Consumer Credit Reforms

Prepared as a submission to Senate Economic Affairs Committee inquiry into the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020

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Table of Contents

Statement of Recognition

The Salvation Army acknowledges the Traditional Owners of the lands on which we live and work.

We pay our respect to Elders and acknowledge their continuing relationship to this land and the ongoing living cultures of Aboriginal and Torres Strait Islander peoples across Australia. We also acknowledge future aspirations of all First Nations peoples.

Through respectful relationships we will work for the mutual flourishing of Indigenous and non-Indigenous Australians.

We commit ourselves in prayer and practice to this land of Australia and its people, seeking reconciliation, unity and equity.

Introduction

The Salvation Army thanks the Senate Economic Legislation Committee for the opportunity to share our insight on issues relating to the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 (**the Bill**).

The Salvation Army is one of Australia's largest providers of social services and programs, including our work with people in, and at risk of, financial hardship. The Salvation Army provides a wide range of services and support to people across Australia as part of realising our vision and living our values.

Throughout The Salvation Army's experience walking alongside people experiencing disadvantage, including through our Moneycare financial counselling services, family and domestic violence support services and Doorways emergency relief services, we have found the existing responsible lending obligations provide a necessary safeguard against unsustainable debt and further financial hardship. Removing these obligations would expose consumers to an unacceptable level of vulnerability.

The Salvation Army recommends that responsible lending obligations be retained in full.

The government's amendments to the regulation of small amount credit contracts (**SACCs**) and consumer leases are also of serious concern to The Salvation Army. There are positive changes within the Bill which would provide safeguards against the predatory practices of consumer lessors and payday lenders. This includes the requirement for equal repayment and repayment windows as well as prohibiting certain unsolicited contacts by lenders.

However, other protections have been weakened from recommendations in the 2016 Review of the Small Amount Credit Contracts Laws, including allowing a 20% establishment fee for consumer leases, and including delivery and installation fees within the calculation of the repayments cap on consumer leases.[1]

The government has also announced its intention to restrict access to these products for people receiving social security benefits, rather than regulate the loans themselves. This will not, in our experience, achieve the policy intent. This will only increase the stigma of social security payments while still leaving other people in vulnerable circumstances or hardship open to these risky loans.

The Salvation Army recommends the Bill and draft Regulations not be passed in their current form.

The Salvation Army also endorses the submissions from the Consumer Action Law Centre and Financial Counselling Australia.

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[1] The Australian Government the Treasury (2016) Final Report on Small Amount Credit Contracts Laws https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf

The Bill

The Bill amends the *National Consumer Credit Protection Act 2009* (**the Credit Act**) and the National Consumer Code (**the Code**). The government has also announced plans to alter the *National Consumer Credit Protection Regulations 2010* and to introduce a National Consumer Credit Protection (Non-ADI Credit Standards) Determination. These changes are designed to:

- Restrict the application of current responsible lending obligations to 'low limit credit contracts'. This obliges lenders to:
    - Make reasonable inquiries about the consumer's objectives for the loan.
    - Verify the consumer's income.
    - Assess whether the consumer can meet repayments without 'substantial hardship', including forcing the person to sell their house.
- Remove restrictions preventing authorised deposit-taking institutions (**ADIs**) and providers of larger loans from:
    - Suggesting or granting a loan which the above assessments would have suggested was 'unsuitable' for a consumer.
    - Suggesting that consumers remain in these unsuitable credit contracts, or from increasing credit on, unsuitable contracts.
- Make provisions for the Minister to create standards for non-ADIs and to apply penalties for non-compliance. This includes specifying requirements for systems, policies and processes to ensure the consumer can repay the loan.
- Ensure that loan repayments on SACCs are of equal size and at equal intervals over the life of the loan, and prohibiting the charging of monthly fees where a consumer repays a loan early.
- Place a cap on fees that can be charged for a consumer lease and requiring additional information gathering and communication of the base and end price to consumers prior to providing a new consumer lease for white goods.
- Through regulation, prohibiting lenders from providing either SACCs or consumer leases which would result in customers spending more than 20 per cent of their income in repayments, with additional restrictions for customers who derive a majority of their income from Centrelink payments.

The Salvation Army's Moneycare service

Moneycare is The Salvation Army's financial wellbeing and capability service. It has been operating for over 30 years and has helped thousands of people experiencing, or at risk of experiencing, financial and social exclusion. We have a national footprint of about 85 sites across Australia.

Through Moneycare, we deliver a range of free and confidential services, including financial counselling, financial capability support, financial literacy and capability workshops, and microfinance. These services build on The Salvation Army values of empathy and dignity, with an emphasis on building trusting relationships with people accessing our services.

Moneycare services support people by addressing their immediate financial crisis situation and helping them build long term capabilities and resilience in managing financial hardship.

Research has shown Moneycare's value. In 2012 Swinburne University of Technology found that The Salvation Army's financial counselling services had a positive impact in debt resolution, wellbeing, financial capability and advocacy. 94 per cent of those surveyed wishing that that they had sought our help sooner.[2]

Moneycare is focused on evidence-based strategies and high-quality service delivery. In 2016 outcomes measurement tools were developed and a pilot was conducted in the 2017-18 financial year. In 2019 outcomes measurement was embedded into our case work processes.

In the 2019-20 financial year, 13,757 individuals were supported by Moneycare with over 52,000 sessions held throughout the year. A total of 6,371 individuals participated in the outcomes measurement survey nationally. The top five main presenting issues at intake were debt, money management, physical or mental health, employment issues, and gambling or alcohol and other drug addiction.

The survey revealed statistically significant positive changes in clients' financial resilience through their engagement with Moneycare. Significant positive changes were also made in clients' reported debt levels and life satisfaction, as well as improvement in mental health and levels of personal wellbeing.

[2] Brackertz, N. (2012). *I wish I'd known sooner! The impact of financial counselling on debt resolution and personal wellbeing.* The Salvation Army.

Responsible Lending

The Status Quo

Responsible lending obligations (**RLOs**) have played a critical role in protecting consumers from becoming overburdened by debt. They put responsibility on lenders, who have a much more nuanced understanding of credit products, to find the most suitable product for the client's needs and to ensure they will not undergo financial hardship as a result of the loan.

Although RLOs place a regulatory obligation upon lenders, the evidence is that these processes have not had a substantial impact upon the availability of credit within the market. In fact, it is likely that RLOs have increased the likelihood that marginal borrowers would repay their debt.[3] The argument that removing the RLOs is needed 'now, more than ever' to stimulate spending and job creation has not been evident in lending indicators.[4] On the contrary, data from the Australian Bureau of Statistics indicates that loan commitments for housing and personal fixed term loans has risen strongly throughout 2020 and housing loans rose at a record rate in November 2020.[5]

Under the current consumer protections Australia already has one of the world's highest household debt to income ratios. A survey of 52,000 households showed that, in October 2020, 40.6 per cent of homeowners were experiencing mortgage stress and 37.9 per cent of respondents were experiencing financial stress.[6]

Our overwhelming evidence delivering financial counselling in Australia for the past 30 years is that credit remains too easily accessible and that this has devastating consequences for the people we support. In the 2019-20 financial year, mortgage debt made up the vast majority (67.6 per cent) of the $516 million worth of debt owed by Moneycare clients. By contrast, credit card debt was the most common type of debt, representing 21.6 per cent of the cases we saw.

To further illustrate the easy availability of credit, since the Treasurer's announcement of the proposed changes to RLOs, a member of the team drafting this submission received an offer of an unsecured personal loan from one of the big four banks. This offer was unsolicited and promised a loan of $50,000 with same day approval. This both demonstrates the aggressive marketing of such loans, and the ability for banks to presumably meet the RLOs and still provide same day approval.

[3] Treasury. (2018). *Financial Services Royal Commission: Submission: Interim Report.* https://financialservices.royalcommission.gov.au/Submissions/Documents/interim-report-submissions/POL.9100.0001.1059.pdf
[4] Australian Treasurer. (2020, September 25). *Simplifying access to credit for consumers and small business* [Media release]. https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/simplifying-access-credit-consumers-and-small
[5] Australian Bureau of Statistics. (2021, January. *Lending indicators.* https://www.abs.gov.au/statistics/economy/finance/lending-indicators/latest-release
[6] Digital Finance Analytics. (2020, November 4). Household Financial Stress Reaches New High. *Digital Finance Analytics Blog.* https://digitalfinanceanalytics.com/blog/household-financial-stress-reaches-new-high/

It is our concern that the proposed changes to the Credit Act are intended to take effect from 1 March 2021, around the same time that JobKeeper subsidies, the Coronavirus Supplement to the JobSeeker Payment and Youth Allowance, and mortgage deferrals are all due to end.

For people already experiencing, or at risk of, financial hardship, easier access to credit may mean that they will get caught in a cycle of increasing debt. This has significant implications for physical and mental health.

> *"The potential removal of responsible lending obligations by the Federal Government will lead to more financial hardship. Leaving responsible lending to our Financial institutions to assess and monitor goes completely against the core purpose of these institutions, "that is to make money". They have a proven bad track record when it comes to responsible lending.*
>
> ***If nothing changes, nothing changes.***
>
> *They will take advantage of the consumer without completing the checks and balances needed. We will have more people struggling with financial hardship and the subsequent impact this has on their family, health, and society. This is a huge step backwards."*
>
> (A Moneycare financial counsellor)

Justin's Story*

Justin* and his wife have two young children aged 10 and 12. Before the COVID-19 pandemic Justin worked a large amount of overtime in his role as a logistics officer for a large company. He also had significant caring duties at home as his wife has a disability that is likely to deteriorate but is not covered under the National Disability Insurance Scheme.

Justin first approached our Doorways emergency relief service for help as he was severely impacted by a reduction in work due to COVID-19. This resulted in him being unable to pay utility bills, meet loan repayments and feed his family. Mounting medical costs and debt were causing him to feel increasingly stressed.

Justin accepted a referral to his local Moneycare financial counselling service. He explained that his mortgage had been negotiated by a mortgage broker and could not remember if a distinction had been made between his salary and his regular overtime pay. Justin then used the same financial data to apply for a credit card with another bank.

A careful review of Justin's budget showed that his debt was marginally sustainable with his overtime earnings. As an unreliable source of income, it should never have been included in his mortgage and credit card assessment. However there is no other explanation for how his credit limit allowed him to accrue over $18,000 of debt on an income of $52,000. Justin also did not fully understand how a change in income might affect his ability to repay his debt.

The Moneycare financial counsellor, after working with Justin, provided him with four options:

1. Sell his house
2. Negotiate a moratorium on both debts to give him time for his work schedule to recover
3. Ask for a return of the fees and charges associated with his credit card and his debt to be waived on the basis that he was not able to afford the debt
4. Do nothing

They discussed the advantages and disadvantages of each option and after careful consideration Justin asked that we apply for three-month moratoriums on both his debts as he felt that his work was returning to normal.

Justin's story highlights the need for robust responsible lending laws and for consumers to be informed about the implications of the level of debt they take out.

** Name has been changed*

The Case for Consumer Protection

Many inquiries have been held into the financial services industry over the past five years. These include the 2019 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**the Financial Services Royal Commission**), the 2019 Review of the Coordination and Funding for Financial Counselling Services across Australia (**Sylvan Review**), the 2019 Senate inquiry into the credit and financial services targeted at Australians at risk of financial hardship (**Senate inquiry into credit and hardship**) and the 2016 Review of Small Amount Credit Contract Laws (**SACC Review**).

It is not clear how the findings of these inquiries have informed the changes proposed in the Bill and Regulations. In particular, the Bill appears to go directly against Recommendation 1.1 of the Financial Services Royal Commission's final report, that the *National Consumer Credit Protection Act 2009* should not be amended to alter the obligation to assess unsuitability. We note that the government agreed to this recommendation in its response to the final report.[7]

The Royal Commission found that although the financial system had in place appropriate rules and consumer protections, in many instances lenders had not set up mechanisms to ensure compliance and that breaches had not been effectively enforced.[8] We welcome the introduction of changes in this space through the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* but submit that these improvements would work better as part of the system recommended by Commissioner Hayne, specifically one in which responsible lending obligations governed all credit products.

The Salvation Army strongly believes that, rather than loosening consumer protection regulations, the Royal Commission's finding that the existing rules need additional enforcement must be heeded. **Appendix A** contains stories from our Moneycare financial counsellors that illustrate that, despite responsible lending obligations, lenders are already failing to ensure that loans will not result in 'substantial financial hardship'. It is reasonable to conclude that relaxing protections will only lead to more people in financial hardship and diminish our ability to advocate on their behalf and alleviate their hardship.

> *"If the responsible lending obligations are removed I feel we are going to see lending standards dropping over time with larger institutions and also new business emerging that will target vulnerable and low financially literate communities. This may lead to a surge in bankruptcies in the following years and a definite increase in mental health presentations and poverty"*
>
> (A Moneycare financial counsellor)

[7] Australian Government. (2019, February). *Restoring trust in Australia's financial system: The Government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.* https://treasury.gov.au/sites/default/files/2019-03/FSRC-Government-Response-1.pdf

[8] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. (2019). Final Report. https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.pdf

Asymmetry of Knowledge and Power

The Sylvan Review identified an "asymmetry of knowledge and power" between consumers and financial services, which leaves consumers more vulnerable. It also found financial and credit products offered by the market had become increasingly complex and opaque. Our experience is that understanding these products requires an above average level of literacy and financial literacy.

Data collected by the Household, Income and Labour Dynamics Australia (**HILDA**) survey suggests that around 45 per cent of Australians cannot demonstrate basic financial literacy. Analysis by the University of Western Australia Business School shows there is a real risk when widespread financial illiteracy is combined with complex financial markets, high levels of debt and easy access to credit.[9]

The Salvation Army's position is that when community members are faced with difficult financial decisions, they should be able to trust lenders, who are arguably the experts on the financial products they sell, to help them ensure the product is suitable for them. Our experience over the past 30 years has been that lenders have the resources to pivot in response to legal changes and market need and invest heavily in targeted and enticing promotion of debt. For example, we recall that after the Credit Act was first introduced in 2009, lenders nimbly responded by offering consumers unsolicited overdrafts instead. The complexity of credit products and the resource imbalance show that it is therefore unrealistic to expect borrowers to bear all the risk when applying for a credit product.

The reduction of scope in the responsible lending obligations under the Credit Act will reduce regulatory oversight and therefore increase the risks for borrowers. Against a backdrop of high unemployment, a predicted economic downturn, the stressors caused or exacerbated by the global COVID-19 pandemic, and an already high debt to income ratio, it is our concern that this will result in more unmanageable debt.

In the 2019-20 financial year, the Australian Financial Complaints Authority (**AFCA**) received 3,616 complaints relating to responsible or appropriate lending, an increase of 14 per cent on the previous year.[10] This was despite the existing consumer protections contained in the RLOs. It is The Salvation Army's concern that the changes under the Bill will expose even more consumers to irresponsible lending practices and that this may limit the scope of AFCA to prosecute these cases.

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[9] Preston, A. (2020, March). *Financial Literacy in Australia: Insights from HILDA data.* University of Western Australia Business School.
[10] Australian Financial Complaints Authority. (2020). *Annual Review 2019-20*. https://www.afca.org.au/about-afca/annual-review

> *"Even when it is blaringly evident in the documents that there is a responsible lending issue, it's necessary to manage client expectations from day one in terms of an outcome success, due to the difficulty in having the financial services provider admit wrongdoing and the limitations of the Australian Financial Complaints Authority to enforce this.*
>
> *I have received correspondence from financial services providers in response to responsible lending concerns that has brought the client to tears, because of the blatant unwillingness to even address the concerns raised. Instead the company uses its resources in attempt to baffle us with lengthy jargon, ignoring the actual concerns raised. Verbally, financial services provider representatives often make statements contradicting the National Credit Code such as "we don't have to give hardship because we've given it before".*
>
> *If the changes happen, we'll be in a much worse position. We will no longer be able to quote our trusted Consumer Action allies in saying "we have some of the best consumer credit in laws in the world, they're just not enforced well enough".*
>
> (A Moneycare financial counsellor)

Consumer Vulnerability

The Salvation Army welcomes the Treasurer's commitment to ensure the "strongest consumer protections" are targeted at the most vulnerable Australians in his announcement of 25 September 2020.[11]

Various factors influence why a consumer may be deemed 'vulnerable'. These include:

- Social factors, such as disability (affecting 1 in 5 Australians) and cultural and linguistic diversity (1 in 5 Australians speak a language other than English at home).
- Educational factors, such as low literacy levels (affecting 44 per cent of Australians).
- Economic factors, such as having few savings (30 per cent of Australians have savings of less than one month's income or none at all).
- Situational factors, such as an experience of family and domestic violence (affecting 1 in 6 women in Australia).[12]

Although the proposed change to a 'borrower responsibility' framework may seem to be encouraging consumers to 'do their homework', our experience is that poor financial literacy

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[11] Australian Treasurer and the Minister for Housing and Assistant Treasurer. (2020, September 25). *Simplifying access to credit for consumers and small business* [Joint media release]. https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/simplifying-access-credit-consumers-and-small

[12] O'Neill, E. (2020). *Exploring regulatory approaches to consumer vulnerability* [A report for the Australian Energy Regulator]. https://www.aer.gov.au/system/files/CPRC%20-%20Exploring%20regulatory%20approaches%20to%20consumer%20vulnerability%20-%20A%20report%20for%20the%20AER%20-%20February%202020_0.pdf

only makes up a small proportion of the cases we see. The majority of community members who approach Moneycare have found themselves experiencing financial hardship due to unexpected life circumstances, such as the loss of a job, significant illness, or family and domestic violence.

Our experience as a nation in 2020 has been a stark reminder that many of us are only a few steps away from vulnerability. Disaster does not discriminate.

> *"It is unrealistic and irresponsible to place the onus on borrowers and expect people to fully understand whether they will be able to repay a loan, particularly when a lot of people get into debt out of desperation. Unmanageable debt already has adverse impacts on individuals and families including stress, relationship breakdowns and suicide. Removing the responsible lending laws will only increase these impacts and put more pressure on emergency relief providers and the social services and health systems.*
>
> *Removal of responsible lending obligations will allow our already vulnerable clients to be preyed upon by unscrupulous lenders. Why take away these safe guards that are so very necessary to protect the community and to give financial counsellors the ability to advocate for their clients and achieve the just and only fair outcomes that they deserve.*
>
> *Moving from lender responsibility to consumer responsibility is well and good if there is not such a power imbalance in the relationship between finance provider and consumer. Most people are flat out understanding the product they are being sold. Most loan or financial products are not written in everyday language. A large proportion of our community members are financially disadvantaged simply because of barriers to understanding financial terms and conditions."*
>
> (A Moneycare financial counsellor)

Mental Wellbeing and Stress

Indebtedness has significant implications for physical and mental health, with rates of suicidal ideation and depression higher in individuals with unmet loan payments.[13]

Community members accessing Moneycare support are surveyed at the beginning and towards the end of their engagement with our financial counsellors. Outcomes measurement shows the high levels of mental health concerns of people when they first come to us for financial counselling, as well as significant improvement in the mental health of clients after engaging

[13] Turunen, E. Hiilamo, H. (2014). Health effects of indebtedness: a systematic review. *BMC Public Health* 14(489). https://doi.org/10.1186/1471-2458-14-489

with our team.[14] This illustrates the mental load caused by financial stress and mounting debt and the benefit of support to address the situation.

Behavioural science shows that we make poor decisions when under stress.[15] This includes a diminished ability to determine whether we actually have capacity to afford the loan or credit card we are being sold. Our on-the-ground experience is that people in crisis experience cognitive overload, which impacts their decision making. Their focus, understandably, is on meeting their immediate needs, often to the detriment of their long-term financial health.

Putting the full burden of responsibility on consumers reveals an assumption that every applicant has the current cognitive bandwidth, and is in the right situation, to coolly evaluate the full implications of a credit product. This cannot be further from the truth.

Jane's Story*

Jane* has recently left a relationship in which she experienced both domestic violence and financial abuse by her partner. Her partner had control over the family finances, which he used to fuel his addictions. This forced Jane to borrow under her name to meet basic living expenses. These debts made Jane feel she had no way out of the relationship as it would make life even more unaffordable, and her partner made her feel 'useless with money'.

Since leaving her partner, Jane has been working with a Moneycare financial counsellor to rebuild her confidence in managing her own finances. Jane now sees her experience made her very good at coping with living on very little money. Her financial counsellor has been able to advocate, together with navigation of the responsible lending obligations, to secure manageable repayment and occasional waivers of debts taken out under duress, or where she had no personal benefit.

** Name has been changed*

Family and Domestic Violence

The current requirement under the RLOs for lenders to make reasonable inquiries and to verify all co-debtors' incomes provide opportunities for lenders to discover instances of financial abuse, for example where a loan has been applied for in a victim-survivor's name without their knowledge. The Salvation Army also notes the industry guidelines produced by the Australian Banking Association, which include a recognition of the role that banks can play in preventing the potential impact of financial abuse on customers.[16]

[14] Loo, J., & Lensun, L. (2020). *Moneycare outcomes measurement annual report*. Sydney, NSW: The Salvation Army Australia.
[15] Wemm, S. E., & Wulfert, E. (2017). Effects of Acute Stress on Decision Making. *Applied psychophysiology and biofeedback*, 42(1), 1–12. https://doi.org/10.1007/s10484-016-9347-8
Atsan, N. (2016). Decision-Making under Stress and Its Implications for Managerial Decision-Making: A Review of Literature. *International Journal of Business and Social Research*, 6(3), 38-47. doi:https://doi.org/10.18533/ijbsr.v6i3.936
[16] Australian Bankers' Association. (2016). *Industry guideline: Financial abuse and family and domestic violence policies*. https://www.ausbanking.org.au/wp-content/uploads/2019/05/ABA_Industry_Guideline_-_Financial_Abuse_and_Family_and_Domestic_Violence-Nov-2016.pdf

Our experience delivering financial counselling, as well as family violence support, is that banks do not always have sufficient protections in place to safeguard against financial abuse. They have however presented opportunities for identification and intervention.

It is our concern that if RLOs are repealed for most credit products, this will also remove a significant opportunity to uncover financial abuse and connect victim-survivors with support.

> *"It is essential that lenders are regulated to ensure responsible lending criteria applies. Having worked as a financial counsellor for 20 years and previously in banking processing home loans, it was easy to see many loans should not have been approved due to the high risk for the applicant.*
>
> *My experience shows that self-regulation does not work. Not all lenders adopted the Code of Banking Practice which was the only available standard that we could use to assist our clients.*
>
> *The client heart break at being evicted from their homes was traumatic to witness and oftentimes my role was to support the clients as best as I could with delays in the eviction process or from time to time gaining the agreement for the borrower to have 90 days sell the property and even helping them to find cheap removalists and provide support letters and Statements of Financial Position to support applications for renting."*
>
> (A Moneycare financial counsellor)

Protecting Consumers Through Prudential Regulations

The Salvation Army understands a major rationale behind the proposed changes is a supposed duplication caused by the current requirements for lenders. To our understanding the Australian Prudential Regulation Authority (**APRA**) and the Australian Securities and Investments Commission (**ASIC**) play very different regulatory roles.

While APRA is concerned with "maintaining the safety and soundness of financial institutions", it is ASIC that has responsibility for regulating their conduct.[17] While APRA protects "the interests of depositors, policyholders and superannuation fund members", ASIC's focus is on achieving good outcomes for consumers and investors.[18]

[17] Australian Prudential Regulation Authority. (n.d.). About APRA. *APRA*. https://www.apra.gov.au/about-apra
Australian Securities and Investments Commission. (n.d.). The ASIC – APRA relationship. *ASIC - Australian Securities and Investments Commission*. https://asic.gov.au/about-asic/what-we-do/our-role/other-regulators-and-organisations/the-asic-apra-relationship/

[18] Australian Prudential Regulation Authority. (n.d.). About APRA. *APRA*. https://www.apra.gov.au/about-apra
Australian Securities and Investments Commission. (n.d.). ASIC vision and mission. *ASIC - Australian Securities and Investments Commission. https://asic.gov.au/about-asic/what-we-do/our-role/asic-vision-and-mission/*

As a result of ASIC's current powers to investigate suspected breaches and prosecute offenders, it already has the expertise and experience necessary to ensure that consumers are protected. Our concern is that by putting the regulatory burden entirely on APRA, whose primary focus is on prudential risk, individual cases will not be prosecuted. As stated above, it is unclear what AFCA's role will be if most credit products no longer need to meet RLOs.

The Salvation Army does not support this change. We note that in considering the regulatory roles, the Financial Services Royal Commission did not recommend that they be changed. We instead recommend that the responsibility for enforcing consumer protection remain with ASIC and that ASIC be given the necessary resources to provide a sufficient deterrent to irresponsible lending practices.

Recommendations

- Responsible lending obligations be retained in full.
- The Commonwealth Government consider the proposed changes against the findings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, the Review of the Coordination and Funding for Financial Counselling Services across Australia, and the Review of Small Amount Credit Contract Laws.
- The Commonwealth Government prioritise the implementation in full of the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.
- Responsibility for enforcing consumer protection remain with an adequately resourced Australian Securities and Investments Commission.

Rosemary's Story*

When 52-year old Rosemary* contacted a homewares rental company to organise a small television for her bedroom, she had no idea it would lead to aggressive upselling, intimidation and a significant debt that would have a severe impact on her health and wellbeing.

As a result of skilful upselling techniques employed by the rental company, Rosemary's original plan for a small bedroom television soon turned into a 65-inch TV, an additional TV, two mobile phones, an iPad, MacBook, a bedroom suite and later a washing machine – to a total of 15 individual rental contracts. Concerned that she wouldn't be able to afford what she was being upsold on her low income, she says she was repeatedly told by the company that she would be able to cover the repayments.

"It was the way that they had gone around things to upsell items, not to give the amount … because they hadn't worked it out. That's what they kept saying to me – they hadn't worked the fortnightly payments out as of yet. But when they do, they will inform me," says Rosemary. "Well into the contract, I was told it was $450 per fortnight. Well I nearly fell over. I said, 'I can't afford that' and they said, 'well you purchased the goods, so you have to pay for it'."

When she was unable to keep up with the payments, Rosemary was visited by what she describes as a 'large bully' – who came to her door demanding her key card to take out the $450 owing. He also added an extra $20 to her fortnightly debt because she was now behind.

Rosemary was unable to meet her basic needs such as rent, food, medication and utilities, after having entered into unaffordable rental contracts. Her financial commitment was exhausting half her income and leaving her in severe financial hardship. Rosemary's health was also suffering due to the stress she was under, trying to keep up with the payments. Already prone to epileptic seizures, she started experiencing them much more frequently, causing her to feel weak and sick on a regular basis.

After three months of not knowing what her payments were and another four months struggling alone to manage the debt, Rosemary sought financial counselling through The Salvation Army's Moneycare service. At this point, Rosemary's debt had snowballed to over $26,000 – significantly more money than the value of the goods combined.

After investigating and escalating the issue to Internal Disputes it was identified that 'maladministration' had taken place, as no confirmation of Rosemary's place of residence was determined nor how much she was paying in rent, let alone other essential expenses.

This is the first time Rosemary has ever been in a situation like this and wants other people – particularly those on low incomes – to be aware of the dangers of these rental arrangements, which can leave families in very serious debt.

** Name has been changed*

Frank's Story*

Frank* is an older community member. He saw an advertisement from a small amount credit company, who advertise that they lend money to “consumers with a very broad range of risk profiles”, including seniors. He applied for a $1,000 loan but was declined via email and advised to approach another small amount credit company. Frank then received an email from this second company and a $180 deposit in his bank account. This was despite not having given consent for his personal information to be shared. The company is now demanding repayment of a debt of $588.

** Name has been changed*

Small Amount Credit Contracts and Consumer Leases

The Status Quo

Through Moneycare and our Doorways emergency relief program, The Salvation Army has witnessed a significant correlation between engagement with small amount credit contracts (commonly known as payday loans) lenders and consumer lease providers, and people living in poverty – typically individuals on lower incomes and people receiving social security payments. In the 2019-20 financial year, Moneycare financial counsellors assisted community members regarding 1,081 payday loans to a total of $1.8 million and 154 consumer leases worth $0.4 million.

The comparatively low amounts and quick turnaround time of small amount credit contract loans mean that people on low incomes are the main target market for, and are highly susceptible to, the marketing of small amount credit contracts. Payday loans are enticing when just a little bit more money is needed to pay the week's rent to avoid eviction, the next car loan instalment to continue to get to work, or a higher-than-expected electricity bill to keep the lights on. Our experience is that lenders target people on low incomes, promising cash in minutes with few questions asked. These loans are often highly unsuitable and begin many people's spiral into unmanageable debt.

The Salvation Army has also seen examples of consumer leases and rent-to-buy schemes where clients end up paying three to four times the normal retail price over the life of the lease. Investigations by ASIC found consumer lease costs can amount to over eight times the retail price.[19] By contrast, when community members come to the No Interest Loan Scheme (**NILS**) for assistance, they only pay the retail price of the goods, with no interest, no fees and no charges. The disparity in the price that people end up paying for the same item makes a significant difference for people who are already struggling to make ends meet.

Our experience leads us to believe that if consumer protections could ensure that people taking out a loan have the capacity to pay it back, this would relieve the pressure on emergency relief services and the broader community service system. It also shows that the existing consumer protections under the Credit Act are not sufficiently robust to prevent people in this situation from being sold a 'quick fix' that is ultimately more harmful in the long term. The findings of the Senate inquiry into credit and hardship and the SACC Review detail the changes that are necessary to ensure laws are having their intended purpose.

[19] Australian Securities and Investments Commission. (2015). *Cost of consumer leases for household goods* [Report 447]. https://download.asic.gov.au/media/3350956/rep-447-published-11-september-2015.pdf

> *"Payday lenders may cause further detrimental impact in our society. I find their conduct unethical and unconscionable. They prey upon and exploit the most vulnerable within our community, resulting in undue stress and financial hardship. I have seen community members in receipt of the aged pension and Disability Support pension lured in by Payday lenders, providing fast money with ease, resulting in severe financial hardship for those caught within the Payday whirlpool. After exhaustive and mostly failed attempts to obtain legitimate debt waivers, I have on many occasions had to involve Financial Rights [Community Legal Service] to continue the fight for those who cannot."*
>
> (A Moneycare financial counsellor)

The Salvation Army has for some time advocated for an increase to the base rate of the JobSeeker Payment and Youth Allowance. It is our experience that the payments are too low for a person to afford basic essentials, let alone whether a financial shock like a washing machine or a car breaking down. Almost 50 per cent of loans provided through NILS are for car-related expenses and 25 per cent for white goods. This is echoed by data published by the Australian Bureau of Statistics which revealed that, in 2019, nearly one in five households were unable to raise $2,000 within a week for something important.[20]

The Salvation Army is pleased that the government has taken steps to apply additional consumer protections for small amount credit contracts (commonly known as payday loans) and for consumer leases. The Bill has some of the critical protections from the exposure draft *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017,* which The Salvation Army, and many within the community sector, supported and have called for similar restrictions to be enacted.

Protections offered within the Bill

The Bill does contain some positive protections which are helpful to financially vulnerable Australians. Small amount credit contractors would be required to provide loans with equal repayment amounts at equal repayment windows. They would be prohibited from unsolicited approaches for these loans and unable to continue to charge monthly fees on loans that have been repaid early. The Bill also requires additional information be displayed to communicate the nature of SACCs, which will be spelled out by ASIC.

The Salvation Army is pleased to see the introduction of an explicit reference to family violence as an example of hardship which will allow for more flexible repayment options on loans, however it is unclear exactly how impactful this will prove to be in practice. The Australian

[20] Australian Bureau of Statistics. (2020). *General Social Survey: Summary Results, Australia.* *https://www.abs.gov.au/statistics/people/people-and-communities/general-social-survey-summary-results-australia/2019*

Banking Association already has guidelines to ensure speedy access to hardship arrangements for those experiencing family and domestic violence, without the need for legal documentation.[21] Our experience suggests many victim-survivors are not emotionally prepared to describe their experiences as domestic violence, or in a position to exit an abusive relationship. This demonstrates that, although hardship arrangements may be available for those experiencing family and domestic violence, a human centered, trauma informed approach is necessary to ensure that those who need them are able to access the provisions.

The Bill imposes increased information gathering requirements upon both SACCs lenders and consumer lease providers. By mandating that a lender collect account statements for 90 days prior to a lease, and that records of the assessment of suitability of an instrument be kept, the Bill helps to provide a record of the decision making process and require a more rigorous assessment of suitability of a lease and SACC terms.

The Bill also contains changes to the regulation of consumer leases which The Salvation Army has supported. Unfortunately many of these protections have been watered down from those recommended by the SACCs report in 2016, thus reducing their efficacy. A 4 per cent cap would be established upon monthly fees payable by the borrower in connection with a consumer lease, yet delivery and installation fees will be included within the cap calculation and a 20 per cent establishment fee will still be permitted. Door to door approaches for consumer leases of household goods are prohibited except by 'prior arrangement', yet the exact definition of a 'prior arrangement' is unexplained. Loan documents would be required to carry information about the base price of the good and the total cost to the consumer over the course of the loan, and breaches would require the payments be repaid to the customer. Our interpretation would suggest a legal finding of breach would be necessary to obtain this remedy, which is too difficult and costly for most of those who are taken in by unscrupulous lending practices. The Bill is also silent on the practice of lenders and leasing agents selling instruments from a temporary location, such as a van parked in the main street of a remote community, which we have seen negatively impact vulnerable people in remote areas.

Although The Salvation Army has called for the implementation of some of the provisions of the Bill since the government's consultation in 2017, we cannot recommend that this Bill be passed in its current form. The benefits that these changes bring are more than offset by lifting RLOs and the compromised protections outlined above. This Bill represents an unacceptable risk to the people we serve, and the policy of regulating access to SACCs and consumer leases based on income source unfairly discriminates against consumers while simultaneously leaving too many unprotected.

The Salvation Army notes that two Bills, one before the Senate[22] and another before the House of Representatives[23], do seek to implement the positive changes from the SACC review without

[21] Australian Bankers' Association. (2016). *Industry guideline: Financial abuse and family and domestic violence policies.* https://www.ausbanking.org.au/wp-content/uploads/2019/05/ABA_Industry_Guideline_-_Financial_Abuse_and_Family_and_Domestic_Violence-Nov-2016.pdf
[22] National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)
[23] National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2020

tethering them to a loosening of RLOs. We understand that the two Bills mirror the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 drafted by the government. It is our belief that Parliament should instead seek to legislate these changes to protect consumers from exploitative small amount credit contracts and consumer leases.

Recommendation

- The Commonwealth Government implement Recommendation 2 of the 2019 Senate inquiry into the credit and financial services targeted at Australians at risk of financial hardship.

> *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.*

Tim's Story*

When Tim* was first referred to The Salvation Army's Moneycare service, he was under a number of payday and other quick loan repayment obligations.

Coming from a background of generational disadvantage, Tim is on a part-disability pension due to a range of health issues. Tim's partner is also on a disability pension and was recently hospitalised. As a result of COVID-19 closures, Tim lost the few hours of weekly work he had driving a shuttle bus for a club. Tim sought out a loan to cover the basic costs of living, but was bombarded with text messages from lenders offing additional loans, which was very tempting considering his already tight financial situations.

Tim's Moneycare financial counsellor was able to guide him to take charge of his finances. She also advocated with lenders on Tim's behalf. Eventually, with the help of his financial counsellor Tim was able to get the interest waived on several loans and negotiated repayment options with others.

A major concern for his financial counsellor was how Tim kept getting payday loans when his circumstances should have triggered the lender's obligations under 'responsible lending' practices. The loans were extremely easy to apply for and get, but the implications would have lasted for a very long time.

For those, like Tim, who are deep in a debt spiral the sense of fear and helplessness can be overwhelming, putting those who are already in financial difficulty into a debt spiral. Usually people who apply for these loans have exhausted all other resources, but the reality is that it is often a deep trap, and that easy fix can soon become a deep, deep hole of debt that only magnifies existing problems.

** Name has been changed*

Questionable Practice; Not Questionable People

The Salvation Army has serious reservations about the way in which the government proposes to "ensure that the strongest consumer protections are targeted at the most vulnerable Australians"[24], namely through continuing restrictions on consumer access based on income source.

The Salvation Army supports the extension of the protected earnings amount to all consumers but opposes the differentiation on the level of these protected earnings based on income source. This is a disappointing departure from the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill which was circulated by the government in a draft format in 2017. While recognising that "repeat borrowing through small amount credit contracts exposes all consumers to a degree of risk, regardless of the consumer's income"[25], this fails to see the equal risk of dedicating 20 per cent of one's income to consumer lease repayments.

The solution to preventing consumer exploitation does not lie in restricting access according to income source, or even income level. Increasing the restrictions already experienced by people on low incomes does not address the real problem, neither does it effectively protect people who suffer from predatory lenders.

Applying additional restrictions for people receiving a majority of their income from Centrelink payments also risks exacerbating the stigma of being 'on the dole'. Many of our clients describe the sense of shame from receiving social security payments. They talk about not even wanting to go for a coffee with friends so others would not carry the burden of always paying. Some people have also shared that they feel punished for not being able to secure a job, despite their best efforts.

Our NILS experience shows that people on low incomes, including people on social security payments, do have the capacity to repay loans, if the loan has been accessed to be suitable for their income and expenditure levels. Over the past 10 years 95 per cent of loans we administer through NILS were fully repaid.

Regulating lending practices, rather than who can access them, is the only solution that will actually prevent practices specifically designed to take advantage of people experiencing financial hardship. As discussed above, lenders have superior knowledge of the products they are offering. Using the source of a person's income as a precondition to access to the loan should not be treated as protection.

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[24] Australian Treasurer and the Minister for Housing and Assistant Treasurer. (2020, September 25). *Simplifying access to credit for consumers and small business* [Joint media release]. https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/simplifying-access-credit-consumers-and-small

[25] National Consumer Credit Protection (Supporting Economic Recovery) Amendment Bill 2020 Explanatory Memorandum, 75.

The Salvation Army also has serious concerns that it will be possible for those who receive less than half their net income from Centrelink to enter into consumer leases where repayments would represent 20 per cent of their total net income and a SACC which would consume a further 20 per cent. Any consumer, regardless of income source, should be protected from a situation where a total of 40 per cent of their income would be diverted to SACCs and consumer lease repayments. This represents an enormous proportion of a person's income and would facilitate those in already financially vulnerable situations entering into unsustainable debt.

As such The Salvation Army calls on the government to refrain from using income source as a condition of eligibility for SACCs and Consumer Leases. This is a blunt instrument which falls to take into account the vulnerable position of those on low incomes from other sources, and patronises those receiving government support.

In recent times there have been moves by governments to protect consumers from harmful lending practices. In response to the 2016 SACC Review the Treasury developed the draft National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017. We understand that the South Australian Government is currently considering similar amendments to the *Fair Trading Act 1987*. Both amendments sought to regulate lenders, credit products and marketing practices, rather than the people who could access them.

The Bill also represents an opportunity to better regulate Buy Now Pay Later loans which The Salvation Army has seen cause significant negative impacts, particularly to young people. Young people often enter these schemes without an understanding of the long term costs and ramifications and without the scheme assessing the suitability for the customer. This combination of limited financial literacy coupled with the aggressive marketing of retailers utilising Buy Now Pay Later through social media has made it increasingly common for young people, who are already struggling with affordability, to find themselves saddled with unmanageable debt.

Recommendation

- The Commonwealth Government revise the protected earnings amount so that it does not discriminate based on income source.
- The Commonwealth Government facilitate passage of the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 exposure draft released by Treasury, including the universal protected earnings amounts of 10 per cent of net earnings for SACCs and consumer leases for household goods.

Conclusion

The Salvation Army again thanks the Committee for the opportunity to provide feedback on the Bill and to share our insights gained from supporting people experiencing hardship and disadvantage in Australia.

The Salvation Army's experience leads us to believe that Australia's consumer credit laws are world-leading and where these have been breached, our financial counsellors have often used responsible lending laws to achieve positive outcomes for the people we support. Reducing their scope will only leave more Australians in financial hardship, with little recourse for relief. We would rather not to have to advocate and find equitable remedies for people in unmanageable debt, our vision is for a fairer market place where people are not the subject of irresponsible lending initially.

Consumer protection is important now more than ever considering the economic impacts of the COVID-19 pandemic, high unemployment and high household income to debt ratios. When properly implemented and enforced, responsible lending obligations protect people experiencing, or at risk of, hardship and vulnerability from being enticed into taking out credit products they cannot afford. Consumer checks required by responsible lending obligations can also provide the first indication of financial abuse and lead to a victim-survivor receiving the support they need. Failure to protect consumers will mean increased demand on other parts of the service sector, including for emergency relief, mental health, and homelessness support services.

The Salvation Army has long advocated for stronger regulations regarding SACCs and consumer leases. Although the Bill contains some of the beneficial changes included in the draft Bill developed by the government in 2017, tethering these protections to the removal of RLOs would be a zero sum gain for the people we serve. It is our belief that the two consumer credit protection Bills before the Parliament would achieve better consumer protection without unnecessarily discriminating against those receiving social security payments.

For these reasons, The Salvation Army urges that the Bill not be passed in its current form.

About The Salvation Army

The Salvation Army is an international Christian movement with a presence in 128 countries. Operating in Australia since 1880, The Salvation Army is one of the largest providers of social services and programs for people experiencing hardship, injustice and social exclusion.

The Salvation Army Australia has a national operating budget of over $700 million and provides more than 1,000 social programs and activities through networks of social support services, community centres and churches across the country. Programs include:

- Financial counselling, emergency relief and microfinance
- Homelessness services
- Youth services
- Family and domestic violence services
- Alcohol, drugs and other addictions
- Chaplaincy
- Emergency and disaster response
- Aged care
- Employment services

As a mission driven organisation, The Salvation Army seeks to reduce social disadvantage and create a fair and harmonious society through holistic and person-centred approaches that reflect our mission to share the love of Jesus by:

- Caring for people
- Creating faith pathways
- Building healthy communities
- Working for justice

We commit ourselves in prayer and practice to this land of Australia and its people, seeking reconciliation, unity and equity.

Further Information

The Salvation Army would welcome the opportunity to discuss the content of this submission should any further information be of assistance.

Further information can be sought from Major Paul Hateley, National Head of Government Relations, at government.relations@salvationarmy.org.au or on [redacted]

Appendix A: Stories from the front line

The following stories have been shared by Moneycare financial counsellors. Some have not yet been resolved but have been included to show the issues that they have been seeing under the current responsible lending obligations.

Anne's Story*

Anne* came to Moneycare for help with a car loan that was in arrears. The loan had been taken out a couple of years prior at a car yard while she was living with her partner's mother. When we met her, she was living in transitional housing with her partner and young child. The car in question had broken down, though she still owed close to the level of the original loan and had not been able to successfully negotiate with the lender.

An assessment of Anne's loan revealed that the loan was not affordable and that the creditor had:

- Failed to take reasonable steps to verify Anne's financial situation
- Failed to verify the repayment amounts of the existing debts Anne had disclosed
- Grossly understated costs for vehicle maintenance

We lodged an AFCA maladministration complaint, citing the creditor's breach of their responsible lending obligations and showing evidence that the loan was unsuitable and that Anne could not meet her contracted repayments without substantial hardship. The outcome we sought from AFCA was for Anne to surrender the car, her remaining debt to be waived and for no adverse listing to be made in her credit history.

In response, the lender rejected our claim of maladministration on the grounds that verification had been completed by simply asking Anne. They did not admit to breaching responsible lending laws, yet agreed that the continuation of the contract would result in significant financial hardship for Anne. They ultimately agreed to collect the vehicle from Anne's home, close the loan account, waive the debt, not pursue any debt collection activities, sell the debt or make any adverse listing.

Time taken to achieve resolution: 4 months

** Name has been changed*

Catherine's Story*

Catherine* is a single mother for four children. When she first came to Moneycare, she was receiving Parenting Payment but was looking to return to work as she was due to be transferred to the lower JobSeeker Payment rate shortly. At the time, she had a secured car loan as well as three consumer leases. She said that she had always felt that she could manage until she took out the car loan but now was feeling overwhelmed by the debt. Catherine expressed that she was willing to surrender the car.

Suspecting a breach of responsible lending laws, Catherine's Moneycare financial counsellor reviewed the car loan and found that Belinda's budget at the time of her loan application showed a deficit of $187 per fortnight. This meant that the loan should have been deemed unsuitable and the creditor had failed to make reasonable enquiries about Catherine's financial position.

Through the lender's internal dispute resolution process, Catherine's Moneycare financial counsellor advocated on her behalf on the basis of unsuitable lending and sought to surrender the vehicle to the lender, sold, and for any residual debt to be waived with no adverse credit report listing made.

The lender admitted that they had not made reasonable enquiries into Catherine's financial situation. They had obtained a Centrelink income statement at the time of the application but did not take the necessary steps to verify the information within the document. The creditor put this down to a "clerical error", stating that they make "every possible effort to ensure that our analysts reviewing applications meet the RG209 requirement to conduct reasonable enquiries into the consumer's financial position."

Catherine surrendered the vehicle and was relieved of any further obligations.

Time taken to achieve resolution: 1 month

** Name has been changed*

Charles's Story*

Charles* lives with a mental health condition. He is on a good income and has a mortgage on his unit. Charles already had a $4,500 loan but found himself in need of some additional funds as he wanted to visit family interstate and do some small repairs. He called his bank, one of the major banks, to request his credit card limit be increased to $10,000. He had called the bank two weeks prior from a mental health ward and was still very unwell at this time.

The bank employee who Charles spoke to over the phone suggested that he instead take out a personal loan and consolidate this new loan with his existing loan. After nearly two hours on the phone, Charles came away with one consolidated $29,000 personal loan. This is despite his bank statements showing erratic spending and three declined direct debit payments the day before the new loan was granted.

The Moneycare financial counsellor took up the case of possible irresponsible lending with the bank and negotiated for Charles's debt to be partially waived to $13,000 and a revised repayment of $100 per fortnight over 5 years.

** Name has been changed*

Elinor's Story*

Elinor* is a single mother of six children and was receiving Parenting Payment and Family Tax Benefit. When she first approached Moneycare, she was in the process of negotiating the settlement of the family home, which had little to no equity. She also had a $52,000 credit card debt.

Elinor been repeatedly rejected for hardship concessions and was struggling to meet her minimum monthly payments and feed her family. She had originally applied for a credit limit of $2,000 while out of the workforce but had regularly accepted increases, ultimately reaching a $48,000 limit. This was despite her financial situation not having changed over the five year period and her then husband having a salary of $60,000 per annum.

Elinor's Moneycare financial counsellor approached her bank seeking that any debt above the initial $2,000 be waived, but the request was rejected. We subsequently lodged a complaint with AFCA on the grounds that the bank had continued to offer regular credit increases beyond what Elinor could reasonably afford to pay back, with no effort to make reasonable enquiries about her financial situation.

The bank responded that as Elinor had continued to make payments, they had taken this as proof that she could meet increased financial obligations. Had they made enquiries, they would have found that the increased credit limits were resulting in Elinor becoming increasingly reliant on family and charities for financial support. This was presented as evidence that the credit card was unsuitable and that obligations could not be met without substantial hardship.

The matter was resolved by AFCA, with the bank waiving Elinor's $52,000 debt in full. As a result, Elinor can now use her income to support her family.

Time taken to achieve resolution: 4 months

** Name has been changed*

Emma's Story*

Emma* is a single mother of five children, one with special needs. When we first met her, she was working part-time in the aged care sector and had recently escaped a domestic violence situation. Emma and her children were staying at her investment property, which she had purchased ten years prior together with her mother, with security taken over her mother's encumbered unit. Emma was unable to sell the property and this meant that her mother was also unable to sell her unit. The property had always been negatively geared and Emma had been making interest-only repayments for the past ten years. She was now struggling to repay both principal and interest.

Our discussion with Emma revealed that the property had been purchased through a mortgage broker. At the time of the purchase, Emma had been earning $30,000 per annum with two dependents and her mother was receiving the Disability Support Pension. Despite this, she received a credit card with a $20,000 limit when taking out the loan.

Emma's Moneycare financial counsellor looked in to the mortgage broker that Emma had used and found that they no longer held a credit licence. We then requested that the bank take possession of the property, relinquish the security they held against her mother's property and waive the credit card debt.

The bank rejected this request and a subsequent complaint was made to AFCA on the grounds of irresponsible lending. We argued that security should not have been taken over the encumbered property of a pensioner, that the bank had made no effort to confirm Emma's financial position or the ratio of mortgage to property value, and that the bank had provided an unsolicited credit card with no effort to assess affordability.

The AFCA complaint was progressed to conciliation, with the bank agreeing to take possession of the property, waive residual debt and relinquish the security on Emma's mother's unit. The bank did not waive the credit card debt and after resolution, repeatedly sent legal notices in conflict with the conciliation agreement, for which they have since apologised.

Time taken to achieve resolution: 1 year

** Name has been changed*

Harriet's Story*

Harriet was referred to Moneycare by her adult daughter, who works for a major bank. Despite being unemployed and without a regular source of income, Harriet had managed to obtain two credit cards and two personal loans with two different major banks. When asked how she had got approval for these loans, Harriet explained that though the banks initially declined her applications, they eventually did approve them when she kept returning to the bank branches. Harriet then repeatedly increased the credit card limits.

Now unable to repay, she has borrowed from family and friends to maintain the regular repayments. The borrowings are damaging Harriet's relationships with her family and creating a wedge between her eldest daughter and son-in-law, who are newly married.

** Name has been changed*

Lydia and George's Story*

Lydia and George* have an average income level and owe approximately $650,000 on their mortgage with one of the major banks.

They decided to consolidate their debt to reduce the strain on their budget. When Lydia went to their bank to negotiate this, the bank manager advised her to instead take out a personal loan. The manager advised that she would be leaving the bank soon to start her own business and could help Lydia and George consolidate the two loans in her new role. Lydia trusted the manager and decided to follow her advice. The manager overrode the bank's system, which had automatically declined the new loan, and granted the loan within the hour.

George needed $10,000 at a different time to replace a broken down van for work. The loan was declined but again the manager overrode it and got $17,000 approved by stating that the money was needed for an emergency funeral.

This matter is currently being investigated by the bank.

** Names have been changed*

Marianne's Story*

Marianne* was referred to Moneycare by the local drug and alcohol support service. Along with her addiction, she has been diagnosed with various mental health conditions. Marianne had been approved for a $30,000 personal loan from a major bank over a year prior. This is despite stating in her loan application that her only source of income was the Disability Support Pension. She had also previously defaulted on a property loan with the same bank and had to hand back the property.

Marianne had already been approved hardship assistance on the loan repayments. With a Moneycare financial counsellor's assistance, Marianne requested and received her loan application and assessment of suitability. In it the bank had reasoned that as Marianne had estimated her monthly living expenses to be $200, this left a monthly surplus of $800 and that she would therefore be able to meet and maintain her loan repayments.

Marianne had been living in active addiction when she applied for the loan. Regardless, $200 per month would not cover an average person's essential living expenses, such as food, clothing, medication and transport. This should have raised red flags during the assessment. The financial counsellor concluded that there was no evidence of a reasonable assessment of the loan application by the bank.

Marianne discussed her options with the financial counsellor, including engaging a lawyer and challenging the debt through responsible lending laws. As Marianne would have no capacity to repay the debt in the near future, she ultimately decided to ask the bank if they would consider waiving the debt, which they agreed to do.

** Name has been changed*

Mary's Story*

Mary* came to Moneycare with her father for support with several business loans totalling $172,000 and a mortgage. She was very distressed at the time. She had just lost her husband to suicide and had three young children.

Unbeknownst to Mary, her husband had named her a partner to the business. He had also not been truthful on loan applications, declaring a false income for Mary and overstating the business's earnings. Hearing this, Mary's Moneycare financial counsellor suspected a lack of due diligence and a breach of responsible lending obligations. After discussing the available options, Mary decided to request more information and for her debts to be waived both on compassionate and irresponsible lending grounds. Her financial counsellor then advocated on Mary's behalf, outlining her circumstances.

The creditors waived her business debts in full, meaning Mary could keep her family home and maintain mortgage payments with her parents' assistance. Her financial counsellor also managed to locate a life insurance policy that Mary's husband had held, which had lapsed due to missed payments. Upon persistent advocacy this was eventually paid out.

** Name has been changed*

Tom's Story*

When we first met Tom*, he was receiving the Age Pension and had a credit card with a $9,000 limit. He was having difficulty meeting his repayments and had requested financial hardship assistance. The bank responded with the suggestion that he close his credit card account and instead transfer the balance to a personal loan, which had a higher interest rate and higher monthly repayments.

Tom's Moneycare financial counsellor took this case of irresponsible lending to his bank. While the bank was willing to discuss the matter, no significant hardship arrangement was offered, with George still being unable to afford the repayments.

With our assistance, Tom lodged a dispute with AFCA against the bank. To his delight, the bank responded by offering him a significant discount, which reduced the balance of the outstanding debt and therefore resulted in lower ongoing fortnightly repayments.

Time taken to achieve resolution: 6 months

** Name has been changed*

Will's Story*

Will* was newly retired and on the Age Pension when he first came to Moneycare. He was having difficulties meeting his mortgage repayments with his new level of income, while supporting an adult son with multiple addiction issues including gambling. He had been approved for the mortgage five years ago while working full-time.

Will's Moneycare financial counsellor took this case of irresponsible lending to the bank, on the basis that at the time of the mortgage being drawn it was foreseeable that he would not continue to be able to afford repayments on the Age Pension.

With the assistance of the financial counsellor, Will lodged a dispute with AFCA. While the bank did not admit to breach of responsible lending laws, it agreed that continuation of the contract would result in significant financial hardship for Will. In response, the bank offered to put the mortgage interest fees and charges on hold while Will sold the property. They also offered him $5,000 to help with moving costs. Will accepted the offer and was able to buy a smaller property outright.

Time taken to achieve resolution: 7 months

** Name has been changed*

Tom and Martha's Story*

Tom (20) and Martha* (21) are a young couple living in transitional housing. Excessive advertising of Buy Now Pay Later has allowed the couple to enter debt with almost no oversight as to their ability to repay. Through these schemes they have accrued debt of $800.

This debt, although comparatively low, is unmanageable on their Centrelink income and is causing high emotional stress on the couple. As Martha is expecting a baby in the coming months, the financial burden of repayments has causing increased anxiety around their ability to prepare for the child.

** Names have been changed*