



Law Council  
OF AUSTRALIA

Office of the President

24 November 2020

Manager  
Banking and Access to Finance Unit  
The Treasury  
Langton Cres  
PARKES ACT 2600

By email: [creditreforms@treasury.gov.au](mailto:creditreforms@treasury.gov.au)

Dear Sir / Madam

### **SUPPLEMENTARY SUBMISSION – CONSUMER CREDIT REFORMS**

1. On 19 November 2020, the Law Council of Australia provided the Treasury with a submission in relation to the Consumer Credit Reforms, prepared by the Australian Consumer Law Committee of the Law Council's Legal Practice Section.
2. Subsequent to this initial submission, the Law Council received input from the Law Society of New South Wales (**Law Society**) which is relevant to the proposed reform measures. The Law Council welcomes the opportunity to present the following views of the Law Society as a supplementary submission to the consultation, relating primarily to the effects of the reform proposals on Aboriginal and Torres Strait Islander borrowers.
3. In its correspondence with the Law Council, the Law Society has noted that according to the First Nations Foundation:
  - one in two Indigenous people are in severe financial stress;
  - only one in ten Indigenous people are financially secure; and
  - 52 percent of Indigenous people have no savings.<sup>1</sup>
4. The Law Society has offered the following case studies provided by its Indigenous Issues Committee to provide front-line context to the proposed reforms, and to underscore the importance of maintaining and effectively enforcing existing responsible lending obligations. The Law Society advises that these case studies are examples provided by a financial rights community legal centre (**the Centre**), which assisted Indigenous clients who experienced substantial financial hardship due to irresponsible lending practices.

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<sup>1</sup> First Nations Foundation, 'Money stories: Financial resilience among Aboriginal and Torres Strait Islander Australians' (April 2019).

### **Law Society case study – point of sale finance – multiple clients**

5. Thirteen Aboriginal men and women were referred to the Centre by financial counsellors from Alice Springs after unwittingly incurring debts totalling more than \$180,000 between them following visits to a major chain store. Many lived in remote communities. In several circumstances, the men and women went to the store with the intention to only browse, however were convinced to purchase thousands of dollars' worth of goods on finance contracts and offered credit cards with large spending limits. None of individuals had strong English, nor could they afford the goods or meet the terms of the contracts they were pressured to sign.
6. Many of the contracts signed were also incorrect: the number of dependants the men and women had was underestimated and fortnightly income was listed as weekly. In all cases the same salesperson was responsible. One of the women went 'window shopping' but left with a \$2,000 credit card and \$16,000 worth of goods on a consumer lease contract. One item was a blu-ray player, which was later discarded as she did not know what it was. But by the time the Centre intervened, she had repaid \$9,000.
7. A solicitor from the Centre sent letters to the two lenders involved, alleging multiple breaches of the *National Consumer Credit Protection Act 2009 (Cth)* (**NCCPA**). Both lenders agreed to the settlement terms in these letters. The lenders waived the debts, refunded amounts paid, removed default listings and gifted the goods. These remedies would not have been achieved without existing current responsible lending obligations.
8. One of these lenders has since embarked on a remediation program administered by an external consulting firm for 300 customer accounts, leading to an estimated \$2.5 million write-off for a program that is only now nearing completion. In the media the lender confirmed that it has accepted all recommendations from the consultant to strengthen its sales processes, including increased monitoring and training of sales staff.
9. In this example, two lenders engaged in predatory lending practices despite the existence of responsible lending obligations. In addition to the 13 individuals noted in this example, it is understood that hundreds of other customers were affected. Had the lenders complied with the responsible lending laws, none of these unsuitable credit products would have been approved. Part of the issue is the exemption in the NCCPA for point of sale finance – an exemption which the Financial Services Royal Commission recommended should be closed. If responsible lending obligations were repealed, predatory sales practices like these are likely to increase.

### **Law Society case study – Eva's story**

10. Eva (name changed) is a 47-year-old single woman with two children living in New England, who identifies as Aboriginal. Approximately two years ago, Eva went to a car dealer to purchase a car. To finance the purchase, a non-bank lender approved a loan of approximately \$5,000 for her. At the time, Eva had limited income as she was on income support (as carer for her disabled brother) and received family tax benefits.
11. After trying to keep up with the repayments for a period of time and paying approximately \$1,500 towards the loan, Eva defaulted as she was simply unable to afford the loan. She requested a hardship variation to pay \$50 per week which was rejected. When she tried to have the lender take the car to sell it, they refused to do so.

12. Around August 2020, Eva had around \$7,000 owing to the lender due to non-payment, interest, and fees that had accrued. It appears Eva was also sold junk insurance with the car, adding to the total of the debt but providing no protection against her default.
13. Had the car yard finance provider undertaken an effective responsible lending assessment, Eva would not have been given an unsuitable car loan, with its accompanying insurance product of little utility. Eva tried repeatedly to give the car back to the lender and address the shortfall, but the lender has refused. Eva is unable to use the car as it is currently unregistered and does not function as it needs a new battery.
14. The Law Council appreciates the opportunity to promote the above input as provided by the Law Society, and would welcome the opportunity to discuss this submission with the Treasury. In the first instance, please contact Dr Natasha Molt, Director of Policy, on at [natasha.molt@lawcouncil.asn.au](mailto:natasha.molt@lawcouncil.asn.au) or on (02) 6246 3754.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Pauline Wright', written in a cursive style.

**Pauline Wright**  
**President**