

14 November 2018

Acting Committee Secretary
Senate Standing Committee on Economics
PO Box 100
Parliament House
Canberra ACT 2600
Via email: economics.sen@aph.gov.au

Dear Mr Alan Raine

Inquiry into credit and financial services targeted at Australians at risk of financial hardship.

The Australian Banking Association (ABA) appreciates the opportunity to provide a submission to the Senate Economics References Committee inquiry into credit and financial services targeted at Australians at risk of financial hardship.

With the active participation of member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and the community, to ensure Australia's banking consumers continue to benefit from a stable, competitive and accessible banking industry.

ABA members believe that all Australians should be afforded consistent consumer protection, no matter which credit or financial services provider they choose. For customers at risk of financial hardship, these consumer protections are particularly important.

Credit and financial services targeted at Australians at risk of financial hardship can exacerbate or even cause financial hardship. These products and services can be the difference between someone being able to meet their financial obligations on an ongoing basis, and that person ending up in significant financial difficulty or even bankruptcy. There is a clear benefit to the community and the economy to ensuring that consumers don't fall victim to unsuitable or predatory lending practices.

To ensure that consumers at risk of, or currently experiencing, financial hardship are adequately protected, ABA members suggest several key changes:

- All Australians should receive consistent consumer protections, even when taking out loans that are small and / or have short repayment terms.
- All participants in the financial services sector should be signatories to a relevant and ASIC approved code of practice.
- All customers should have access to both internal and external dispute resolution and therefore, all participants in the financial services sector should be members of AFCA.
- The transparency of fees and charges should be improved to ensure that customers can make informed choices.
- Financial counsellors are an essential public service and ABA members support the continuation of the existing funding of the sector.
- The Committee should consider the application of comparable responsible lending obligations to providers offering alternative forms of credit to individual customers.



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- Consideration should be given to licensing debt management firms.

Thank you for the opportunity to provide this submission for the Committee's consideration. If you have any questions regarding our submission, please contact Eliza Twaddell, Consumer Engagement and Policy Lead on (02) 9298 0407 or Eliza.Twaddell@ausbanking.org.au.

Yours sincerely

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Introduction

ABA members believe that all Australians should be afforded consistent consumer protection, no matter which credit or financial services provider they choose. For customers at risk of financial hardship, consumer protections are particularly important to ensure they have access to appropriate and affordable products and services.

We note that although the legislation, regulations and Code provisions we mention in this submission apply in some cases to business and other types of customers, our comments relate only to individual customers, specifically those at risk of financial hardship. None of the comments in this submission are intended to relate to business borrowers of any size.

While some of the products and services covered in the terms of reference (**TOR**) for this inquiry, are much less commonly used than traditional credit and financial services, they are disproportionately taken up by people at risk of financial hardship, and therefore carry a heightened risk of causing significant consumer detriment.

The ANZ Financial Wellbeing Report from 2018¹ showed that people struggling to meet their day-to-day financial commitments were more likely to use “loans from family and friends (32%), financial institutions (24%), delayed payment schemes such as AfterPay/ZipPay (24%), payday lenders (16% borrowed at least once a year) and lease or hire purchase arrangements (10%).”

The ABA and its members have concerns about the potential for consumer harm from credit and financial services which are largely targeted at Australians at risk of financial hardship. To ensure that consumers at risk of, or currently experiencing, financial hardship are adequately protected, our members suggest several key changes:

- All Australians should receive consistent consumer protection.
- All participants in the financial services sector being signatories to a relevant and ASIC approved code of practice.
- All participants in the financial services sector becoming members of AFCA.
- Improved transparency of fees and charges.
- Continued support for financial counsellors.
- Expanding the reach of responsible lending requirements across the sector.
- Licensing of debt management firms.

Impact on individuals, communities, and the financial system

Credit and financial services targeted at Australians at risk of financial hardship can exacerbate or even cause financial hardship. These products and services can be the difference between someone being able to meet their financial obligations on an ongoing basis, and that person ending up in significant financial difficulty or even bankruptcy. There is a clear benefit to the community and the economy to ensuring that consumers don't fall victim to unsuitable or predatory lending practices.

In the experience of our members, it is clear that customers who have other vulnerabilities are at greater risk of experiencing financial hardship. These vulnerabilities include, but are not limited to, customers who are experiencing:

- Elder abuse
- Family and domestic violence
- People from culturally and linguistically diverse (**CALD**) backgrounds

¹ <https://bluenotes.anz.com/content/dam/bluenotes/images/financial-wellbeing/ANZ%20Financial%20Wellbeing%20Summary%20Report%20-%20Australia.pdf>

- Mental illness; and
- Financial abuse.

ABA members have committed to taking extra care with these customers and we would like to see that same care extended by all participants in the industry.

Consistent consumer protection

The ABA and its members believe that all Australians should be afforded consistent consumer protection and service no matter which provider of credit or financial services they choose. In relation to credit, we believe that all types of credit and deferred payment products offered to individual customers, specifically those at risk of financial hardship, should be offered with the same consumer protections.

Consumers should not be disadvantaged if they take out loans that are small and / or have shorter repayment terms.

This would provide certainty for customers about what to expect when they purchase a product or take out loan, rather than added complexity from determining what regulatory regime applies to what provider. A uniform regulatory approach would also provide a level playing field for all providers in the markets and not create a regulatory distortion between ADI and non- ADI lenders.

Banking Code of Practice

The new Banking Code of Practice (**the Code**)², which will come into effect on 1 July 2019, has been approved by ASIC in accordance with RG 183.

In order to obtain ASIC approval, the ABA had to meet RG 183 criteria including that:

- it “be developed and reviewed in a transparent manner which involves consulting with relevant stakeholders including consumer representatives”; and
- it addresses “a broad range of issues of real concern to consumers”³.

ABA members believe that the extensive engagement with stakeholders undertaken in the development the Code and the fact that ASIC determined that the Code met the requirements of RG 183 show that the Code is a benchmark for whole financial services industry in meeting community standards and expectations.

The Code extends consumer protection beyond the law in several important respects. The ABA and its members are strong believers in the value and importance of self-regulation. **ABA members believe that all providers of financial and credit services to everyday Australians should be required to be signatories to an appropriate and ASIC approved code of practice**, consistent with regime recommended by the ASIC Enforcement Review⁴.

ABA members believe that the provisions in our Code are benchmarks which providers of similar services should adopt.

The Australian Financial Complaints Authority (AFCA) has indicated that the Code represents good practice, and it will use the Code broadly as the benchmark for industry practice.

Some of the key commitments of the Code which relate to customers at risk of financial hardship are that ABA members will:

- Attempt to proactively identify customers experiencing financial hardship and contact those customers to discuss the situation and options available to help them⁵.

² http://www.ausbanking.org.au/images/uploads/Banking_Code_of_Practice_2019_web.pdf

³ See RG 183.20 and RG 18.222(b) <https://download.asic.gov.au/media/1241015/rg183-published-1-march-2013.pdf>

⁴ Recommendation 19

⁵ Chapter 40 – Banking Code of Practice 2019 - http://www.ausbanking.org.au/images/uploads/Banking_Code_of_Practice_2019_web.pdf



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- Have a Customer Advocate to help facilitate fair customer outcomes and minimise the chance of future problems⁶.
- Raise awareness of basic, low or no fee accounts and offer eligible customers one if they ask for one⁷.
- Take extra care with vulnerable customers and train staff to act with sensitivity, respect and compassion⁸.
- Comply with the Code of Operation to ensure customers who have overdrawn and are largely reliant on government assistance can retain at least 90% of their payment⁹.

No Interest Loan Scheme (NILS) and not-for-profit providers

No Interest Loan Schemes (NILS) offer Australians on low incomes access to affordable credit.¹⁰ These loans are for up to \$1,500 for essential purchases like appliances and medical procedures. NILS loans are available to people with a Health Care Card or who earn less than \$45,000 (after tax) and are designed to offer affordable repayments.

The ABA would like to acknowledge the important work done in the small and medium amount credit space by not-for-profit providers, who have developed business models that meet the needs of some low income customers, without harmful practices such as high fees, significant default fees and encouraging perpetual debt.

Providers such as Good Shepherd Microfinance, Foresters and Speckle provide NILS as well as other products to customers who might otherwise resort to more predatory lenders and provide an important protection for Australians experiencing financial hardship.

For example, NAB and Good Shepherd launched Speckle in March 2018, Speckle provides online cash loans, is managed by Good Shepherd Microfinance and backed by NAB. It was created for Australians who may not be eligible for traditional community finance such as NILS, or StepUP, or would prefer to apply for a small amount of credit online. Speckle is a not-for-profit provider.

Speckle charges fees at 50% of the limits set under the Small Amount Credit Contract regulations, and also charges limited dishonour and default fees - \$5 dishonour fee if a payment is dishonoured and \$1/day when a customer's account is greater than 30 days in arrears.

When a loan isn't the most suitable option for the applicant they can be referred to financial counselling and other services. This helps to ensure people are able to get the financial support they need.

Payday lenders

The ABA believes the payday lending industry needs to be more regulated, including through improved transparency of fees and charges, to prevent predatory lending to vulnerable customers.

The banking industry is committed to promoting financial inclusion and working towards ensuring all Australians have access to, and use of, many safe, affordable and appropriate banking and financial products and services.

The regulation of small amount credit contract (SACC) and payday loans should ensure that these products are appropriate and affordable where provided and protect vulnerable consumers. The sector must be appropriately regulated, with all credit providers subject to similar responsible lending provisions, ensuring a level playing field.

The ABA welcomed the review of SACC laws completed by Treasury in November 2017 to address certain market and regulatory failures on the part of those credit providers. However, **further**

⁶ Chapter 46 – Banking Code of Practice 2019 - http://www.ausbanking.org.au/images/uploads/Banking_Code_of_Practice_2019_web.pdf

⁷ Chapter 16 – Banking Code of Practice 2019 - http://www.ausbanking.org.au/images/uploads/Banking_Code_of_Practice_2019_web.pdf

⁸ Chapter 13 – Banking Code of Practice 2019 - http://www.ausbanking.org.au/images/uploads/Banking_Code_of_Practice_2019_web.pdf

⁹ Chapter 43 – Banking Code of Practice 2019 - http://www.ausbanking.org.au/images/uploads/Banking_Code_of_Practice_2019_web.pdf

¹⁰ <https://nils.com.au/>

regulation of SACC is required, including greater transparency of fees and charges to allow consumers the ability to compare the cost of credit and to make informed choices.

The ABA notes the Federal Government prepared a draft bill encompassing its response to the Review of the Small Amount Credit Contract Laws which included a range of measures such as imposing a cap on the total payments that can be made under a consumer lease and requiring small amount credit contracts to have equal repayments and equal repayment intervals.

We encourage the Government to progress these reforms in the interests of ensuring adequate consumer protections across the financial services sector.

Responsible lending

Responsible lending requirements are an important aspect of consumer protection and the stability and strength of the Australian financial services sector. These are set out in Chapter Three of the *National Consumer Credit Protection Act 2009 (Cth)* (**National Credit Act**) and require lenders to ensure that a credit contract is 'not unsuitable for a customer' before providing credit. The National Credit Act defines where a contract will be 'unsuitable' to include where:

- the consumer is unable to meet the repayments or can only comply with 'substantial hardship'
- the contract does not meet the consumer's requirements and objectives.

The compliance processes that need to be implemented to comply with these obligations will depend on the business model and credit activities being undertaken. ASIC provides further information on its expectations for compliance in its *RG209: Credit licensing: Responsible Lending Conduct*.

The ABA supports consistent and robust standards for responsible lending as set out in the National Credit Act. Our members take our responsible lending obligations seriously to ensure they are doing the right thing by customers and complying with the law. However, we note that at present, a number of providers (including 'buy now, pay later' providers) that are the subject of this inquiry are not required to adhere to responsible lending regulations.

Consistent with the principle that consumers should receive consistent consumer protection, the ABA supports the Committee considering the application of comparable obligations to providers offering alternative forms of credit to individual customers.

Dispute resolution

Simple, accessible and effective EDR plays a valuable role in enabling retail and small business customers to bring and resolve disputes with financial services providers. When something goes wrong, all Australians should have the same ability to make a complaint and have that complaint resolved.

We noted earlier in this submission that some of the products and services considered by this review are used in greater numbers by people suffering financial hardship. It is concerning that these vulnerable customers do not have access to the same dispute resolution processes that other customers have.

We believe that all participants in the financial services sector who sell products and services to individuals and small businesses should be members of AFCA. This includes debt management firms, credit repair agencies, and 'buy now, pay later' providers.

The ABA believes that EDR offers an important and accessible alternative to the court system as it is free for customers to access, does not require formal legal representation, and resolves disputes in a less adversarial way than the court system.

EDR works best in conjunction with effective complaints handling and Internal Dispute Resolution (IDR) programs. IDR programs are an important element of the FSP's overall relationship with its customers and manage a wide variety of complaints, including those that have not resulted in monetary loss. Many customers have their complaints successfully resolved through IDR.

But when EDR is needed to resolve a problem, the system must work as efficiently and quickly as possible to resolve disputes and achieve fair outcomes for customers.

The ABA believes that to ensure consistent consumer protection, customers of any financial services provider should have equal access to resolution of their issues through AFCA.

Transparency of fees and charges

The ABA believes the fees and charges associated with financial products and services should be clear for all customers.

The provision of straight forward information assists consumers to make properly informed decisions about accessing particular products and services and facilitates competition as consumers can more readily determine whether an alternative provider provides better value.

The National Credit Code includes requirements around the inclusion of comparison rates to ensure the total annual cost of credit arising from interest charged and other prescribed credit fees and charges is disclosed in relevant advertising.¹¹ Further, clause 123 of the new Banking Code of Practice incorporates a requirement to tell individuals about transaction service fees immediately before the fee is incurred.¹²

We note there is no requirement for short term credit providers to disclose fees on an annual basis. Quoting monthly interest rates risks confusing consumers, leading them to think that a 4% monthly fee on a payday loan is a better deal than, for example, a 14% p.a. interest rate on a credit card, where in fact the annual rate for the payday loan is 60%.

The ABA believes that fees, charges and interest rate disclosures on SACCs should be made on a comparable basis.

Financial Counsellors

Financial counsellors are an essential social service. They provide independent and free advice and information to individuals and families during difficult financial and emotional times and help their clients deal with debt problems, including from mainstream financial institutions, other lenders (including payday lenders), and other creditors (including retailers, utilities and telecommunications companies). We recognise the importance of the work financial counsellors do in helping people through incredibly challenging times often due to a change in their circumstances, such as loss of employment or relationship breakdown, or health related issues.

The ABA supports an enduring model of government funding for financial counselling services to ensure these services continue to make a significant difference for many Australians experiencing financial difficulty and facing other economic and social challenges. It is important for the government to provide funding for financial counsellors' casework.

As well as financial counsellors, community legal centres and legal aid provide important services to Australians at risk of, and experiencing, financial hardship. These services are crucial to hold credit and financial services providers to account, and without them, existing or additional regulation cannot achieve its full potential.

Hardship processes

ABA members are committed to providing assistance to customers experiencing financial hardship. The ABA has formalised this commitment in Chapter 41 of the Code which says, "We will work with you to help you respond to financial difficulty".

The hardship assistance programs of ABA members are well equipped to assist customers providing a range of flexible solutions which help customers get back on track. This help can come in the form of

¹¹ See Part 10 of the *National Credit Code*.

¹² Clause 123. "If you are an individual, we will tell you about a transaction service fee immediately before you incur the fee, if it is practical and reasonable for us to do so."

payment holidays, reduced payments, extended loan terms, or even waived debt in more extreme circumstances.

In 2016-17 banks received 303,635 requests for financial hardship assistance and provided assistance to 220,627¹³.

Bank hardship teams are anecdotally observing an increase in the number of unsecured debts, such as pay day loans and buy now, pay later arrangements held by customers applying for hardship assistance.

Licensing of debt management firms

The role of 'for profit financial difficulty companies' (including debt management firms and credit repair agencies) should be examined to ensure consumers are appropriately represented and protected, including in their representations with EDR schemes but also more broadly.

ABA members believe that consideration should be given to whether debt management firms should be licensed. We support a review considering licensing for debt management firms, but also suggest at least in the first instance, that debt management firms are required to become members of AFCA.

Debt Repayment Service

For the information of the Committee, the ABA and the major banks, in partnership with several consumer organisations, in particular Financial Counselling Australia (**FCA**), recently set up a Debt Repayment Service called Way Forward Debt Solutions (**Way Forward**). The pilot of the service commenced in October 2018.

Way Forward fills a gap in the market for a not-for-profit to assist people who are struggling with multiple unsecured debts. The service will be free for customers and will negotiate debt arrangements across multiple creditors including banks, utilities, and telecommunications companies. It provides an alternative for for-profit debt management firms which are not currently subject to licensing requirements and, in some instances, have considerable fees and charges to access their services.

The Board consists of four directors from consumer organisations, four directors from debtors (currently drawn from the four major banks) and an independent Chair.

Shadow banking

Although not specifically mentioned in the TOR for this inquiry, the ABA notes that the inquiry contains scope for consideration of any other matters in part (d).

The Financial Stability Board (**FSB**) defines Shadow Banking as credit intermediated outside of the regulated banking sector. Shadow banks operate with much less prudential oversight which can lead to them adopting riskier business models.

ABA members believe that regardless of which institution a customer chooses to bank with they should enjoy the same protections. A uniform regulatory approach would also provide a level playing field for all providers in the markets and not create a regulatory distortion between ADI and non-ADI lenders.

The expansion of shadow banking into consumer lending means that existing consumer protections applicable to ADI's, such as the Banking Code of Practice or Customer Owned Bank Code of Practice are not applicable to shadow banks.

ABA analysis shows that assets of shadow banks are growing faster than non-major domestic banks (regionals and mutuals). Two years ago, asset growth was about the same (6.5 per cent versus 6.2 percent). Since then, the assets of shadow banks have grown by 15 per cent, three times the pace of

¹³ <https://www.ccmc.org.au/2016-2017-annual-report/our-monitoring/>



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other non-major domestic banks (5 per cent). As a result, shadow bank assets are now at 6.7 per cent and other non-major domestic banks at 5.9 per cent.

The new Banking Code of Practice and the protections contained in it are a good starting point for non-ADI lenders to adopt.



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About the ABA

With the active participation of 24 member banks in Australia, the Australian Banking Association provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and community. It strives to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.