



Submission by Mob Strong Debt Help

An Aboriginal led program embedded within the Financial Rights Legal Centre

Standing Committee on Indigenous Affairs

Inquiry into how the corporate sector establishes models of best practice to foster better engagement with Aboriginal and Torres Strait Islander consumers

9 December 2021

Introduction

Thank you for the opportunity to comment on your Inquiry into how the corporate sector establishes models of best practice to foster better engagement with Aboriginal and Torres Strait Islander consumers. Mob Strong Debt Help (**Mob Strong**), is an Aboriginal led program embedded in the Financial Rights Legal Centre (**Financial Rights**). We will address the following:

- What is Mob Strong Debt Help;
- Important issues regarding First Nations consumers of financial services;
- Ways to strengthen corporate sector cultural understanding;
- The practical impact of Reconciliation Action Plans; and
- Examples of the corporate sector not meeting the needs of First Nations consumers.

We also support and endorse the comments submitted by Financial Counselling Australia (**FCA**) which were informed by the National Aboriginal and Torres Strait Islander Financial Literacy Network.

What is Mob Strong Debt Help

Financial Rights is an independent, not-for-profit community legal centre helping people understand and assert their financial rights in relation to consumer credit, debt, insurance and other problems related to money. In 2016, **Mob Strong** began as a pilot program providing free nationwide legal advice for Aboriginal and Torres Strait Islander consumers. The program specialises in financial counselling and legal advice about consumer loans (such as credit cards, pay day loans, car loans, rent to buy, and unregulated credit like buy now pay later), banking, debt recovery and insurance (including car, home, life and funeral insurance).

Mob Strong is a national program led by and for Aboriginal and Torres Strait Islander people. The program exists to empower Aboriginal and Torres Strait Islander consumers, staffed by an Indigenous team with support from culturally trained specialist financial counsellors, solicitors, communications, policy and administrative workers within Financial Rights. Our structure is of peers who lead the direction and focus of the program. We come to a decision through a yarn up process of consultation and agreement. Our Mob Strong team has autonomy and authority within the broader Centre to progress, consult and assist community.

Mob Strong staff work collaboratively with an Aboriginal Advisory Committee and the Financial Rights executive team to ensure we are providing a culturally safe, helpful and empowering service to First Nations consumers. By embedding Mob Strong's Indigenous team within the broader Financial Rights structure, we can ensure ongoing upskilling and critical knowledge transfer for all of our staff. Financial Rights staff listen to the Mob Strong voice, and provide guidance and resources. Financial Rights is in the process of transitioning to a company limited by guarantee, and the draft Charter for the new entity requires at least one Board member to be a person who identifies as Aboriginal or Torres Strait Islander.

Indigenous consumers and corporate Australia

One in two Aboriginal and Torres Strait Islander people live in financial stress.¹ There has been, and continues to be, systemic failure across corporate Australia to understand the underlying intergenerational trauma, cultural and socioeconomic issues for Aboriginal and Torres Strait Islanders. These failures have left many facing extreme challenges when dealing with financial and insurance sector processes and products and therefore more vulnerable to predatory financial practices.

In addition, community values of kinship unique to the Aboriginal and Torres Strait Islander community conflict with concepts of financial independence and self-interested behaviour, making many financial literacy messages appear impractical or incomprehensible. The Mob Strong team often find ourselves bridging this gap for our clients.

Assumptions regarding financial literacy, and equitable access to fair and competitive financial services and banks simply don't hold true for Aboriginal and Torres Strait Islander communities and render them vulnerable to predatory practices and exposed to poor value products, such as overpriced consumer leases with purchase options, pay day loans, funeral and other junk insurance.

Lending processes which marginalise Aboriginal and Torres Strait Islanders – such as closing regional and remote bank branches, and requiring the production of mainstream identification documents not readily available to many members of the community - make low doc, high cost payday lending, buy now pay later and wage advance products more readily accessible and available. It also exposes consumers to increased risk of financial harm.

Regional and remote communities rely heavily on private transport, leaving people at risk of high cost car loans for poor quality vehicles, and other junk add-on products. Accessing assistance to help resolve these problems can be difficult due to language and literacy, physical distance, perception of government authority, reliance on existing high risk products and distrust of non-Aboriginal organisations.

First Nations consumers often seek assistance in advocating and navigating the complexity of corporate Australia. This is something Mob Strong assists clients with after financial harm has been encountered. It is clear from our experience that medium and large companies need to engage in more culturally appropriate strategies with Aboriginal and Torres Strait Islander consumers throughout the consumer relationship. This needs to start at product design process and sales, where financial harm often begins. Companies must then maintain culturally appropriate relationships with the consumer including at the point of complaints and hardship. Companies need to be prepared to amend their products, services and processes at any stage in the consumer relationship to prevent harm or further harm.

It is critical that Australian companies seek to culturally educate themselves at all levels so they can approach First Nations consumers with a better understanding of the barriers and challenges these consumers are facing on a daily basis. Companies cannot simply assume they are meeting the cultural

¹ Weier, M., Dolan, K., Powell, A., Muir, K., Young, A. (2019) *Money Stories: Financial Resilience among Aboriginal and Torres Strait Islander Australians 2019*. Centre for Social Impact (CSI) – UNSW Sydney, for National Australia Bank
https://www.csi.edu.au/media/NAB_IFR_FINAL_May_2019_web.pdf

needs of these consumers because they have Reconciliation Action Plans (**RAPs**). A RAP can be one way of planning cultural engagement and inclusion, but it is not an end in itself.

How to strengthen corporate sector cultural understanding

As advocates for Indigenous consumers, the Mob Strong team regularly engage with financial services companies in the corporate sector on behalf of our clients. We see first hand the way our clients are treated by these companies when they use a financial product or service, reach out for assistance or try to resolve a dispute. The level of treatment ranges from inconvenience to complete dismissal.

Every day we get calls from clients who have entered into inappropriate, poorly matched products which are sold with very little friction. The harm caused by these products require them to reach out to Mob Strong to assist in navigating and advocating for them in the complex, difficult and culturally inappropriate complaints process embedded in most of corporate Australia. While we do come across some good examples of corporate sector engagement with First Nations consumers, more often than not the engagement we see is poor, culturally inappropriate and disempowering. Our clients often report a lack of confidence with these financial service providers, which makes corporate engagement with the community even more difficult.

Financial sector firms need to walk the talk, not just talk the talk

In recent years, whether through the influence of the Royal Commission into Financial Services or the more widespread use of Reconciliation Action Plans, we have noticed many major companies have started to advertise special First Nations support services including phonelines or email accounts. We celebrate this initial development. It is a sign that companies are acknowledging that their First Nations customers might have unique vulnerabilities or need priority access to dispute or hardship teams. Unfortunately, in our experience as advocates we have found that many of these special access points lack effectiveness in a number of key respects.

Problems include:

- insufficient visibility and promotion;
- inappropriate or inadequate staffing;
- technical or process deficiencies;
- inadequate cultural training;
- limited coverage (they are only available for a sub-set of First Nations people or for a limited range of issues);
- staff lack sufficient authority or expertise to address issues raised by callers.

If a company is going to have a specialist phonenumber or email or assistance team for First Nations customers:

- it needs to work,
- it needs to be answered, and
- it must be culturally appropriate to meet community needs.

These teams must seek to train and employ Aboriginal and Torres Strait Islander leaders in them. If a company cannot employ Aboriginal and Torres Strait Islander people, they should not be able to advertise that they have this specialist service. The managers of these teams ideally need to be Aboriginal or Torres Strait Islander people or at least have had extensive cultural safety training and have spent some time working with First Nations communities, ideally urban, regional and remote communities in order to understand the daily realities of the customers they are trying to assist. Phone numbers should be easy to find, and email accounts should work. Companies should use a periodic shadow shopping exercise to ensure their promises have been embedded in the day to day services.

Poor visibility of specialist customer contact line

We recently learned that ANZ had an Aboriginal and Torres Strait Islander customer phone line, but when we had an ANZ client in distress we were unable to locate this number despite extensive searches on their website. We called the financial counselling phone line, which provided the ANZ Aboriginal and Torres Strait Islander Hotline 1800 037 366. Even reverse searching the ANZ website, we could not locate information on the phone line. When we called the number we were told that it is not a team, but a line that people across the company are trained to answer, but they don't get many calls. We explained to the staff member that this may be because no-one can find the number. We asked to speak to the manager who was not available. We sent an e-mail to an address we were given to contact the manager, but we received no reply.

E-mail does not work

As recently as November 2021 our organisation was supporting an Aboriginal and Torres Strait Islander client with a Telstra debt and opted to email:

firstnationsconnectcomplaints@team.telstra.com

This email itself was not easily located on the website, and to our amazement the email bounced:

Delivery has failed to these recipients or groups:

['firstnationsconnectcomplaints@team.telstra.com'](mailto:firstnationsconnectcomplaints@team.telstra.com)

The email address you entered couldn't be found. Please check the recipient's email address and try to resend the message. If the problem continues, please contact your email admin.

Our next step was to call the Telstra Aboriginal and Torres Strait Islander support line. Our Financial Counsellor spoke to a helpful man who was part of the overflow team who was not Indigenous. He tested the email address and confirmed it was indeed not working. We were kept informed till about 36 hours later when it was repaired.

Source: C222242

In some cases the First Nations contact points have a limited mandate and are not available to Aboriginal and Torres Strait Islander communities in general. The following case demonstrates this:

Case study – Brandon’s story - Access & Assistance is limited

Brandon is a homeless Aboriginal man living in regional NSW who was reliant on Centrelink as his only source of income. Brandon fell prey to a Facebook scam resulting in his password being used to access and drain his Commonwealth Bank Account of \$490, the only funds he had to survive the fortnight. Despite the shame Brandon went to the local Commonwealth branch to seek assistance. Mechanically the bank did all the right things, closing his account and opening him a new one, Brandon bravely asked the branch for assistance to survive till the next fortnight, but none was offered or provided. He called Mob Strong Debt Help and we were able to identify a local charity to provide short term support. We made a follow-up call to the CBA Indigenous Customer Assistance Line (ICAL), asking if some form of voucher or other assistance could be provided to Brandon. This was on a Friday in November 2021.

Our financial counsellor spoke to two ICAL staff, including a senior manager. The response was that they would investigate and respond by the following Tuesday (which did not help Brandon who had no money over the weekend), but we accepted.

We are not aware of receiving any contact on the Tuesday. On the Thursday of the same week our financial counsellor reported this incident in her oral evidence to this Senate Inquiry. On the Friday our financial counsellor raised the issue again in a monthly feedback session CBA holds for financial counsellors. She was later called by ICAL to report that he had called us on the Tuesday as promised to tell us that Brandon was “not an ICAL client”, so another department was investigating the alleged scam. We have no record of this but we have recently moved to a new phone system and have had some difficulties accessing call records.

A few communications later we were informed that CBA had deposited \$490 in Brandon’s account. It was also explained that ICAL is only for remote Indigenous clients, ones without a branch to go to, and that if they supported other Aboriginal and Torres Strait Islander people that would be too much and take away resources from remote people.

Source: C222663

We note while we have not had the opportunity to discuss the scope of the First Nations contact points/helplines at the other major banks, the list of issues they can assist with on their websites is also somewhat limited.

Example: NAB - Improving Banking Access For Our Customers²

People in remote communities may face the following challenges with banking due to:

- Remote location

² <https://www.nab.com.au/contact-us/personal/indigenous-customer-service>

- Limited access to fee-free ATMs
- Limited internet access
- Access to ID
- Cultural aspects of financial obligations to kin and community

How we can help

- Balance enquiries
- Internet banking password resets
- Internet and telephone banking
- Lost and stolen cards
- Cancelling direct debits
- Identification and authentication
- Opening accounts

Example: Westpac - Indigenous Call Centre³

No matter how remote your location in Australia, our Indigenous Call Centre Team (Indigenous Connection) can help you with:

- Basic everyday banking enquiries such as balance enquiries and card replacements.
- Access to translation services including Indigenous languages.
- Determining which products and services may be suitable for you.

Call us on 1800 230 144. This service is available Monday to Friday 9am – 6:30pm CST.

The services described above are incredibly important, and we thoroughly support the need for them. However they do not represent the full range of issues experienced by Aboriginal and Torres Strait Islander customers. For example, they do not include financial hardship in repaying loans, reporting unauthorised transactions and scams, financial abuse related issues and general complaints in relation to banking services.

While it is clearly the case that not all Aboriginal and Torres Strait Islander people are vulnerable, it is equally true that not all vulnerable Aboriginal and Torres Strait Islander people are remote. One reason for vulnerability is remoteness, others include generational trauma, language, literacy, and financial literacy. Further, while culture is not a vulnerability in itself, in fact quite the opposite, there are cross-

³ <https://www.westpac.com.au/about-westpac/sustainability/initiatives-for-you/indigenous-banking/>

cultural differences which mean that Aboriginal and Torres Strait Islanders may find it particularly difficult to navigate some corporate products, services and processes. Cultural differences, including communications styles, can mean that customer needs are not clearly understood, regardless of their geographic location or the reason for the call.

Empowered First Nations Staff

Specialist First Nations assistance teams need to be empowered to solve problems for customers and resolve disputes on the spot as often as possible. There are many reasons why it is difficult for Aboriginal and Torres Strait Islander people to make a call to a large corporation, and failure to address an issue in that one call can be a significant lost opportunity. For example:

- First Nations households may be sharing one device, meaning the customer has limited opportunities to make calls.
- There may be problems with connectivity. While this is most pronounced in very remote communities we are aware of many regional areas where this is also a problem.
- An issue related to connectivity is that some people may have one place where they get phone coverage that is in on the top of a hill, or in the middle of a paddock, making it difficult to receive return phone calls.
- Paying for call credit or being disconnected due to non-payment of ongoing plan costs may be an issue. The latter may be exacerbated where customers have been sold inappropriate and unaffordable plans by telcos in the first instance.
- There are significant levels of disempowerment due to intergenerational trauma and discrimination which can affect people's willingness to call, their ability to express their issue and needs during that call, and their threshold for coping with barriers that are thrown up during the call process.

Extensive delays caused by having to go away and check with broader credit and hardship teams often increase the already present financial harm. Often the staff operating these special First Nations access points are not empowered resolve disputes on the spot. They therefore cannot function as a tool for change or action for our clients. They are simply a surface level point of contact. For corporations to truly walk the talk and not just talk the talk, they need to empower their First Nations staff to effectively solve problems for their customers there and then and to act as advocates within the organisation to create better all-round customer experiences for First Nations People.

We recognise that the major banks, and many other corporations, are creating and fostering valuable programs and initiatives for First Nations people, employees, business and communities. We do not wish to dismiss the importance of those activities. Such measures can, however, ring hollow when these institutions fail to address the needs of their own Aboriginal and Torres Strait Islander customers.

Recommendation

1. Specialist First Nations contact points should be:
 - a) visible and well promoted to the target community;

- b) include identified Aboriginal and Torres Strait Islander people in all levels of staffing, with extensive cultural training and experience in urban, regional and remote communities for all team members;
- c) regularly tested to ensure that they are working and the intended processes are fully embedded in the business;
- d) empowered to solve real problems in real time;
- e) extended to be available to First Nations customers from all parts of the country.

Taking advantage of specialist Indigenous knowledge and resources

Knowledge and insight into Aboriginal and Torres Strait Islander communities is a specialist skill and should be valued. Medium and large Australian companies are willing to pay for consultants and experts in other areas (marketing, cyber-security, financial risk, etc.) but do not seem to put the same value on the need to gather insights from First Nations organisations and their workers for their deep perspective into First Nations consumers.

Companies should not rely on the unpaid engagement of community workers to train their teams or to help bridge their engagement strategies with their own First Nations customers. Mob Strong staff are often asked to provide insights, join advisory groups, and comment on policies and communications. While we appreciate the good will intended, community workers like the team at Mob Strong have full time jobs, and caseloads of clients we are trying to help. Companies need to be willing to pay fairly for expertise into cultural safety and the unique challenges facing their First Nations customers or they need to ensure they have enough First Nations employees to bring this expertise in-house.

Recommendation

2. Corporations should be willing to pay for Aboriginal and Torres Strait Islander, whether that be by hiring in-house or paying suitable consultants.

Aboriginal consumers don't fit the same mold

We encourage medium and large corporate Australia to ensure their non-Indigenous staff are able to develop true cultural competency to engage with First Nations customers. It is a poor excuse to avoid developing this competency by saying you simply treat all customers fairly and alike (as we have on occasion been told).

People's experiences, cultural beliefs, values and world-views influence the thinking, behaviours and interactions with others. As advocates for First Nations consumers, the Mob Strong team has seen many examples of clients being dismissed by financial service providers because they do not communicate or engage with those services in the same way as non-Indigenous customers. For example, a First Nations customer might not have the financial literacy or generational socioeconomic supports to understand or meet the requirements of a contract or product disclosure statement. They may not answer

questions put to them in the expected way but answer questions in roundabout ways. However instead of receiving more communication from a service provider to ensure that they have understood, they are simply dismissed, leaving them vulnerable to financial harm.

When these customers become frustrated with barriers, they may not communicate in a linear fashion or they can react in a way that Western society does not relate to. It is important for employees servicing First Nations consumers to reflect on these different communication styles without judgment before, during and after interacting with people whose beliefs, values, world-views and experiences are different to their own.

Time and again, First Nations consumers have to call community services like our own to obtain assistance to communicate with a bank, insurer or financial service provider on their behalf. We then re-order and re-write their inquiries in a way that will cut through with non-Indigenous staff. Corporate Australia can do better than this.

Case study - Breakdown in communication

Jodie called Mob Strong from northern Queensland in a terrible state of anger and frustration. She was the primary carer for her grandson. Her son had received a redress payment and had transferred a portion of it to Jodie to help her look after his son, the grandson in her care. The bank had refused to allow her access to the money, telling her the account was frozen due to being connected with a scam.

Jodie lived a considerable distance from the bank branch. She had driven home and called the bank to complain. The complaints department looked into the issue and confirmed that while the account had been compromised, the funds were now available. They told her she should be able to go into the branch the next day to withdraw them, but when Jodie arrived at the branch they told her the same story as the day before about the funds being frozen. She tried to explain, but they would not listen. Jodie became increasingly and understandably upset and angry, and the branch staff became less inclined to listen.

The Mob Strong financial counsellor was able to calm Jodie down over the phone and convince her to get a coffee and wait in the car while she made some calls within the bank. One of the financial counsellor's contacts within the bank was very helpful. The whole process took a couple of hours but Jodie was ultimately able to withdraw her funds. Our concern is that without our financial counsellor's contacts, Jodie may have gone home without the funds to which she was legally entitled a second time, after incurring considerable time, frustration and shame.

Source: S271900

Case study - Failure to understand both geographical context and cultural barriers

James lives in a remote NT community with his partner and children. He does not read, and relies on his partner. He had comprehensive insurance over his vehicle which broke down. James had to

leave it on the side of the road in a remote part of NT, when he returned to collect the car - it was gone. He claimed on his insurance. The insurer investigated the claim, based on the delay between when James realised it was stolen and his claim (about 3 days). The insurer asked for telephone records, bank statements and registration details which are generally standard in an investigation. But, given the remoteness, James's vulnerabilities in reading writing and English not being his first language it was overwhelming. The insurer withdrew the claim for non-response by the customer. James connected with a local advocacy organisation some years later who contacted Financial Rights for assistance. We assisted James and his financial counsellor collect the remaining documents, including lodging complaints with the telecommunication industry ombudsman, and engaged with the insurer and his claim was paid in full.

Source: S251537

Case study – Lila's story - Poor treatment by bank, systems fail despite best intentions

Lila is a 64 year old Aboriginal woman, widowed in many years previously, who lives in public housing, is in receipt of the Disability Support Pension and has over 20 grandchildren. Lila has multiple health issues. Apart from an old car and household items Lila has no other assets of value.

In 2019 Lila received a lump sum payment from the National Redress Scheme. Prior to receiving this payment she had a number of debts: one was approximately \$13,000 owing to a debt collector and the other \$14,000 owing to a major bank. According to our instructions the loans were taken out jointly with her husband at some point before he died. Our client had been struggling with the loans ever since and had been on a series of hardship arrangements.

Prior to the redress payments pursuant to the Royal Commission into Institutional Child Sexual Assault being released, the banks and one major debt collector had committed to not taking redress payments from recipients to pay down debt. Many of the recipients of these payments were in dire financial circumstances, often as a direct result of the destructive impact the childhood abuse on their lives, and it was unconscionable that their compensation payments would be re-directed to banks and debt collectors. A disproportionately large number of the redress recipients were Aboriginal or Torres Strait Islanders as a direct result of government policies. These policies led to high rates of First Nations children being removed from their families and placed in institutions where - in addition to being dislocated from their families and culture - they were the subject to appalling physical and sexual abuse.

Lila called Financial Rights for advice about a settlement offer she had received from a debt collector. She wanted to know if it was a good deal. She had already paid \$2,500 from her redress payment and was proposing to pay another \$2,500 following by a further amount in instalments. By the time one of our financial counsellors talked to her she had already paid the second instalment of \$2,500. Our financial counsellor explained that she should not be using her redress money to pay down debt (unless it was to preserve an asset) and that this debt collector had

undertaken not to take people's redress funds. She contacted the debt collector and was able to negotiate a return of the \$5,000 and a full waiver of the debt.

Lila then disclosed she had already paid another \$14,000 to a major bank. In that case it was the same bank that her redress money had been paid into in the first place. This was completely at odds with the commitments made by the banks, through the Australian Banking Association, to quarantine payments received under the National Redress Scheme from all debt collection activity. We had also been led to understand that redress payments are coded so that they should be clearly identifiable by the bank upon being deposited into a customer's bank account. Lila said that she received a phone call from the bank indicating they could see a sum of money in her account. They suggested that she should be able to settle her loan with those funds. Our client felt she had no choice but to agree and they deducted about \$14,000 to pay out the entire balance of the loan.

Financial Rights were able to get a full refund from the bank and a reassurance that their systems had been improved to stop this happening again. We never received any information about whether other redress recipients had been subject to similar treatment and whether those people had received refunds.

Source: C200317

The practical impact of Reconciliation Action Plans

It is hard for Mob Strong to comment on the impact of Reconciliation Action Plans (**RAPs**) in developing targeted approaches on engaging with Aboriginal and Torres Strait Islander people through such actions. When we are representing a First Nations client in a dispute with a financial services provider we don't check whether that provider has a RAP or what is in it.

What we will say about RAPs is that they are an important exercise for financial services providers to go through and they are a critical first step for companies that have not thought through the practical realities of how their services might affect First Nations customers. RAPs can also bring a level of accountability and time-based goals towards practical reconciliation outcomes. There is incentive in achieving these goals by improving the good will and reputation for the company. Reconciliation Australia have used this model to help influence corporations to adopt a RAP and to improve their reconciliation goals. This model has been used to also name and shame RAP subscribers when they have caused grave harm to First Nations communities, such as with Rio Tinto, Woolworths and Telstra. We strongly support all companies in Australia's financial services industry having a RAP and taking all necessary steps to ensure they are living up to those commitments.

We endorse the comments made about RAPs in the Financial Counselling Australia submission to this Inquiry particularly regarding the disconnection between RAPs and the practice of corporations' engagement with First Nations people. To be effective, RAPs need to be owned and engaged with

through all levels and departments in a company, not just siloed in the human resources or public relations teams.

Financial Services Sector Industry Codes of Practice and commitments to First Nations peoples

In the financial services sector there are a number of self-regulatory codes of practice that set out rules of conduct and practice that bind industry subscribers, in order to improve consumer confidence in their sector.

Currently most but not all at least provide some passing reference to the need to take particular care with respect to First Nations communities with some specific commitments.

Most include a vague general statement identifying the need to be inclusive. The Banking Code, for example, includes general commitments to provide banking services that are inclusive of “Indigenous Australians, including in remote locations.”⁴

Most codes include reference to training staff to understand how to be inclusive or deal with those experiencing forms of vulnerability. For example the General Insurance Code states: “We will have internal policies and training appropriate to our Employees’ roles.”⁵ The Banking Code does this too⁶ but at least includes a further specific reference to providing: “cultural awareness training to staff who regularly assist customers in remote Indigenous communities.” No other current code includes a commitment for specific First Nations cultural competency and safety training. It is worth noting that the current draft of the new Life Code⁷ has not taken up consumer recommendations to include specific cultural training in this regard.⁸

Despite the Banking Code’s specific commitment it does remain limited to only those First Nations people in remote communities and only to staff engaging with them. The most recent Banking Code Review report has recommended that this be rectified and expanded upon.⁹

Beyond acknowledgement of First Nations people as a class subject to vulnerability under Codes, there are few commitments made to addressing the specific issues faced by First Nation Australians.

The Banking Code is the leader on this front and does seek to: tell Aboriginal and Torres Strait Islander customer about any accounts and services that are relevant to them including accounts with no or low

⁴ Clause 32, Banking Code. See also clause 7.1 of the current Life Insurance Code of Practice; clauses 91 & 92 of the General Insurance Code of Practice, promise 3 COBA Code (and proposed Clause 13 of the new draft COBA Code). The National Insurance Brokers Code currently does not reference First Nations people in their Code although they are currently proposing to include one reference in a new draft code (11(b)).

⁵ Clause 96 of the General Insurance Code. See also the current clause 7.2 of the Life Insurance Code; and proposed clause 17 of the new COBA Code.

⁶ Clause 33 of the Banking Code: “We will train our staff to treat our diverse and vulnerable customers with sensitivity, respect and compassion.”

⁷ <https://www.fsc.org.au/policy/life-insurance/code-of-practice/code-2-0>

⁸ Joint consumer submission to the FSC re: Final Consultation draft of the Life Insurance Code of Practice https://financialrights.org.au/wp-content/uploads/2021/09/210928_LifeInsuranceCode2_Sub_FINAL.pdf

⁹ See recommendation 55, Independent Review of the Banking Code of Practice 2021, <https://www.ausbanking.org.au/wp-content/uploads/2021/12/Final-Report-Banking-Code-of-Practice-Review-2021.pdf>

fees¹⁰ and assist with identification issues.¹¹ This is also supported by an ABA Indigenous Statement of Commitment. Consumer groups have however raised with the current Banking Code review the need to go further.¹² The final Banking Code Review Report has supported this call and has made a series of recommendations in this regard including asking customers whether they have Aboriginal and Torres Strait Islander heritage (to be more proactive in their provision of support where required),¹³ expand commitments to all First Nations people not just those in remote areas,¹⁴ and providing more direct assistance to those with identification issues.¹⁵

Outside of the Banking Code, other financial services sector codes provide few specific commitments outside of those commitments that are broadly applicable, such as providing interpreting services to all non-English speaking customers.

The General Insurance Code and Life Insurance Code specifically reference supporting those Aboriginal and Torres Strait Islander consumers who need to meet identification requirements.¹⁶ This is the only other commitment made explicitly referencing the needs of First Nations people. Consumer groups have asked the insurance codes to go further including for example, making commitments on funeral insurance products in the life insurance sector that do specific harm to Aboriginal and Torres Strait Islander communities. However most of these suggestions (including the funeral insurance related commitments) have not been taken up by industry nor is there any sign that they will be addressed under the Code.

Neither the COBA nor NIBA Codes (both in their current and proposed future forms) reference the issue of identification.

We note that COBA banks have specifically chosen not to make any further commitments to First Nations peoples in line with the ABA Code on the basis that it would involve Customer Owned Banks servicing remote communities which would be “impractical”.¹⁷ This despite acknowledging that “Aboriginal and Torres Strait Islanders (like other Australians) are primarily urban dwellers”.¹⁸ In our view this demonstrates a lack of understanding and engagement by Customer Owned Banks with First Nations people and their specific needs that need addressing.

Case study – Trevor’s story - COBA member fails to recognise existence or specific needs of First Nations customer

Trevor lives in a regional Northern Territory town. He is employed but he has no internet access, no email, speaks English as a second language and was a member of the stolen generation. In the course of assisting him with a car loan problem we requested his bank statements to assist us to understand his financial position at the time of the loan. The member would not accept our

¹⁰ Clause 35 (a) & (b), Banking Code

¹¹ Clause 35(c), Banking Code

¹² See pages 22-27, recommendations 27-32 https://financialrights.org.au/wp-content/uploads/2021/08/210820_CFA-Sub-ABA-Code-Review-Final.pdf

¹³ Rec 51, Independent Review of the Banking Code of Practice 2021

¹⁴ Rec 52, Independent Review of the Banking Code of Practice 2021

¹⁵ Rec 54, Independent Review of the Banking Code of Practice 2021

¹⁶ Clause 100 General Insurance Code; Clause 7.4 of the Life Insurance Code.

¹⁷ Para 36, Customer Owned Banking Code of Practice, Independent Review 2019, Final Report

¹⁸ Op Cit

authority (which is generally always accepted) and required our client to ring and provide verbal consent. This was unnecessary and time intensive. We identified that he was in an inappropriate account with a customer owned bank. The account included a \$1,500 overdraft facility at an interest rate of 14.75% and associated consumer credit insurance, which together were costing him about \$16 per month that he could ill afford. There are much better, fee free accounts on the market, more suited to the client's circumstances. The Customer Owned Banking Code does include provisions in relation to account suitability, but they do not seem to have been effective in this case. Further, the COBA member's claim that it does not have First Nations clients and therefore has no need for specific provision in relation to their unique needs is patently untrue.

Source: C215515

In summary, self-regulatory codes could be one way for industry to make both broad and specific commitments to addressing the unique needs of and challenges faced by Aboriginal and Torres Strait Islander communities. However apart from vague generalities and a small number of specific and limited commitments, codes of practice have thus far failed to provide a means of consistently and comprehensively addressing the full range of issues faced by Aboriginal and Torres Strait Islander people. This will remain the case without significant engagement and buy in from industry to commit to changing or improving their practices via codes.

Recommendations

3. Corporations need to understand that First Nations customers experience both practical, linguistic and cultural barriers to productive engagement with mainstream Australian businesses and institutions;
 4. Reconciliation Action Plans have the potential to make a real difference but they must be embedded in the culture of the business, and embraced at all levels to be successful;
 5. Self-regulatory Codes should make both broad and specific commitments to addressing the unique needs of and challenges faced by Aboriginal and Torres Strait Islander communities;
 6. As with specialist contact points or support teams, internal processes need to be regularly tested to ensure they are delivering the intended outcomes.
-

Telecommunications

Many of First Nations people are sold never-ending phone plans that are not appropriate, with the debt existing long after the phone has been damaged or stolen leaving First Nations consumers in pit of despair and debt. While the ACCC case against Telstra highlighted the particularly egregious examples of this conduct in remote communities, resulting in a record breaking penalty, in our experience this is very common across Australia and much more needs to be done to ensure that sales of

telecommunications products and plans are suitable and fit for purpose, along with better support at every stage of the service cycle.

Many First Nations consumers in regional and remote communities do not have access to telecommunications hardware (like handsets and tablets) and end up turning to high cost consumer lease providers. The problems with consumer lease providers in Aboriginal and Torres Strait Islander communities are well documented¹⁹, and continue to be a major source of hardship for our clients.

Case study – Deborah's story (Part one, continued below)

Deborah is a young mother with a 9 month old baby. Her only income is the Centrelink Parenting Payment and family tax benefit (about \$900 per fortnight). She is living with a friend but this is not stable and she considers herself homeless. When Deborah reached out to Mob Strong for help she was struggling with debts to two pay day lenders, Cigno, a **major Telco company** and a consumer lease company. She was paying off a Centrelink advance as well.

The Telco was pressuring her to commit to a \$150/fortnight payment which she could not afford. Deborah had no money for food for her and her baby. She is regularly paying overdraft fees to her bank because of all the direct debits going towards her debts.

Mob Strong is helping Deborah with her two unaffordable consumer lease for phones, one for her and one for her mother. In reviewing her bank statements, which were provided to the consumer lease provider, it was clear that a lot of her money was being lost to overdraft fees.

Source: C220061

Recommendations

7. The government should pass the recommendations of the 2016 Small Amount Credit Contracts Review in full. These recommendations included crucial protections for people using consumer leases.
8. Telecommunications firms need to ensure that products and plans are suitable and fit for purpose, along with better support at every stage of the service cycle.

Energy Debt

High energy debts are common among Mob Strong's client contacts. Across all our services, including Mob Strong and the NSW answer point of the National Debt Helpline, the most commonly called about creditor is an energy provider serving large parts of regional NSW. Accumulated debts of many thousands of dollars keep many of our clients in constant fear of disconnection from essential services.

¹⁹ Paul Ali, Steve Kourabas, Cosima Mcrae, And Ian Ramsay, *Consumer Leases And Indigenous Consumers*, 2017 <http://www.austlii.edu.au/au/journals/AUIndigLawRw/2017/7.pdf>

According to data released 1 December by the Australian Energy Regulator (**AER**), average household energy debt for gas and electricity has increased 12% from \$897 in 2019–20 to \$1,000 in 2020–21, while the average electricity debt for a customer upon entry into their retailer's hardship program grew 21% over the same period from \$1,304 to \$1,584. The Energy Ombudsman of NSW also put out a report in December 2021 highlighted the problem of increased energy debts.²⁰

While this is very worrying, but unsurprising in the wake of the pandemic measures, these averages belie some of the huge debts carried by some individuals (see **Alira's story** below). Mob Strong is regularly called by clients with high energy bills. Anecdotally, only in the last 3 months we have assisted four First Nations consumers with had the following energy debts: \$3,000, \$4,000, \$5,000, and \$10,500²¹. There needs to be structural change to the way hardship and assistance is applied to chronically large energy bills in First Nations communities and the accompanying large energy debts. Large energy arrears are allowed to accrue across multiple billing periods without proactive change of energy plan or access to state-based rebates or vouchers.

First Nations consumers with unmanageable energy bills should be offered an energy assessment and solutions for reducing usage. Frequently problems with unmanageable bills are seen in community housing clients as the buildings are poorly insulated to prevent loss of heating or cooling. It is clear that the state-based vouchers are not designed to address the level of arrears we are seeing today. First Nations customers are at the mercy of the energy provider's hardship arrangement, which vary from good with a matched payment system to poor with simple prevention of disconnection. Due to fear of disconnection First Nations customers will change providers or revert to using Buy Now Pay Later products to pay their energy bills, both these solutions result in a loss of Energy Ombudsman protections.

We note that there is a movement towards prepaid meters to prevent the accumulation of energy debt in some First Nations communities, with more rollouts planned. We recently sent a letter of support for the South Australian Council of Social Service (**SACOSS**) submission to the Remote Area Energy Supply Scheme.²² We do not support the regulatory change to mandate prepayment as the only method of payment where other billing options are removed. While prepayment is a good option for many customers, a one size fits all approach does not suit everyone further putting them at risk of increased hardship. Energy is an essential service and consumers have a right to access it on fair and reasonable terms and must be protected from disconnection due to an inability to pay. Along with SACOSS's other submissions we endorse the recommendation that state governments should *investigate opportunities for integrating community energy solutions that empower communities, including remote community Rooftop Solar, stand-alone power systems and community owned energy schemes with training and job opportunities lifting households out of energy poverty, and reducing reliance on diesel generation.*²³

²⁰ <https://www.ewon.com.au/page/publications-and-submissions/reports/spotlight-on/consumer-and-small-business-energy-debt-solutions>

²¹ Source: C221191, C117564, S269956, S272757

²² <https://consumeraction.org.au/supporting-south-australian-council-of-social-services-submission-to-the-remote-area-energy-supply-scheme-issues-paper/>

²³

https://www.sacoss.org.au/sites/default/files/public/documents/Submissions/Utilities%20Submissions/210917_SACOSS_Sub_DEM%20prepayment%20consultation-combined-1.pdf

Recommendations

9. As recently recommended by the Energy and Water Ombudsman of NSW:

- a) The hardship provisions under the National Energy Regulator Law and National Energy Regulator Rules should be extended to cover small business accounts and closed accounts;
- b) The Australian Energy Regulator sustainable payment plan framework should be extended to closed accounts;
- c) Energy retailers should develop a Retail Code or Best Practice Guideline in dealing with hardship, payment plans and debt collection
- d) Energy providers need to work with their customers pro-actively to prevent large debts accumulating where ever possible, using the full suite of solutions offered in best practice hardship programs.

Other examples of corporate sector not meeting Indigenous consumer needs

In the last three years, the Financial Rights Legal Centre and Mob Strong Debt Help took 1900 calls from Aboriginal and Torres Strait Islander consumers. For most of these calls we are able to record which financial service provider the person called to get advice about. While many calls involve major banks, energy companies and debt collectors, there are a number of companies that feature in the top 10 disproportionate to their size: Funeral insurer Aboriginal Community Benefit Fund (**ACBF**) was third in the list, after a major bank and a large energy provider. Cigno loans was fourth, and Money 3 was seventh after two debt collectors. These three entities – ACBF, Cigno and Money 3 - feature very frequently in client complaints and disputes.

Funeral Insurance

Mob Strong has been warning consumers about the poor value and often unsuitability of funeral insurance products – both regulated and unregulated - for years. We have run countless cases through the Financial Ombudsman Service (**FOS**) and now the Australian Financial Complaints Authority (**AFCA**) to help consumers get their payments reduced or their premiums refunded when this poor value product does not meet their needs.

This year Financial Rights provided over 120 services to 75 clients relating to funeral insurance. Of those 63% were First Nations clients.

The cultural importance of Sorry Business and the high cost of funerals has led many disadvantaged and vulnerable people, already struggling with finances, they were targeted to sign up poor value products that were promoted as culturally safe. Funeral insurance has a particularly negative effect on young people and families. Inability to afford rising premiums and high cancellation rates have left many people with nothing after years of payments. First Nations people sought to relieve the burden of sorry

business from their families but often endure the shame of unaffordable fees and loss of money and coverage.

Historical high pressure sales tactics, including cold calling, by many funeral insurers has also led to many of our First Nations clients presenting with multiple policies from a range of different providers, clearly in excess of their needs and ability to pay. Poorly designed products also meant most became unaffordable, or premiums exceeded benefits before a claim was made leading to policies being cancelled.

Lynnie's story - poor sales conduct

Lynnie is a 64 year old Aboriginal woman living in a remote community. She was referred to us by a Financial Counsellor in Western Australia, who had already obtained documents from a major insurer selling funeral insurance. Lynnie's funeral insurance premiums became too expensive so she closed her bank account. When Lynnie came to us she was not sure whether she had funeral insurance with one company, a second company or with both.

We requested further documents from both of the insurers and call recordings, which revealed that Lynnie already had a policy with one major insurer when she was cold-called by the second large insurance company. She told the second company she already had a policy but they told her she would be better off if she switched to them, though they had no basis for that comparison. Lynnie was subject to pressure selling, the insurer also failed to explain stepped premiums and failed to explain the details of the cover provided.

Source: S255927

Case study - Melody's story - poor sales conduct

Melody, a young Aboriginal women in a remote community in WA, was sold a funeral insurance policy in 2015. It was a cold call, involved the sales rep (a self-described "local specialist") dropping the names of other family members and friends with the insurer. Melody told the sales representative she already had funeral insurance and could not afford another policy. She was then pressured into agreeing to give the sales representative her ID and bank account details, on the basis he would use them to set up a policy for her partner, which would be changed over once they got in contact with him. A policy was set up in Melody's name insuring her, her children and her partner and proceeded to charge her over \$6,000 in premiums over the ensuing years. Melody also held a policy with ACBF.

The insurer was subject to intense criticism at the Royal Commission into Banking and Financial Services.

Source: S268975

While funeral insurance is sold to First Nations consumers from several major insurers, some of the more egregious and targeted harm has come from the ACBF, now known as Youpla. Fortunately, this year, we have had many positive outcomes in key cases taken to AFCA against funeral insurance provider ACBF/Youpla. Mob Strong has assisted numerous First Nations clients who felt they were misled when they signed up to funeral funds offered by ACBF, believing it to be an Aboriginal-owned and controlled, community organisation serving the Aboriginal and Torres Strait Islander community.

Most of our clients had limited literacy skills and financial awareness and little understanding about the products ACBF was selling. Most clients thought they were entering into a savings fund when they were actually entering into an insurance policy. At the very least, these clients thought they were entering into an arrangement with an Indigenous organisation set up for the benefit of the Aboriginal and Torres Strait Islander community, not a non-indigenous, for-profit entity. Some clients were signed up in their late 20's or early 30's and were paying for their children's policies using Centrelink benefits.

AFCA agreed with Mob Strong that our clients were misled by ACBF and ordered the insurer to refund all premiums the clients paid, plus interest.

The panel accepts that the complainant would not have entered into the plan on her behalf or on behalf of her children if informed ACBF was a private, non-Aboriginal organisation and the premiums would likely exceed the benefits paid.²⁴

Funeral insurance providers like Youpla could be improving their engagement with Indigenous communities by going out to them and apologising for years of misleading sales practices. These companies should be offering premium refunds instead of forcing unhappy customers to lodge complaints with AFCA.

Case study - Nancy's story

Nancy signed up to an ACBF funeral insurance policy believing that the organisation was Aboriginal owned and operated, when in truth it was owned by gubbas (white people). Possessing a low level of financial literacy, Nancy could not understand the contract terms or a disclaimer by ACBF that it was a "private company".

She realised the truth about ACBF's ownership after her policy was cancelled, having already paid more than \$7,100 on premiums to cover both her and four children.

Recognising Nancy's vulnerability, Financial Rights and Mob Strong took on her case in 2018. We requested documents from ACBF which initially refused on the basis that some were already provided to the client years ago when she was assisted by another community legal centre and the rest were commercial in confidence.

We lodged a complaint with AFCA in 2019 to obtain the documents and we went on to argue that ACBF had signed Nancy up to a life insurance product and had breached its duty of utmost good

²⁴ AFCA determination 637663

faith by making misrepresentations as to its Aboriginal ownership and had engaged in unconscionable conduct.

AFCA handed down its determination in Nancy's favour in September 2020. To her great relief, she received a full refund plus interest. Determination 637633

Source: S209344

Our clients held policies with ACBF Fund 1, ACBF Fund 2, or ACBF Funeral Plan, or a combination of these. On 24 November 2021 date ACBF Fund 2 went into voluntary administration. While some of our clients have already been paid refunds, many have not and have been waiting for many months. We are now assisting our current clients, and numerous others who have come forward seeking assistance, to lodge proofs of debt with the administrator. Our clients live in some of the most disadvantaged communities in Australia. They have been sorely misled and taken advantage of (again). It will be an absolute travesty if these clients are unable to obtain relief for the amounts they have paid for these policies, usually money they could ill afford to part with. It is imperative that the government steps in, in the event that our First Nations people are left without redress in these matters. At the very least, the compensation scheme of last resort currently before the Parliament should be amended to include the AFCA determinations made in relation to these clients.

Recommendations

10. ASIC should conduct follow-up surveillance to ensure that the recently introduced anti-hawking provisions are effective in protecting First Nations people from unsolicited and otherwise inappropriate selling of funeral insurance.
 11. The government should take steps to ensure that all ACBF customers are adequately compensated in the event of the insolvency of any of the relevant funds. At the very least the Compensation Scheme of Last Resort bill should be amended to ensure that ACBF customers who obtain AFCA Determinations will be paid in the event of insolvency.
-

High cost, unsuitable credit

When First Nations consumers call Mob Strong Debt Help for assistance they often have one or more debts they are struggling to pay which came from high cost or unsuitable loans. There are certain lenders that appear repeatedly in our casework. While these companies may not be as big as the banks, they have a big share of the Indigenous consumer market. They market themselves in Indigenous communities and their services have an outsized impact on Indigenous consumers. These smaller unsecured lenders target vulnerable consumers. Once an Indigenous consumer has a loan with one of these lenders, it is not uncommon for them to get unsolicited marketing from others.

Unfortunately the Royal Commission into Financial Services was not able to deal with these types of lenders because non-bank lenders were specifically excluded from the Terms of Reference. From the experience of Mob Strong, the following types of high cost unsuitable credit are causing the most systemic harm for Aboriginal and Torres Strait Islander consumers.

Cigno – Expensive loans under business models set up to avoid the credit Legislation

The pay day lending company Cigno Pty Ltd (**Cigno**) developed a model of small amount lending structured such that it benefited from the exemption in s6(1) of the National Credit Code (Sch 1 of the *National Credit Act*). The model involves the provision of short term credit at high cost to consumers, including consumers who may be on low incomes or in financial difficulties and so may not reasonably be able to afford the repayments. It operates in the following way:

- a. The short term credit provider Cigno offers short term credit to consumers, for small amounts up to \$1,000.
- b. An associate (such as BHF solutions) offers collateral services under a separate services agreement for a 'fast track application' if the consumer wants the money immediately – with repayments amounting up to 990% of the loan amount.
- c. The money must be repaid within a maximum term of 62 days and sometimes a shorter period of time, increasing the risk of default as repayments are based on the term of the credit rather than being based on capacity to repay.²⁵

This model has caused significant detriment to consumers – in particular those living in remote Aboriginal and Torres Strait Islander communities with little experience of accessing credit or financial contracts in general. Cigno have done so by:

- specifically targeting vulnerable consumers experiencing financial stress;
- having significantly higher upfront costs compared to regulated credit products;
- having high and uncapped fees payable on default creating a financial incentive to offer credit to consumers who are unable to meet repayments;
- funnelling consumers to a high-cost alternative; and
- requiring consumers to repay the credit amount and fees via direct debit.

Amounts borrowed by Financial Rights clients ranged from \$75 to \$800, we found the amounts owing ranged from 146% of the original amount borrowed to 952% higher than the original amount borrowed.²⁶

Often Cigno is the last port of call for consumers finding themselves in a downward trajectory towards financial rock bottom. They have borrowed from a number of sources and have become trapped in a debt spiral, borrowing from one provider to pay for living expenses after direct debits to meet other loans have depleted their income: see **Deborah's story** below

²⁵ Para 2, ASIC CONSULTATION PAPER 316: Using the product intervention power: Short term credit
<https://download.asic.gov.au/media/5197542/cp316-published-9-july-2019.pdf>

²⁶ https://financialrights.org.au/wp-content/uploads/2019/07/190730_ASICCP316CShortTermCredit_FINAL.pdf

ASIC have recognised the harm that this business model has caused to financially vulnerable consumers and have attempted to use their Product Intervention Powers to intervene – with limited success so far.

ASIC's original 2019 product intervention order was challenged by Cigno. While the order was upheld in the Federal Court in June 2021, the product intervention order had in fact expired in March 2021. Since ASIC's original product intervention order, a new 'continuing credit' model involving Cigno emerged that had sought to skirt around the law yet again. Financial Rights still receive calls from people who continue to be charged exorbitant amounts under this new model. ASIC consulted on a further product intervention order to address this new model in 2020 but to date has yet to make the new order. We note that ASIC also lost in the Federal Court in (insert case reference) but that matter has since been the subject of an appeal by ASIC.

It is clear that despite ASIC's best efforts, the Product Intervention Power they have been provided has been left wanting and is not agile enough to address a nimble fringe lender willing to undertake regulatory arbitrage to peddle harmful financial products to financially vulnerable people. This leaves vulnerable communities exposed to ongoing harm and sends a message to other financial services market participants that avoidance of the law pays off.

Recommendations

12. ASIC should take out a further PIO in relation to both lending models used by Cigno as soon as possible;
 13. That the government should enhance the Product Intervention Power to ensure that the regulator can respond nimbly to emerging problems in the marketplace as intended.
-

Regulated Pay Day Loans & Consumer Leases

While regulated lenders are not as expensive as Cigno, they are nevertheless a consistent problem for First Nations consumers. Relatively high fees and charges compared to non-small amount credit contracts, make these small amount credit contracts also unaffordable, trapping First Nations consumers in debt spirals. Companies such as Cash Converters, Wallet Wizard, Cash Stop, Quick Cash, Cash n Go, Jacaranda, Money Me, Money Spot, Swoosh and Ferratum feature in our client's creditors.

Case study - Jane's story

Jane was referred to us as she was being chased for a debt of approximately \$700 by a payday lender for two loans. Jane's only income was the Disability Support Pension and then Newstart.

After reviewing the documents, it became clear over five years, Jane was granted over 46 small amount credit contracts with the same SACC provider and paid approximately \$7,000 in fees. This review also revealed that:

- on average Jane had four SACC's within the 90 days of her application and in some cases as many as six;

- in almost all instances, the SACC was unsuitable as the presumption of hardship was not disproved;
- in a number of instances, one SACC was used to payout an existing SACC with Cash Converters;
- in some instances, the total repayments under each SACC exceeded 20% of Jane's gross income within one payment cycle; and
- the loan applications included inaccurate analysis of Jane's income and expenditure.

While we were able to assist Jane to reach a reasonable settlement with the SACC provider in this matter it would have been preferable had the loans never been made in the first place. We are also concerned for the many people who never present for assistance.

Source: S248417

Consumers leases (including unregulated perpetual leases and products marketed, often misleadingly, as rent to own) are another area that is causing harm for many First Nations consumers, as the price they pay to these companies is usually inflated well above the recommended retail price. Common regulated providers include Rent4Keeps, Radio Rentals, and Walker Stores (InRent, Snaffle). First Nations consumer are rarely explained how these products work, how much money they will owe in total or how much above the Recommended Retail Price they will be paying for goods. Mob Strong also regularly sees examples of unfair treatment to First Nations consumer by consumer lease companies including the sale of unsuitable goods like IT products (tablets needing internet capability) where internet coverage is inadequate.

Case study - Barb's story

Barb is a 43 year old Aboriginal woman from regional, NSW. She is a Centrelink recipient, and gets approximately \$1500 per fortnight for herself and her four dependents. She came to us after hearing about ASIC's action a consumer lease provide on the news, and was experiencing difficulties with making repayments on her various consumer leases. She had been a customer for over 20 years. The contracts in dispute involved four items (i.e. TV, home theatre system, washing machine and entertainment unit), where she was paying approximately \$100-\$120 per fortnight for all the items. This was unaffordable for her, but she kept the contracts because she was under the impression that she would own these goods after the contract ended.

Source: S196463

Consumer lease companies use the fact that repayments can be made via Centrepay as a selling point. However, then payments are made ahead of essential goods such as food and utilities.

The perils inherent in small amount credit contracts and consumer leases were well aired in the 2016 independent review into these products. First Nations people are among those that continue experience harm as a result of these products. The regular use of these expensive products means that these communities ultimately pay more for goods and services, and continue to be excluded mainstream credit. The ongoing failure to enact the draft legislation tabled after the independent review is a lost opportunity to address this ongoing harm. Access to expensive credit is not capacity building, it is ultimately only damaging.

Recommendation

14. The government should pass the recommendations of the 2016 Small Amount Credit Contracts Review in full.

Unregulated credit under the guise of fintech - Buy Now Pay Later and Wage Advance

The last few years has seen rapid growth in the availability and take up of new forms of credit which have so far effectively avoided being caught by existing credit legislation. They are able to do so because of their charging structures, most relying on a combination of admin fees, late fees and merchant fees (not necessarily all three), rather than charging interest.

While we don't see evidence that emerging unregulated credit providers are specifically targeting First Nations consumers, these products are almost universal among the First Nations people we assist. Accessing buy now pay later products or wage advance services are nearly frictionless, as there are no legal suitability requirements. In our experience, First Nations consumers that are already struggling with debts, sign up to these services hoping they will help make ends meet only to prolong and deepen their hardship. Many have multiple purchases with multiple providers, often combined with other credit facilities and debts. Providers such as Afterpay, Zippay, Humm, Bundll, Brighte, MyPayNow, BeforePay, Advance Pay regularly appear in our advice and casework.

When we reach out to these emerging businesses to discuss the unique vulnerabilities of our clients or to see what hardship options might be available for them, we rarely find culturally trained staff or specialist assistance for First Nations consumers. Indeed we find that while making purchases using these products may be seamless, dealing with the companies directly involves a number of hurdles. For example:

- they can be difficult to contact by phone or e-mail;
- their hardship policies and disputes resolution are often inadequate compared to regulated credit providers; and
- it is difficult to obtain information from them.

These products are very popular with consumers, including Aboriginal and Torres Strait Islander people, and may not be inherently harmful like expensive credit and consumer leases. Nevertheless people currently interacting with these products do so without any of the normal consumer protections the

community has come to expect – such as standard disclosures about price and risk, product suitability, hardship processes, access to free dispute resolution and legal redress.

Further, the products available within this broad range vary enormously in both their contractual models, revenue structures and risks, including some providing significantly high credit limits (\$10,000 to \$30,000)²⁷. The wage advance model is particularly concerning for creating exactly the same debt spirals as pay day loans, albeit for lower cost.

Case study - Alira's story

A single Aboriginal mother of two children had been working at the same job for 6 years but had to take an extended, unpaid leave of absence due to her family's health.

She had been struggling with her own physical and mental health and was a victim of family violence. Her three year old son has been diagnosed with a disability and her teenager is not coping with the lockdowns and home-schooling.

She was under a great deal of stress and feels overwhelmed. Unable to make ends meet, Alira was very vulnerable to offers of credit, digging a deeper and deeper hole. Alira initially tried to communicate with her various creditors that she was in hardship but as things escalated she had to focus on rent and staying in a hardship payment arrangement with her energy provider. Alira is under a great deal of stress and feels overwhelmed. She was struggling with the following debts:

- two loans with a payday lender totalling \$3000
- a second payday lender which is a subsidiary of a debt collector loan for \$2200 which has gone to debt collectors
- a third payday lender loan for \$800 (she got this after being turned down for a NILS loan)
- a buy now pay later (BNPL) \$500 debt now with a debt collector
- a Wage Advance debt of \$350
- a different Wage Advance debt of \$400
- an energy debt of \$4000
- SDRO driving fines \$450

Our Mob Strong financial counsellor has negotiated solutions with half of Alira's creditors, saving her \$5,000. There are still a number of matters not yet resolved.

Source: S269204

²⁷ Reserve Bank of Australia, Developments in the Buy Now, Pay Later Market, Bulletin, March 2021
<https://www.rba.gov.au/publications/bulletin/2021/mar/developments-in-the-buy-now-pay-later-market.html>

Case study - Deborah's story (continued)

Deborah is a young mother with a 9 month old baby. Her only income is the Centrelink Parenting Payment and family tax benefit (about \$900 per fortnight). She is living with a friend but this is not stable and she considers herself homeless. When Deborah reached out to Mob Strong for help she was struggling with debts to two pay day lenders, Cigno, a major Telco company and a consumer lease company. She was paying off a Centrelink advance as well.

The Telco was pressuring her to commit to a \$150/fortnight payment which she could not afford. Deborah had no money for food for her and her baby. She is regularly paying overdraft fees to her bank because of all the direct debits going towards her debts.

Mob Strong is helping Deborah with her two unaffordable consumer lease for phones, one for her and one for her mother, as well as her Cigno loans. She has had four Cigno loans, having got the first one when she was 17 years old. She borrowed a total of \$530 in four loans and has repaid a little over \$1,400 being an excess of \$890 over the principal amount advanced. The account statements indicate she was accepted for a new loan even in circumstances where it took her almost 12 months to repay the first and second advance (much longer than the contracted 62 days). When the fourth advance was made, the third advance had not been repaid.

In reviewing her bank statements, which were provided to the consumer lease provider and Cigno, it was clear that a lot of her money was being lost to overdraft fees and direct debits to a BNPL company. She also had direct debits to a Wage Advance company ranging from \$80 to over \$100 per week, when her income was Centrelink and she was often overdrawn.

Source: C220061

Case study - Bonnie's story

Bonnie is Aboriginal and lives in Queensland. A few years ago, there was a knock at the door. It was a door to door seller of some solar panels. Lured by the promise of saving money, Bonnie entered into a contract to purchase solar panels using a Buy Now Pay Later facility. The home was owned by her partner, but otherwise Bonnie did not own or rent the property. The house burnt down and Bonnie moved to emergency accommodation and then to public housing. Payments to the BNPL provider ceased as she struggled to afford them on her limited income. From time to time she was contacted by an aggressive debt collector. She provided them her bank account details for a joint account she had with her partner. Her partner had accessed his superannuation to address other debts he had incurred. The debt collector took over \$10,000.

We raised a complaint to the debt collector and the BNPL provider.

Source: S253461

Recommendation

15. The government should call for an independent review by a panel of experts to determine the most appropriate way of including new products like Buy Now Pay Later and Wage Advance under the credit legislation.
-

Loans for overpriced lemon cars

Regional and remote communities rely heavily on private transport. This leaves First Nations people at risk of high cost car loans for poor quality vehicles and other junk add-on insurance products. Mob Strong regularly advises First Nations consumers who are struggling to pay an unaffordable loan for a car that was a lemon.

Living in regional and remote communities means that long distances and high towing costs exacerbate issues with poorly maintained vehicles. Dealerships prey on First Nations consumers – upselling them to inappropriate and expensive vehicles and adding junk warranties and insurance products to already unsuitable loans. Finance companies like Money3 are more than happy to extend unaffordable loans to First Nations customers. These are usually secured by a vehicle, which would never cover the cost of the loan if it was returned to the dealership, and is more than likely to face mechanical problems in the first year. As noted above, Money3 is the seventh most frequent creditor among our Aboriginal and Torres Strait Islander clients.

Case study - Maree's story

Maree came to us when she was a 28 year old, Aboriginal woman who had been struggling to make headway on a debt to Money3 for the past five years. She started missing payments from day one, immediately after getting the loan. Her bank account was overdrawn for about half of her attempted payments (over 75 times) as she struggled to pay Money3.

When Maree was a 23 year old single Mum, she approached Money3 to get a loan for \$6,000 to buy a car. She was lent over \$8,800, with the extra money being for gap insurance, fees and charges. Less than 12 months after getting the loan, and with her insurance having lapsed due to non-payment of premiums, Maree had a motor vehicle accident (although not at fault), after which the car was sold to wreckers. The fact that her car insurance had lapsed when she had the accident meant that the gap insurance she had paid for (which is meant to cover the shortfall, or gap, between the car value and the outstanding loan balance, in a scenario such as this) was invalidated.

Source: S264461

Case study - Joanne's story

Joanne is single Aboriginal mother surviving on parenting payments. Joanne left a violent relationship and spent 12 months homeless with her child.

Joanne went to a dealership in regional NSW to find out how much she could borrow. The dealer told Joanne she could be approved with a Money3 loan. Joanne was unknowingly referred to a broker (credit assistance provider) and Joanne provided her Centrelink statement and completed a suitability assessment. Joanne even signed a part of the Money3 application that allowed the lender to complete any blank parts of the form themselves.

Shortly after, the dealer told Joanne that she was approved for a car loan and they picked out a car for her.

The car was a lemon and broke down within one month with a defective transmission and Joanne could not afford the loan at all. She raised the defects with the dealer, who made some aesthetic repairs and she was out of pocket \$1,500 to obtain a pink slip. When she raised the car was defective with Money3 they allegedly offered her a loan to cover the repairs.

The assessment as to suitability was very poorly done and Joanne could not afford the loan even after comparing it against Henderson Poverty Level standards.

The use of an intermediary broker means that Joanne had no rights under the linked credit provisions of the National Credit Code limiting her options to rescind the finance if the car was not of merchantable quality.

Source: C210437

Case study - Trevor's story, continued

Trevor (see above for more of his story) lives in a regional Northern Territory town. He is employed but he has no internet access, no e-mail, speaks English as a second language and was a member of the Stolen Generation. His vehicle was on its last legs, and he visited a car yard in a larger regional centre in July 2019. He intended to trade it in for a similar sedan for about \$16,000. He was talked into a more expensive model as it was better for a "man his age". He was signed up on the spot and he wasn't sure how much it cost. Nor did he know what the trade in amount was, nor what the shortfall on the previous car loan was. He drove back home the same day and within a week the engine light came on - he started having ongoing issues with the electrics. He was approached by the previous owner who indicated they were surprised the computer could be fixed. The transmission then stopped working. The car was quoted as needing \$15,000 in repairs.

Trevor went to Legal Aid NT who raised a complaint with the car dealer and referred the car loan issue to Mob Strong. We raised a dispute with the lender. We also identified, a broker was also

used. The broker was not responsive. We raised unjustness and responsible lending with the lender as we could not raise any linked credit arguments due to the brokers limited involvement. Trevor's loan was for close to \$28,500.

We ultimately settled the matter with the client surrendering the vehicle and paying a reduced lump sum towards the shortfall, which came from the payout Legal Aid NT secured from the car dealer. Even then, the lender made life difficult by insisting the payment could only be made by BPAY, when Trevor did not use internet banking (for obvious reasons). He had to travel a considerable distance to a branch and get them to help him set it up over the counter.

Ultimately Trevor walked away with no debt and a few dollars in his pocket.

Source: C215515

In some cases over-priced car loans are then exacerbated by poor conduct by debt collectors who are related entities.

Case study - Monaro's story

Monaro is an Aboriginal client in his late 60s, and a war veteran. Back in 2015, he took out a car loan for \$14,000 because living in regional Australia, he needed a car to get to and from work. The lender promoted itself as offering loans to people with "Bad Credit" The loan was wholly unsuitable and unaffordable from the start, including really high interest of almost 30%, and Monaro fell into arrears immediately. 18 months later, his marriage having just fallen apart, he suffered a stroke, became unemployed and he voluntarily surrendered the car. The loan balance had never, up to that point, ever reduced below the initial borrowed amount despite the car sale proceeds.

The lender was informed by both Monaro's daughter and by Monaro himself that he was unemployed, had suffered a stroke and was struggling on all fronts (not just financially). The loan was then assigned from the car lender to the company's debt assignment subsidiary. Post-assignment, the debt collector maintained the loan at the same contractual interest rate at which it had been taken out. Monaro did eventually gain employment, driving long haul trucks on a casual basis for close to the minimum wage. He did this out of a sense of moral obligation to pay what he could. Despite the debt collector knowing about his hardship and vulnerability it was not until May 2020, that the lender finally reduced the loan interest to 0%. By December 2020, as Monaro continued to make payments, the loan balance finally reduced beneath the initial loan balance - the first time in more than five years since the loan was taken out.

Monaro continued to pay until early 2021, when he collapsed on the road and was forced by doctors to give up all driving and all work. When Monaro contacted Financial Rights in early 2021 the outstanding debt was precisely \$35 lower than when he took out the loan in 2015.

Source: C212916

Intermediated retail lending and the point of sale exemption

Consumers making large purchases, such as motor vehicles, whitegoods, or furniture, may borrow money in order to pay for their product. Often the application for credit is made at the point of sale, not at the lender's premises. However, the salesperson with whom the consumer deals at the point of sale - for example Harvey Norman or the Good Guys, or a car dealer - is not subject to the *National Consumer Credit Protection Act 2009 (Cth)*. Because of this exemption:

- retailers (in particular, white goods and furniture retailers) and car dealers recommend and facilitate credit applications or consumer leases that are unsuitable and unaffordable for their customers, because they are not required to assess:
 - whether the credit contract or consumer lease meets the consumer's financial requirements or objectives and
 - whether the consumer can afford the credit contract or consumer lease without substantial hardship.
- ASIC is unable to exclude these vendor introducers from the credit market because they are not licensed by ASIC (even if they engage in conduct that is incompetent or dishonest);
- Australian consumers are limited in their ability to access remedies for irresponsible lending or the conduct of vendor introducers, including lodging their disputes with a recognised external dispute resolution scheme.

Consumers accessing credit through retail introducers regularly present to Financial Rights with insurmountable debt because they were provided credit limits far in excess of the credit required for the desired purchase (often multiples of the amount required). This problem is then exacerbated by;

- heavy marketing by the credit provider to encourage customers to utilise the extra available limit, and
- high interest charged outside of an interest-free promotion amount or period.

Retail credit introducers tend to provide poorer quality application information than on credit applications submitted directly from consumers to the lenders. Retailers and car dealers have a vested interest in securing the credit in order to make the sale. We have been told of numerous occasions where a consumer's unaffordable debt stems from a credit application in which the retail introducer actively "coached" the applicant on how to complete the application or filled it in on the consumer's behalf without explanation.

The point of sale exemption results in many low income and vulnerable consumers being approved for unaffordable and unsuitable credit and consumer leases, causing them to be significantly over-indebted, facing debt collection action and severe financial and non-financial harm.

Case study – Large Department Store systemic mis-selling

In 2018 Financial Rights year acted on behalf of a large number of Aboriginal clients in the Northern Territory following the sale of goods at a Large Department Store via credit card and consumer lease contracts initiated in the store. The salesperson told our clients the goods were cheap, they could pick out anything in the store and it would be sent to them.

The salesperson did not ask what their income and expenses were and completed the application forms, usually for both a consumer contract and a credit card, without the clients understanding what was happening. All the application forms were filled out by the salesperson and were all completely incorrect. The credit and consumer lease providers involved (both non-bank lenders in this instance) subsequently approved the credit cards without verifying the information, or properly assessing the affordability and suitability of the card. The average spend by these consumers was \$12,500. Some of them had only entered the shop to browse or purchase a very low value item. Some of the items purchased were soon discarded because the clients did not know how to use them, or because they were unfit for use in the client's home due to inadequate telecommunications coverage or a lack of complementary technology.

Source: C212916

The Royal Commission recommended the exemption of retail dealers from the operation of the NCCP Act should be abolished.²⁸ The Government agreed to remove the point-of-sale exemption in responding to the Royal Commission²⁹ however this has yet to be implemented by the Government.

It is critical that the Government act to close this loophole that is leading to significant harm in financially vulnerable communities including First Nations communities.

Recommendation

16. The government should expedite the implementation of 1.7 of the Financial Services Royal Commission and remove the point-of-sale exemption from the credit legislation;
 17. Debt collectors & debt assignees also need to have RAPs and code commitments specific to First Nations debtors;
 18. State and Territory fair trading/consumer protection agencies need to conduct focussed surveillance of car dealerships taking advantage of Aboriginal and Torres Strait Islander clients, and take enforcement action as appropriate.
 19. Corporate entities and not for profits engaging in community development programs in regional and remote communities should consider programs aimed at empowering those communities to source reliable vehicles, for reasonable prices at affordable interest rates.
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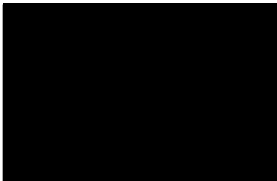
²⁸ Recommendation 1.7 Financial Services Royal Commission – Final Report <https://treasury.gov.au/sites/default/files/2019-03/fsrc-volume1.pdf>

²⁹ Restoring trust in Australia's financial system The Government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry February 2019 <https://treasury.gov.au/sites/default/files/2019-03/FSRC-Government-Response-1.pdf>

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



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