insurance (CCI) lender review (follow up to REP 622)</p> <p><i>ASIC is requiring lenders to undertake large-scale remediation to address consumer harm involving more than 300,000 affected consumers who are to be paid over \$100 million in refunds of premiums and interest.</i></p> | <p>Apart from overseeing remediation, ASIC is deferring other follow up work until further notice. ASIC plans to issue a data request but will not seek to collect the data until further notice.</p> | <p><u>ASIC Corporate Plan 2019-23</u></p> |
| 32 | <p>Total and permanent disability insurance industry responses (follow up to REP 633)</p> <p><i>REP 633 asked insurers and superannuation trustees to undertake a range of measures by 31 March 2020 to address the concerns raised by our review.</i></p> | <p>ASIC will contact insurers by the end of April 2020 to seek information about the steps taken so far to meet the expectations outlined in our report.</p> | <p><u>19-281MR</u> <i>ASIC calls on insurers and trustees to take action to improve consumer outcomes from total and permanent disability insurance</i></p> |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|---|---|--|
| 33 | <p>Travel insurance review</p> <p><i>Review of travel insurance distribution channels and assessing outcomes for consumers, including product value.</i></p> | <p>ASIC is deferring this work until further notice; however, we will consider travel insurance as part of our future review of unfair contract terms under the Royal Commission program of work.</p> | <p>ASIC Corporate Plan 2019-23</p> |

[Back to top](#)

Market infrastructure and supervision

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|--|---|---|
| 34 | <p>Onsite reviews of market intermediaries under enhanced supervision program and FICC program</p> <p><i>Onsite reviews of conflicts of interest in FICC business, fixed income desks. Ongoing onsite review program of high-touch market intermediaries.</i></p> | <p>ASIC is ensuring intermediaries manage operational risk, including ensuring that back-office risk management capabilities are maintained, that automated order processing does not cause market disruption, and that client money is protected.</p> <p>ASIC has published guidance on business continuity and supervision arrangements to help intermediaries comply with their regulatory obligations in the current environment. However, for the time being, we are deferring onsite supervision programs for market intermediaries and instead undertaking desk-based reviews, focusing on conduct and resilience in a COVID-19 environment.</p> <p>For further information</p> <p>ASIC's COVID-19 market updates</p> | <p>ASIC's priorities for supervision of market intermediaries in 2019–20</p> <p>ASIC Corporate Plan 2019-23</p> |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|---|--|---|
| 35 | <p>Onsite reviews of exchanges and wholesale trading platforms</p> <p><i>Onsite reviews of conflicts of interest of exchanges and wholesale trading platforms under enhanced supervision program and FICC program</i></p> | <p>ASIC is continuing to monitor and retain ongoing dialogue to understand the risks of the current environment, particularly where there is a risk of consumer detriment or to market resilience. However, at present, we have deferred onsite reviews.</p> <p>For further information</p> <p>ASIC's COVID-19 market updates</p> | <p>ASIC Corporate Plan 2019-23</p> |
| 36 | <p>Allocation practices in debt capital market (DCM) transactions</p> <p>ASIC undertook a thematic surveillance of allocation practices in DCM transactions and made observations about better and poorer practices.</p> | <p>ASIC has shared the observations with relevant industry associations and their members. ASIC will undertake periodic reviews of transactions to test compliance with the law and best practice. ASIC is deferring publication of a report on the better and poorer practices observed.</p> | <p>ASIC's priorities for supervision of market intermediaries in 2019-20</p> |
| 37 | <p>Consultation Paper 314 on new market integrity rules for technology and operational risk for market operators and participants</p> <p><i>New market integrity rules for securities and futures market operators and participants that promote technological and operational resilience of their critical systems.</i></p> | <p>ASIC will continue to assess feedback from other regulators, and responses to COVID-19 by market operators and participants to inform the settlement of ASIC's final policy position.</p> <p>ASIC is ensuring market operators and intermediaries manage their technology and operational risk in the current environment and identifying areas of weakness, including arrangements for outsourced and off-shored services.</p> <p>However, we are deferring the publication of our final report setting out ASIC's position on the market integrity rules. ASIC expects that the final report will set out the expected timetable for implementation of the rules.</p> | <p>19-159MR ASIC consults on proposed market integrity rules for technological and operational resilience</p> |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|--|--|--|
| 38 | <p>Miscellaneous market integrity rule amendments – securities and futures markets</p> <p><i>Securities—including on-market takeovers and buy-backs, accredited derivative advisers and legal entity identifiers.</i></p> <p><i>Futures—including extension of securities rules to futures market participants on automated order processing and unique client identifiers.</i></p> | <p>ASIC is exploring options to reduce the 2020 accreditation burden for market intermediaries and their derivative advisers.</p> <p>ASIC will review automated order processing controls for futures market participants where there are risks to the resiliency of the market.</p> <p>ASIC will delay the publication of the consultation papers until the industry has the capacity to consider and respond to the proposals.</p> | <p>ASIC Corporate Plan 2019-23</p> |
| 39 | <p>Listed market structure: Dark liquidity report, market making, market data access and fees</p> <p><i>A report updating the industry on our assessment and key metrics of dark liquidity (trading of equities that are not executed on exchange).</i></p> | <p>ASIC will continue to assess current market conditions and ensure market resilience.</p> <p>ASIC is deferring the release of our report and our internal market structure analyses on market making and market data access and fees.</p> | <p>ASIC Corporate Plan 2019-23</p> <p>20-062MR</p> <p><i>ASIC takes steps to ensure equity market resilience</i></p> |

[Back to top](#)

Insolvency practitioners

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|--|---|--|
| 40 | <p>Registered liquidator registration and renewal</p> | <p>ASIC is monitoring the impact of COVID-19 on the number and type of insolvency appointments and the capacity in the existing registered liquidator population to deal with resulting corporate failures.</p> | <p>N/A</p> |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|--|---|---|
| 41 | <p>Illegal phoenix activity</p> <p><i>Supporting Government initiatives to combat illegal phoenix activity through our work with the Phoenix Taskforce and conducting surveillance of potential illegal phoenix activity and considering cases for referral or banning.</i></p> | <p>ASIC continues to work with Phoenix Taskforce members to target illegal phoenix activity. ASIC also continues to fund registered liquidators through the Assetless Administration Fund to investigate and report on serious misconduct including illegal phoenix activity.</p> | <p>ASIC action on illegal phoenix activity.</p> |
| 42 | <p>Reporting on proactive and reactive surveillance of registered liquidators</p> <p><i>ASIC's regular publication of reports on proactive and reactive surveillance of registered liquidators.</i></p> | <p>While ASIC is continuing surveillance of registered liquidators, it is deferring the publication of its report on observations about historical deeds of company arrangement until further notice.</p> | <p>ASIC Corporate Plan 2019-23</p> |

[Back to top](#)

Corporations

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|---|---|--|
| 43 | <p>No-action position on annual general meetings due by 31 May</p> <p><i>COVID-19 may temporarily impact companies' ability to hold an annual general meeting (AGM).</i></p> | <p>ASIC does not have the power to grant extensions of time to hold an AGM on a 'class basis', i.e. to all entities with a financial year ended 31 December 2019. ASIC has therefore provided a 'no-action' position on upcoming AGMs that need to be deferred or that are held online.</p> | <p>20-068MR Guidelines for meeting upcoming AGM and financial reporting requirements</p> |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|---|---|--|
| 44 | <p>Temporary relief to allow 'low doc' placements, rights issues and share purchase plans</p> <p><i>Temporary relief to allow 'low doc' placements, rights issues and share purchase plans where a listed company has been suspended for a total of up to 10 days in the previous 12-month period.</i></p> | <p>ASIC is helping listed companies raise capital quickly by giving temporary relief to enable certain 'low doc' offers (including rights offers, placements and share purchase plans) to be made to investors, even if they do not meet all the normal requirements.</p> <p>ASIC has also issued a 'Market Integrity Update' about fairness in equity raisings emphasising our expectation that directors act in the interests of the company and balance the need for quick and certain capital possible dilution of existing shareholders. ASIC is actively monitoring capital raisings.</p> | <p>20-075MR <i>Facilitating capital raising during COVID-19 period</i></p> |
| 45 | <p>Work on climate risk disclosure by Australia's listed companies</p> <p><i>Surveillance of climate risk disclosure practices by Australia's listed companies.</i></p> | <p>ASIC is conducting desk-based surveillance work to assess the level of decision-useful climate related disclosure by listed companies. ASIC is also identifying key challenges faced by companies in this area. Discussions with companies have been delayed as a result of COVID-19.</p> | <p>19-208MR <i>ASIC updates guidance on climate change related disclosure</i></p> <p>19-341MR <i>Financial reporting focuses for 31 December 2019</i></p> <p>18-273MR <i>ASIC reports on climate risk disclosure by Australia's listed companies</i></p> |

[Back to top](#)

Financial reporting and audit

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|---|---------|-------------|--|
|---|---------|-------------|--|

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|--|--|--|
| 46 | <p>Financial reporting for unlisted entities and listed entities</p> <p><i>Requirement to lodge financial reports with ASIC under Chapters 2M and 7 of the Corporations Act.</i></p> | <p>Unlisted entities</p> <p>ASIC is extending the deadline for unlisted entities to lodge financial reports by one month for balance dates from 31 December 2019 to 31 March 2020.</p> <p>Listed entities</p> <p>ASIC is closely monitoring market conditions and COVID-19 developments that may affect financial reporting, talking to market participants and auditors, and considering possible impacts and responses.</p> | <p><u>20-084MR</u> <i>ASIC to provide additional time for unlisted entity financial reports</i></p> <p><u>20-068MR</u> <i>Guidelines for meeting upcoming AGM and financial reporting requirements</i></p> |
| 47 | <p>Audit inspection program</p> <p><i>Regular audit firm inspections to promote the improvement and maintenance of audit quality.</i></p> | <p>ASIC is continuing with our inspections of audit files. While reviews are conducted remotely rather than at the audit firms, we continue to interact with audit firm representatives through teleconferences and email. We are reducing the number of audit files to be reviewed at each of three of the largest audit firms before 30 June 2020 by one.</p> <p>Some of our work on the review of conflicts, culture, talent, governance and accountability at each of the largest six audit firms will be reduced. In particular, part of the work on culture and talent will be deferred to the 2021 calendar year.</p> | <p><u>19-350MR</u> <i>Audit inspection findings: 12 months to 30 June 2019</i></p> |
| 48 | <p>Audit quality – Post-audit review and root cause analysis</p> <p><i>Considering robustness of post-audit review and root cause analysis processes undertaken by audit firms. Review of oversight of financial reports by board audit committees.</i></p> | <p>ASIC is continuing to review material already received on this project but will be deferring the next phase of this work, which will require further engagement with the firms and boards involved until further notice.</p> | <p><u>ASIC Corporate Plan 2019-23</u></p> |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|---|---|--|
| 49 | <p>Consultation on routine reporting of inspection findings to audit committees</p> <p><i>Consultation on possible changes to Regulatory Guide 260 to routinely report our audit file review findings to audit committees rather than on an exception basis.</i></p> | ASIC is deferring this work until further notice. | N/A |

[Back to top](#)

Business-as-usual

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|---|--|--|
| 50 | Reporting of remediation programs | <p>Unless ASIC has indicated to a licensee that it should adopt a different approach for a particular remediation program, it is acceptable for licensees to provide us with updates consistent with their internal firm reporting in lieu of the current form and scheduling of reporting arrangements. ASIC expects that once the situation normalises the, until now, existing reporting arrangements would resume.</p> <p>Note: This is separate to the work ASIC is doing with financial institutions to further accelerate payments for outstanding remediation to customers, as outlined in 20-070MR ASIC recalibrates its regulatory priorities to focus on COVID-19 challenges.</p> | 20-070MR ASIC recalibrates its regulatory priorities to focus on COVID-19 challenges |
| 51 | Licensing and professional registrations | <p>ASIC will continue to receive and assess applications for Australian Financial Services and credit licences and audit-related professional registrations.</p> <p>ASIC is now seeking additional information on how applicants will manage their obligations due to the changed operating environment in light of COVID-19.</p> | |

| # | Project | ASIC update | Links to earlier public statements by ASIC about this work |
|----|----------------------------------|--|--|
| 52 | Reports of misconduct | ASIC will continue to receive and act on reports of misconduct, including those related to COVID-19. ASIC will pay particular attention to reports of scams, misleading conduct including in advertising and unlicensed behaviour. | |
| 53 | Whistleblower reports | <p>ASIC will continue to receive and act on reports of misconduct or breaches of the law from whistleblowers, including those related to COVID-19.</p> <p>ASIC will continue to provide information and guidance to potential whistleblowers about their rights and protections, and to companies and company officers about their obligations under the regime.</p> <p>For further information</p> <p><u>Information Sheet 238</u> <i>Whistleblower rights and protections</i></p> <p><u>Information Sheet 239</u> <i>How ASIC handles whistleblower reports</i></p> | |
| 54 | Notices and data requests | <p>ASIC understands its regulated community may experience disruption and be under significant stress as a result of the novel COVID-19 outbreak.</p> <p>If you have been issued with a notice or received a request for data or information, and you need more time to respond, contact ASIC and seek an extension. Details of the appropriate ASIC contact person are available on each notice we issue.</p> | |

Last updated: 20/04/2020 12:00