



THE LAW SOCIETY
OF NEW SOUTH WALES

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23 November 2020

Mr Michael Tidball
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: travis.kotzur@lawcouncil.asn.au

Dear Mr Tidball,

Consumer credit reforms

The Law Society of NSW thanks the Law Council for the opportunity to consider its submission to the Treasury dated 19 November 2020. The Law Society strongly endorses the views set out in the Law Council's submission and shares the concerns outlined in the Law Council's submission, particularly in respect of Aboriginal and Torres Strait Islander borrowers.

According to the First Nations Foundation:

- 1 in 2 Indigenous people are in severe financial stress,
- only 1 in 10 Indigenous people are financially secure, and
- 52% of Indigenous people have no savings.

We offer the following case studies provided by the Indigenous Issues Committee to provide front-line context to the proposed reform, and to underscore the importance of maintaining and effectively enforcing existing responsible lending obligations. 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.

Case study – point of sale finance – multiple clients

Thirteen Aboriginal men and women were referred to the Centre by financial counsellors from Alice Springs after unwittingly incurring debts totaling 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 to look around and not buy anything but were convinced to purchase thousands of dollars' worth of goods on finance contracts and given credit cards with big spending limits. None of them had good English, could afford the goods or meet the terms of the contracts they were pressured to sign.

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 \$2000 credit card and \$16,000 worth of goods on a consumer lease contract. One item was

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a blu-ray player, which she threw away as she didn't know what it was. But by the time the Centre intervened, she had repaid \$9000.

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.

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.

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, we understand 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.

Case study – Eva's story

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 about \$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.

After trying to keep up with the repayments for a period of time and paying around \$1500 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.

Around August 2020, she 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.

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 just 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.

Thank you for the opportunity to provide supplementary information. Questions at first instance may be directed to Vicky Kuek, at Victoria.kuek@lawsociety.com.au or 02 9926 0354.

Yours sincerely,



Richard Harvey
President