SUBMISSION

Senate Economics Legislation Committee

Financial Sector Reform Bill 2022

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By email: economics.sen@aph.gov.au

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About Financial Counselling

Financial counsellors provide advice and support to people experiencing financial difficulty. Based in not-for-profit community organisations, financial counselling services are free, confidential and independent.

Financial Counselling Australia

This is a joint submission from the peak bodies in the financial counselling sector.

- Financial Counselling Australia
- Financial Counsellors ACT
- Financial Counsellors Association of NSW
- Financial Counsellors Association of Queensland
- Financial Counsellors Association of Tasmania
- Financial Counsellors Association of Western Australia
- Financial Counselling Victoria
- South Australian Financial Counsellors Association (also covering the NT)

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1 Background

1.1 We support the passage of Schedule 4 of the Bill

The financial counselling sector welcomes the Committee's Inquiry into the Financial Sector Reform Bill 2022. This submission focuses only on the reforms applying to high-cost credit products in Schedule 4 of the Bill. These address small amount credit contracts (SACCs, also called payday lenders) and consumer leases.

We strongly support Schedule 4 of the Bill and ask that the Committee recommend that this component of the legislation is passed as a matter of urgency.[1] We also endorse a joint consumer submission on Schedule 4 prepared by Consumer Action Law Centre, which includes more detail about the proposed reforms.

1.2 Lack of action since 2017

The proposed reforms in Schedule 4 have been mooted since an independent "Review of the Small Amount Credit Contract Laws" (the SACC Review) in 2015. This led to the release of draft legislation in 2017. It has been a long wait to implement urgently needed consumer protections.

The final report of the SACC Review[2] made 24 recommendations. The Government accepted most of the recommendations and released draft legislation in October 2017.[3] This is an example of evidence-based policy where a consumer harm was identified, there was an independent review, a final report was issued with recommendations and the Government drafted legislation based on that review.

It is difficult to understand therefore why legislation was not enacted in 2017. It is now 2022, and the harm identified in the SACC Review has continued for a further five years.

In contrast, the harm identified in the recent Financial Services Royal Commission was also extensive. The current and previous Government is now acting on most of the recommendations of the Royal Commission. It remains unclear why bank customers can expect action on recommendations and yet the many people who have fallen into a debt trap with payday loans and consumer leases are still waiting and continuing to be harmed.

Based on their day-to-day contact with people experiencing financial hardship, financial counsellors have repeatedly raised concerns about high cost and exploitative pay day loans and consumer leases for more than 20 years.

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[1] A separate joint submission from a number of consumer groups on the two other aspects of the Bill, the compensation scheme of last resort and the Financial Accountability Regime, has been lodged separately.

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

[3] Treasury consultation 22 October 2017 – 3 November 2017 with information available at https://treasury.gov.au/consultation/c2017-t229374.

3 The current regulatory framework is inadequate

The harm for people using pay day lending and consumer leases is extensive and has been documented in numerous reports, including the SACC Review, numerous submissions from financial counsellors and other consumer groups and reports such as *The Debt Trap – How payday lending is costing Australians*.[4] ASIC has also taken several enforcement actions against specific consumer lease providers or SACCs.[4] The most recent of these was against Sunshine Loans Pty Ltd for charging prohibited fees. ASIC alleges the company charged these fees over 9,000 times when people tried to reschedule or amend the payments on their loans.[5]

Some of the key issues driving the need for reform include:

Payday loans and consumer leases can trap people in debt: current regulation is woefully inadequate at safeguarding consumers. Under the current regime, SACCs and consumer leases are being provided to people that cannot afford the loans, or who face substantial hardship as a result of the credit. Many people end up with the repayment for the SACC or lease being a substantial amount of their income. The harm includes:

- being left with insufficient money for basic living expenses as a direct debit takes any income before rent, food and utilities (payday lenders align direct debits with the day a person is paid);
- for people in receipt of income support payments through Centrelink, consumer lease providers are paid first by setting up Centrepay arrangements.[6] Again, this means people can be left with insufficient money for basic living expenses as consumer lease payments are prioritised;
- the need to access emergency and food relief from community agencies as the person has insufficient money;
- the stress of not having enough money to cover basic needs, as well as the strains on mental and physical health of people affected, their partners and children;
- desperately borrowing to attempt to get out of the debt trap; and
- despite the presumption that a SACC will be unsuitable if a person had two or more payday loans in the previous 90 days, financial counsellors report that this type of lending still takes place.

Repossession of goods: Consumer lease providers can repossess the goods under the lease if the person falls behind on repayments (and a default notice has been sent and remains unpaid). As there is no right to buy, the person may have paid the cost of the goods many times over and the goods can still be repossessed.

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[4] Stop the Debt Trap Alliance, *The Debt Trap – How payday lending is cost Australians* November 2019 available at https://consumeraction.org.au/20191112-the-debt-trap-report/

[5] ASIC, 22-132MR ASIC sues Sunshine Loans for charging prohibited fees, https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-132mr-asic-sues-sunshine-loans-for-charging-prohibited-fees/

[6] The use of Centrepay by consumer lease providers is a separate issue that also needs to be addressed by the Government.

Debt collection and enforcement: Debt collection is stressful. Repeated calls and demands wear a person down. This is particularly difficult when the person could never afford the loan and now owes default fees as well. There are also the serious consequences of enforcement through the court including garnishee of wages or savings, repossession of household goods and forced bankruptcy.[7]

4 Examples of harmful SACCS and consumer leases

Below are a number of recent case studies from financial counsellors that illustrate the continuing problems. Given the timeframe for the Committee's inquiry, there was only a short time to request case studies from our sector. These case studies however are indicative of the problems financial counsellors have continued to report for many years. In some places, the case studies have been edited for grammar and clarity. Names if used have been changed.

4.1 Payday loans

Example 1 – single mother, spending 15% of income on payday loans

I have a client that was given four payday loans within four months. Two of these loans were provided within two days of each other. The payday lending company claims they checked for responsible lending and the client was able to afford the loans. The best solution they have given was a reduction in payments for six months. These loans have placed the client into hardship as she is on single parent payment and family tax benefit A and B. Her income is $2,075 per fortnight with rent $740 per fortnight (36% of her income). Her rent is about to increase. The total payments for the SACCs loans are $687 per month (15% of her income).

Date of loan	Balance	Minimum monthly repayments
Nov 2021	$1794.82	$231.91
Dec 2021	$1077.32	$98.29
Feb 2022	$2075.52	$285.42
Feb 2022	$701.45	$71.37
Total amount owing @ Feb 22	**$5649.11**	
Total payments for SACCS		**$686.99**

Example 2 – SACCs obtained by fraud, but the payday lender onsells the debts anyway

Some companies are very persistent in attempting to recover the funds. Company staff were informed of a fraudulent SACC in which a house mate obtained a phone via deception of a person with an intellectual disability. Multiple SACC debts were accumulated by the house mate without sufficient checks of affordability or the number of SACCs that had been raised in the previous two months.

When evidence of the fraud was presented, the debts were wiped in many cases. The payday lending company were informed of the fraud, but on sold the debt to a debt collection agency anyway. The debt collection agency sent the debt back with the second submission of evidence

of fraud. The payday lender then onsold the debt to another debt collection company and the process was repeated. The financial counsellor contacted the payday lender again, discussing the need to take the case to the Ombudsman, as the alleged debt had grown substantially and the client would need to access food bank and emergency service providers to be able to afford to pay the fraudulent alleged debt.

Example 3 – client with gambling issues which should have been picked up through responsible lending checks

This example shows credit that is a mix of regulated payday loans (Quickcash, Ferratum, Sunbow), unregulated payday lenders (Cigno – see Section 4 of this submission also) and wage advance companies (Beforepay).[7] It is very common for financial counselling clients to have a range of different types of debts.

I have been supporting a client with 11 short term loans in 89 days. Below is the actual data from the bank records that reflect $5,600 of these 11 loans. The client was previously in a good well paid job and then lost it and got a second job which he also lost, so they were using his higher income while working to get the loans. The client has a challenge with gambling – in his bank statements I could see 221 of 411 transactions in a 120 day period with TAB and Points Bet from March totalling over $13k. The $5,600 in debt was basically used to fund that gambling.

Most of the clients that are using these products are not able to access or already have used Centrepay Advances or No Interest loans. It is overwhelmingly predatory; most are people with low incomes and most are experiencing mental health challenges.

These lenders are all on direct debit arrangements the same day of the payments ... The fee structures are so that as long as they get enough of the payments back, they have got their money.

March 2022	500	PAYMENT FROM QuickCash
May 2022	300	PAYMENT FROM Beforepay
May 2022	250	PAYMENT FROM BSFS
May 2022	300	PAYMENT FROM Beforepay
May 2022	250	PAYMENT FROM BSFS (Cigno)
May 2022	1000	PAYMENT FROM Ferratum
May 2022	300	PAYMENT FROM SUNBOW FINANCE PTY. LTD.
June 2022	300	PAYMENT FROM Beforepay
June 2022	250	PAYMENT FROM BSFS (Cigno)
June 2022	1100	PAYMENT FROM Beforepay
June 2022	250	PAYMENT FROM BSFS (Cigno)

[7] Wage advance companies also provide unregulated credit, operating through a loophole. The Government is currently consulting on these businesses, together with Buy Now Pay Later companies should be regulated.

Example 4 – pawn loan turns into a SACC which leads to more items being pawned

I have had several clients over the last few years that have had a pawn ticket loan, which they have been unable to re-pay and so the pawn broker gives the client a SACC loan.

The client then pays the pawn ticket but can't pay the SACC loan. The client them pawns other goods to pay the SACC loan. This is a vicious cycle of very high interest rates on both products.

The outcome is that pawn brokers should not be able to provide SACCs or payday loans/leases of any type.

Example 5 – dubious affordability checks

I have three examples I can provide in the short timeframe.

1. Male, has four payday loans totalling approx. $1,400. Also two utility debts totalling about $1,300; and another personal loan. He got these after COVID struck, had been employed, but employment became casual and difficult as in health industry and was required to isolate many times.

2. Female: six payday loans totalling over $6,000. Also two utility debts totalling over $2,000. Also another debt to housing.

3. Male: 5 payday loans totalling almost $7,000. No other debt.

The point is: all of these people are on Centrelink payments, all have mental health concerns (and some physical) and told me they used the payday loans as they were struggling to afford food and these loans were "so easy" to get.

Example 6 – Client with gambling issues became suicidal

Single woman with teenage dependants in her 40s with a gambling addiction had accessed multiple pay day loans to fund the needs of her family post gambling binges due to easy access. Client works part time. There were five loans in total. Because of missed payments, she had to pay additional fees putting her further into financial despair. The client's mental health spiralled further downhill to the point where she became suicidal as she could not see a way out of her financial and gambling situation. Easy access to the lenders exasperated the stress and anxiety of client's addiction and self-efficacy.

Linked client to gambling counselling and was able to achieve waivers of the remaining balance due to the level of trauma linked to the gambling addiction. However, the client by this stage had repaid far more than the loan principal.

4.2 Consumer leases

Example 1 – consumer lease providers targeting consumers in remote communities

This table is from work we did with our First Nations network in 2020 about the behaviour of a consumer lease provider targeting people in remote communities. The themes are that the lease provider did not check whether the credit was affordable, the people were in vulnerable circumstances and the contract price for the leases were many times the cost of the goods.

	Client	Weekly Income Type	Problems with contract	Value of Goods	Contract Price
#1	Ms JC	$488 Parent (2 child)	Expenses exceed income	$1,600	$5,824
#1	Mr WR	$31 JobSeeker	No expenses listed for crucial items	$1650	$5,980
#2	Ms MS	$790 Single Parent, 3 kids	Unaffordable, No expenses listed for crucial items	$1,650	$5,250
#3	Ms MY	$43 Disability Pension	Unaffordable, Contract not explained.		
#4	Mr CS	$456 Disability Pension	Expenses unrealistic / 2 year old credit check, No expenses for phone - but new phone in contract, Two different contract totals	$2,041	$7,790
#5	Ms CC	$249 JobSeeker	Husband-wife income. $400/fortnight less than expenses	$700	$2,548
#5	Mr PE	$325 Disability Pension	Expenses not properly listed	$600	$2184
#6	Ms EB	$750 Teacher's Aide	Two different total payment figures in same contract	$1,500	$6,300
#7	Ms BS	$292 JobSeeker	Told verbally it was a 1 yr contract, but it is for 2 years, Thought she was buying, never told she was renting.	$1,550	$5,668
#8	Ms NS	Single Parent, 4 children	Client told contract total was $3,132, but it is $6,132, Client told it was a 1 yr contract, we found it's 2 years, Fictitious people named in contract as knowing her, Man named in contract as her father is unknown, Another man named in contract is also unknown	$1,450	$6,132
#9	Ms ED	Single, Part-time Work	Contract terms not explained, Bank statements show no affordability	$1,800	$5,408
#10	Ms AR	$636 Carers Pension + 2 children	Bank statement show contract unaffordable	$2,020	$6,552

Example 2 – Inadequate and cursory affordability checks, contract price significantly in excess of the value of the goods

34-year-old woman with three children. While in a relationship characterised by domestic violence, she was coerced into signing up for a laptop in 2019. The total amount payable was $4,095. The average price of a laptop in 2019 (from website product review was $800).

The rental company collected bank statements and her Centrelink statement. The bank statement showed her money going in and going out and was in deficit of $35 at the time of assessment. The rental company calculated there was a $588 surplus. There were lots of cash withdrawals on the bank statement. The rental company miscalculated child support in their assessment. The purpose of the lease for the purchase was stated that she could not afford outright. In reality, the purpose was for her child to use at school.

Example 3 – Irresponsible lending, excessive cost of the lease compared to the goods, refusal to provide statements

Karen, a 50 year old First Nations woman, contacted financial counselling services after discovering she still owed $1,500 under her consumer lease and was struggling financially.

Karen had been asking the lease company for an account statement which she never received. Karen thought she would have paid the leases off as she had been paying $148.00 a fortnight (20% of her Centrelink Jobseeker income) to the lease company for two years.

When she came to our agency, Karen was in financial hardship, homeless and moving from motel to motel when she could or couch surfing with her partner who was receiving dialysis three times a week.

Karen also had a $3,500 telecommunications debt she could not pay due to the lease payments being paid via Centrepay and therefore being prioritized over her other debts. Karen did not understand she could have cancelled the Centrepay.

Karen's literacy levels are limited. Karen had many past leases with the lease company, and they were all paid via Centrepay. These past leases were obtained when she had children in her care and was receiving more income. As the years passed, Karen's income reduced significantly. Karen was unaware of other means of obtaining goods as these consumer leases have historically been her family's way of obtaining essential household items.

Our agency's financial counsellor requested all the assessment documents relating to the two most recent leases. The financial counsellor completed separate statements of financial positions at the time of the loans and discovered a deficit, however the second lease where Karen was receiving even less income than the first lease was approved. The documents revealed a breach in the lease company's responsible lending obligations and that the loans were unaffordable. Furthermore, Karen had paid the lease company $7,500 for an iPhone and bedroom suite when the retail cost of goods was approx. $1,400. This exacerbated her financial issues which ultimately led Karen down the path to homelessness and the suffering of extreme financial hardship.

The lease company refused to resolve the matter and Karen was forced to take it to AFCA with the assistance of our agency's financial counsellor. The matter has since resolved.

Example 4 – Lease of TV is four times the retail cost, broken goods not replaced

- 50-year-old First Nation man living in remote Australia, accessing Centrelink income support
- The client leased a TV worth $600 by a consumer lease company over 24 months, with $48 per fortnight repayments. The total repayments required were $2,496.
- The TV broke only a few months into the contract, which led to the client going back to the consumer lease company. The company leased the client a tablet worth $450, with $25 per fortnight repayments over one year. The total repayments required were $650.
- The client then purchased a replacement TV from the same company, while still paying for the original broken TV. He was leased a $700 TV over 24 months, with $48 per fortnight repayments. The total repayment requirements were also $2,496.
- In total, the client was paying $121 per fortnight for the leases, a substantial portion of his income.
- After reaching out to a financial counsellor for support, the consumer lease company agreed to wipe the debts owed for the first two products (but not with any refunds of the $1,168) he had already paid. He was required to repay $480 for the third product and keep the remaining products.

Example 5 – Excessive cost of the goods vs contract

- Solo mother of 3 (one with a disability), needed furniture for her new Community Housing property, without any child support being received from the children's father.
- She was provided a $50 a week rental at a total cost over $10,000 over the 4 years for items likely to be worth only $2,000.
- Client knew they were rental items (although they told her she could basically get the items for free at the end of the term) and horribly overpriced, but felt she had no other options due to low income.

Example 6 – Rental company does not undertake proper affordability checks (ignores evidence in front of them)

- 44 years old First Nations woman with one child. In and out of domestic violence relationship. Living separately. English not first language. Washing machine and laptop were leased from a consumer lease company.
- I have looked at the contract and supporting evidence and I have found the following issues.
    - The contract states no dependents, yet Centrelink statements has amount for Family Tax Benefit.
    - There are no bank statements to verify any expenses.
    - No bills supplied to verify expenses. I made a phone call with the client to the energy company and the client is paying $135/fortnight. The rental company said gas and electricity was $22 and $50 respectively. No evidence for this amount. Furthermore, the Centrelink statement obtained by the rental company shows deductions for $80 for gas.
    - Did not account for any phone expense yet the contract has a phone number recorded.
    - Did not account for Centrelink advance ($140/fortnight) in expenses

- Did not account for Basic Household Goods deduction on Centrelink statement for ($70/fortnight)
- Did not account for chemist deduction of $10/fortnight on Centrelink statement.
- No one survives on $80/week for food when they have a teenager. No evidence of costs of food.
- The contract is for $32/week, however the Centrelink statements indicate $80/fortnight is being deducted

- At $80 per fortnight, that accounts for $2,080 per year or $4,160 over 48 months.

Example 7 – Father passes away. The lease company signs 20-year child to pay for the existing leased goods for a further three years.

An ongoing customer to a consumer lease company, also a single father supporting 2 children aged 17 and 20. All experiencing mental health issues.

Father had a current contract for a lounge, home entertainment system and a TV (the TV was not in his possession). The father had passed away and the children were unaware he had a contract for the items. The consumer lease company representative attended the property and proceeded to sign up the 20-year-old with the same products for a further 3-year contract. In addition, he signed up the 17-year-old to an iPhone rental contract.

Thankfully the young people were being supported by an employment agency specific to people with mental health issues and identified financial hardship. They were referred to financial counselling. In the process it was identified that the items re-contracted were only months away from end of contract when the father passed. The consumer lease company had clearly taken advantage of the situation and young people not knowing any better. The impact of the leases impacted the young people's capacity to meet their basic needs. They were both in receipt of Centrelink income as their only income source, and this caused further harm to their health.

4 The importance of an anti-avoidance mechanism

We particularly want to stress the importance of the anti-avoidance mechanism in the Bill. There are a cohort of lenders using loopholes in the law to avoid regulation. The most egregious example is unregulated payday lender Cigno. Using its product intervention powers, ASIC has tried to close down the various business models used by Cigno a number of times but has not yet succeeded. When they have stopped one business model, Cigno replaces it.[8]

We draw the Committee's attention to the various submissions our sector has made to ASIC in response to consultations about the use of their product intervention powers in relation to Cigno and its associated companies.[9] This one case study from our most recent submission in January

[8] O'Brien, L and Ian Ramsay, Paul Ali, How 'bad credit' lender Cigno has dodged ASIC's grasp, The Conversation, 5th August 2022, https://theconversation.com/how-bad-credit-lender-cigno-has-dodged-asics-grasp-187887.

[9] Financial Counselling Australia, Product Intervention Orders: Short Term Credit Contracts and Continuing Credit Contracts, Submission to ASIC re Consultation Paper 335, January 2022, https://www.financialcounsellingaustralia.org.au/docs/product-intervention-orders-short-term-credit-contracts-and-continuing-credit-contracts/ and ASIC Consultation Paper 330 – Using the Product Intervention Power re Continuing Credit Contracts, August 2020, https://www.financialcounsellingaustralia.org.au/docs/asic-consultation-paper-330-using-the-product-intervention-power-re-continuing-credit-contracts/

2022, illustrates the common themes – the loans are targeted to people who are vulnerable, the costs are extraordinary and the impacts on the people who borrow are serious.

> Kelly is a First Nations single mother of two twins. She sought the help of a financial counsellor due to struggling to pay her Cigno loan which was resulting in her falling behind in other payments. Kelly has been obtaining loans from friends for food, in addition to taking out Centrelink advance payments for food and other bills.
>
> Kelly took out a loan with Cigno Australia Pty Ltd for $100 in late 2020. Since taking out the loan the amount owed has increased to $1,435.
>
> She has struggled to make repayments, as her fortnightly income was only $560 at the time of the contract. To date, the client has paid $1055, with $379 outstanding.
>
> She has had to ask a friend to repay the loan and did not want to pursue the issue further with Cigno due to the stress they have already caused. At the time of seeking help from a financial counsellor, Kelly was about to give birth to her twins. She was worried about her new babies and the impact of further stress on them.

The anti-avoidance provisions need to apply to all types of credit regulated under the National Consumer Credit Protection Act. This is an important requirement as we cannot predict what new avoidance scheme will be dreamed up by these kinds of lenders.

6 The schedule 4 changes are vital

We recommend that Schedule 4 of the Finance Sector Reform Bill proceed and support the changes proposed:

- the inclusion of 10% protected earnings amount caps for each of SACCs and consumer leases. A protected earnings cap of 20% for each product would see people potentially spending 40% of their income on payday loans and consumer leases. People would not have enough money to also pay for other essential expenses such as rent, food, electricity and telecommunications;
- the 4% per month consumer lease cost cap - this is currently the only regulated credit product without a cost cap;
- ban on unsolicited offers of SACCs. This would bring the regulation of SACCs into a similar regulatory framework to that applying to other credit products, such as credit cards;
- ban on unsolicited selling of consumer leases. This would stop some of the exploitative practices targeting First Nations people in remote communities in particular;
- anti-avoidance provisions – this would stop predatory business models such as that employed by Cigno;
- ban on referrals to unlicensed lenders.

In particular, the proposed changes for protected earnings are a vital consumer protection to ensure that people using SACCs and consumer leases do not end up in a debt trap.