



**Submission by the  
Financial Rights Legal Centre**

Select Committee on COVID-19

Australian Government's response to the  
COVID-19 pandemic, April 2020

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28 May 2020

## About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

For Financial Rights Legal Centre submissions and publications go to [www.financialrights.org.au/submission/](http://www.financialrights.org.au/submission/) or [www.financialrights.org.au/publication/](http://www.financialrights.org.au/publication/)

Or sign up to our E-flyer at [www.financialrights.org.au](http://www.financialrights.org.au)

National Debt Helpline 1800 007 007  
Insurance Law Service 1300 663 464  
Mob Strong Debt Help 1800 808 488

Monday – Friday 9.30am-4.30pm

## Introduction

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Thank you for the opportunity to comment on the Australian Government's response to the COVID-19 pandemic.

The Financial Rights Legal Centre (**Financial Rights**) is a community legal centre based in NSW that operates several state-wide and national consumer advice lines. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

Over the last three months the pandemic has dominated our services. The pandemic has brought people that have never missed a loan payment into worrying financial situations as well as taken people already struggling with hardship to new lows. Suddenly many more Australians find themselves in financial stress than ever before.

However notably there has been a counterintuitive fall in the number of calls to the National Debt Helpline. Nationally calls to the NDH fell almost 20 per cent between the middle of March to mid-April, during an unprecedented economic shut down.<sup>1</sup>

Part of the story is that many of the people who Financial Rights' hears from – people who spend a lot of their lives dealing with financial hardship are actually, possibly, in an improved financial position right due to Government intervention.

The Australian Government's rapid and generous response to assisting those Australians most impacted by the economic fallout from the pandemic should be acknowledged and commended. The Government's action to increase Centrelink payments, provide access to JobKeeper and JobSeeker payments, and making early childhood education free for parents of young children have kept a lot of consumers from feeling the worst of this current financial crisis so far.

Those Australians who we regularly speak to have had extra supplement money from the Government. Banks have stepped up with mortgage deferrals and other hardship measures. Disconnections to utilities have been suspended, debt recovery and collections have decreased and, in some states there's been a hold put on evictions. These are the sorts of problems which people on very low incomes deal with all the time and often call the National Debt Helpline for help and advice about. For some people, the anxiety and restrictions of the pandemic have been tempered by temporary relief from chronic financial hardship and the constant threat of loss of their shelter or essential services.

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<sup>1</sup> ABC News, Debt helpline reports steep fall in calls as coronavirus response lifts welfare payments, 14 May 2020, <https://www.abc.net.au/news/2020-05-14/debt-helpline-steep-fall-in-calls-despite-coronavirus/12246446>

There is also however a group of wealthier Australians who have never sought any financial help that are now in need. Many of these people may not know where to go.

Up to 30 April 2020 our centre undertook 421 coronavirus (pandemic) related services (for 360 clients, where the impact of coronavirus was explicitly mentioned as a reason for the call. Many more sought information and advice without mentioning coronavirus as a cause or factor.

Of the 272 pandemic related services (221 clients) in April alone, 185 services or 81% specifically referenced some form of hardship (153 clients or 69%). 70 services related to insurance of which 49 were related to travel insurance issues (or 70%).

This experience in speaking to Australians on the front line of the pandemic's financial impact, gives us an ability to highlight the government and industry measures that have worked, where some of these should be continued, post-pandemic and also those measures that have not worked as well and highlight the need for reform.

As mentioned above the measures that have worked include:

- the Government's action to increase Centrelink payments, provide access to JobKeeper and JobSeeker payments, and making early childhood education free for parents of young children;
- early proactive measures from the banking sector to consumers and small businesses including deferrals of loan repayments, waiving of fees and charges and interest free periods;
- changes to Commonwealth bankruptcy legislation in order to decrease the threat of insolvency including the raising of the minimum threshold
- the decision to ensure that Australians granted a six month deferral on loan repayments on their mortgage or other credit products, such as a credit card, will not have their credit rating affected as a result of that deferral;
- measures in some states to desist from enforcement warrants for seizure of property or land;
- utilities agreeing to not disconnect Australians from essential services like energy, water and phone services and other hardship measures;
- the life insurance industry removing the application of pandemic exclusions of life insurance to health care workers,
- the life insurance industry not applying stricter activities of daily limit (ADL) definitions under total and permanent disability products; and
- ASIC intervention raising regulatory expectations of industry.

We believe that some of the measures are important and impactful enough to consider continuation. We recommend that:

- The government should permanently increase the amount paid to jobseekers (Newstart) to address the chronic financial hardship experienced by people who are unable to find employment;
- the Government should commit to review the *Bankruptcy Act* and permanently raise the minimum threshold required for a creditor to initiate bankruptcy proceedings against a debtor, and to improve debt collection practices more broadly;
- the draft *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting And Other Measures) Bill 2019* and its impact upon Australian's experiencing hardship must be reconsidered In light of the issues highlighted by the coronavirus crisis and the credit reporting agreements the banks have made during the pandemic;
- the Government needs to examine the ethical, moral and social impact of applying pandemic exclusions in life insurance to health care workers moving forward; and
- the Government should prohibit the use of the more stringent eligibility criteria (including but not limited to Activities of Daily Living and Everyday Work Activities tests) for TPD insurance.

Some of the problems we have identified have been:

- the terrible plight of people who did not qualify for either jobseeker or jobkeeper;
- poor short and long term consumer outcomes arising out of early access to superannuation;
- inconsistent debt collection and enforcement practices nationally;
- inconsistent and poor claims, refund and cancellation outcomes in travel insurance; and
- difficulties for both renters and landlords arising out of delays and lack of decisive measures from government and/or insurers with respect to the impact of rental clauses in landlord insurance.

Subsequently we recommend that

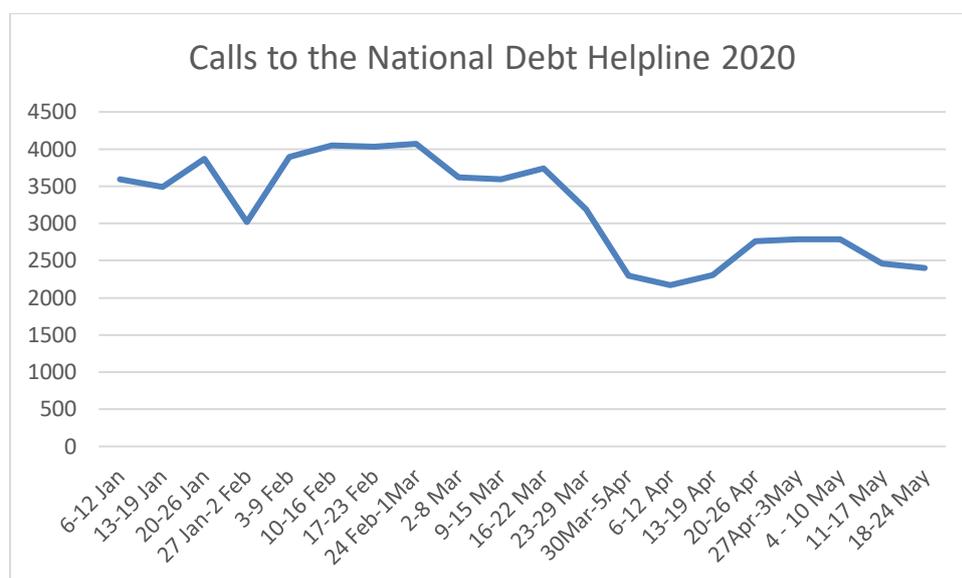
- a nationally coordinated approach to debt collection and enforcement across all states and territories should be developed to ensure a consistent and compassionate approach is taken during times of national crisis;
- the Government should implement Royal Commission recommendations 4.3 and 4.8 as soon as possible and prioritise the disclosure in general insurance review upon completion of the Royal Commission implementation; and
- The Government should assist in coordinating solutions to address issues in tenancy and landlord insurance, including ASIC expectations of insurers with respect to their right to go after tenants in hardship from the pandemic for unpaid rental arrears during this period.

## Recommendations

1. The government should permanently increase the amount paid to jobseekers (Newstart) to address the chronic financial hardship experienced by people who are unable to find employment.
2. The Government needs to provide urgent financial assistance to vulnerable migrants, refugees and international students who have been unable to return to their home countries and are now in extreme financial hardship.
3. The criteria for early access to super should have been more finely honed to ensure people only got access to those funds where no other financial support options were available.
4. Appropriate information and resources should always be made available to Australians to consider the full pros and cons of accessing their superannuation early.
5. The Government should commit to review the Bankruptcy Act, permanently raise the minimum threshold required for a creditor to initiate bankruptcy proceedings against a debtor, and to improve debt collection practices more broadly.
6. The draft *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting And Other Measures) Bill 2019* and its impact upon Australian's experiencing hardship must be reconsidered In light of the issues highlighted by the coronavirus crisis and the credit reporting agreements the banks have made during the pandemic.
7. A nationally coordinated approach to debt collection and enforcement across all states and territories should be developed to ensure a consistent and compassionate approach is taken during times of national crisis.
8. The Government should implement Royal Commission recommendations 4.3 and 4.8 as soon as possible and prioritise the disclosure in general insurance review upon completion of the Royal Commission implementation.
9. The Government should assist in coordinating solutions to address issues in tenancy and landlord insurance, including ASIC expectations of insurers with respect to their right to go after tenants in hardship from the pandemic for unpaid rental arrears during this period.
10. The Government needs to examine the ethical, moral and social impact of applying pandemic exclusions in life insurance to health care workers moving forward.
11. The Government should prohibit the use of the more stringent eligibility criteria (including but not limited to Activities of Daily Living and Everyday Work Activities tests) for TPD insurance.

## Reduction in calls to the National Debt Helpline

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Counterintuitively there was a fall in the number of calls to the National Debt Helpline in late March early April 2020.<sup>2</sup>

While the causes of this have not been systemically explored, part of the story is that many of the people who the National Debt Helpline services usually hear from – people who spend a lot of their lives dealing with financial hardship are actually, possibly, in an improved financial position right due to Government intervention.

The Government's action to provide access to JobKeeper and JobSeeker payments, including supplementary payments for those on Centrelink, and making early childhood education free for parents of young children have kept a lot of Australians from feeling the worst of this current financial crisis so far.

Those Australians who we regularly speak to on the National Debt Helpline have had extra supplement money from the Government. Banks have stepped up with mortgage deferrals and other hardship measures. Disconnections to utilities have been suspended, debt recovery and collections have decreased and, in some states there's been a hold put on evictions. These are the sorts of problems which people on very low incomes deal with all the time and often call the National Debt Helpline for help and advice about. For some people, the anxiety and restrictions of the pandemic have been tempered by temporary relief from chronic financial hardship and the constant threat of loss of their shelter or essential services.

We are very concerned about what will happen when Centrelink repayments return to normal, and all the assistance currently offered by lenders, utility providers and some landlords ceases.

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<sup>2</sup> National call data supplied by Telstra Analyser to Financial Counselling Australia who coordinates the multi-service delivery model of the National Debt Helpline. Financial Rights Legal Centre is one of 10 services around Australia staffing the National Debt Helpline.

We are preparing for a large surge in calls later this year for this reason. We have received additional funding from the Commonwealth Government to prepare for this.

We are particularly concerned about a return to pre-pandemic Centrelink rates. It has been apparent for many years that Centrelink generally, and Newstart in particular, is insufficient to support people to maintain even a very basic standard of living. We see the current drop in calls as further evidence to support this. As the economic fallout of this crisis continues more people will be forced to endure the indignity of chronic financial hardship, hindering their efforts to find employment unless Centrelink rates are permanently increased.

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## Recommendations

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1. The government should permanently increase the amount paid to jobseekers (Newstart) to address the chronic financial hardship experienced by people who are unable to find employment.
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## Gaps in assistance

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While the Government's financial assistance has kept a lot of Australians from feeling the worst of this current financial crisis so far, there have been some people that have fallen through the cracks and are now extremely vulnerable. Refugees, migrants and international students that cannot get access to Centrelink support during this crisis are now facing severe hardship. Many of these people were unable to return home due to border closures, the catastrophic spread of COVID-19, or the need to stay and protect loved ones.

### Case study – Pierre's story – C202202 (late-March)

Pierre used to have a small source of income teaching music privately - but because of Covid-19 students are no longer attending and therefore no more income. He is 4 weeks behind on his rent. There is no lease / rental agreement in place and he is concerned about being evicted.

Pierre is in Australia on a Bridging Visa and is not entitled to get Centrelink Income Support payments (he has applied and been rejected a few times). He has approx. \$4000 in super that he wants to be able to access under the new COVID early access policy. He still has \$100 in grocery vouchers from an emergency relief place so this will last him another couple of weeks.

### Case study – Abasi’s story – C204026 (mid-April)

Abasi is in Australia on a temporary visa and his wife has been here studying. In late 2019 Abasi lost his job and has been working casually since then. Now he cannot find any work because of the coronavirus. Abasi has no income. He has spoken to his landlord and has temp agreement to defer his rent temporarily. But Abasi has no money for food or to pay his ongoing bills.

### Case study – Arvind’s story – C204182 (late-April)

Arvind’s family are refugees on a bridging visa. They are not allowed to work and have no income. Arvind and his family live with international students who have all lost employment because of the coronavirus. Normally the international students pay Arvind rent but Arvind has had to reduce their normal rent. Arvind tried to call a refugee service but they cannot assist for 3-4 months. Arvind reached out to Vinnies for EAPA vouchers and food, but he can’t get any other support.

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## Recommendations

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2. The Government needs to provide urgent financial assistance to vulnerable migrants, refugees and international students who have been unable to return to their home countries and are now in extreme financial hardship.
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## Early release of super

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We commend the Government for taking swift action to relieve financial hardship during the pandemic. The World Health Organisation (**WHO**) declared COVID-19 a global pandemic on 12 March 2020. Ten days later, the Government released the second stage of its economic plan to cushion the economic impact of the coronavirus. In that announcement the Government announced it would allow individuals in financial stress as a result of the Coronavirus to access

up to \$10,000 of their superannuation in 2019-20 and a further \$10,000 in 2020-21. The coronavirus supplement of \$550 per fortnight and \$750 stimulus payment support were also announced at this time. The government subsequently announced the JobKeeper program on 30 March.

By early May, 1.1 million Australians had applied for access to superannuation, with \$9.4 billion of retirement savings approved for early release.<sup>3</sup> Several cohorts of people are eligible to access their super early:

- unemployed people;
- those eligible to receive JobSeeker payment, Youth Allowance for job seekers, Parenting Payment, Special Benefit or Farm Household Allowance; and
- those who've been made redundant or had their working hours reduced by 20%, or sole traders whose business has been suspended or faced a reduction of 20% or more since 1 January 2020.

In our experience working with consumers in financial stress, just because a consumer can access their superannuation doesn't mean they necessarily should. There are a great number of issues that somebody experiencing financial hardship needs to consider before drawing on their superannuation. Financial counsellors work with a client's unique financial circumstances and generally only suggest accessing superannuation as a last resort.

These relaxed criteria for accessing superannuation should have been more finely honed to ensure people only did it where no other viable options for financial support were available. For example, if a person lost their job and was ineligible for JobSeeker and JobKeeper.

We have since heard from many consumers applied for access to their super as a first resort, during a time of great uncertainty and panic in Australia.

#### Case study –Safah's story – C203910 (mid-April)

Safah has a small business doing hairdressing from her home, but now she has no clients or income due to coronavirus. Safah filed her intention to apply for JobSeeker and JobKeeper. Safah has a credit card that is almost maxed out on which a hardship arrangement has been accepted, and she has negotiated lower rent with her landlord and put her energy payments on hold. Safah only has about \$10,000 in her super and she thinks she should access it.

Australians considering drawing on their superannuation should have been given access to better information regarding the pros and cons of doing so before deciding to dip into the funds meant to provide for their future and long-term financial security. While the National Debt Helpline in NSW provided some financial counselling in this regard, more resources were

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<sup>3</sup> <https://www.theguardian.com/australia-news/2020/may/07/australian-authorities-reveal-alleged-of-early-access-to-superannuation>

required to ensure Australians were provided the advice they needed during this difficult period.

Financial Rights also spoke to Australians who were given unlicensed financial advice to access their super by real estate agents and debt collectors.

#### **Case study – Eleasha’s story – S247748 (mid-April)**

Eleasha and her husband have both lost their jobs due to COVID-19. Eleasha’s husband might be able to access JobSeeker and his employer is applying for JobKeeper but at this time they are getting no payments and they cannot afford their rent. The Agent told them there is no hardship arrangement available because the property owner is an overseas investor. The Agent is telling Eleasha to access her super to pay her rent.

#### **Case study – Wilbur’s story – C204307 (late-April)**

Wilbur is a small business owner. One of his suppliers is threatening to send his overdue account to a debt collector and insisting he pays way more than he says he is able to afford right now. He is not receiving any income and now his supplier is pressuring him to access his super to pay off the account.

#### **Case study – Sarah’s story – C204164 (early-May)**

Sarah is being chased for a debt from a finance company for a \$6000 car that was a lemon which she has already paid \$4500 towards. Sarah is being told she still owes \$9000 to the finance company. Sarah is dealing with severe hardship and health issues, she is a single parent and is pregnant. The finance company has been calling her asking about what extra money she is entitled to because of COVID19 and also pressuring her to access her super to pay out the car loan.

#### **Case study – Benjamin’s story – C203313 (early-May)**

Benjamin is a veteran with long-standing psychological issues, including problem gambling. He borrowed \$300 from a small lender, which he gambled and lost. He then lost

his job due to COVID-19 and was unable to pay. During the period Benjamin had no income (while waiting for JobSeeker), the lender applied default fees increasing the amount owing to over \$1000, despite Benjamin telling them he was in hardship and unable to pay his rent. Benjamin contacted our service for assistance, and we were able to negotiate a reduction in the fees and an affordable repayment arrangement. However, because Benjamin was so stressed about it, he went ahead and applied for early access to superannuation under the COVID-19 arrangements, and used this to pay the lender in one lump sum. He did not obtain legal or financial advice before taking this step.

While ASIC were able to provide some oversight on these issues including distributing a letter to the Real Estate Institute and their members regarding unlicensed financial advice by real estate agents to tenants<sup>4</sup>, they were unable to directly address this issue with unrepresented landlords and other businesses who were placing pressure on debtors to access their superannuation to pay their debts.

There has also been some evidence that consumers who have accessed their super early during the pandemic have since spent those funds on online gambling.<sup>5</sup>

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## Recommendations

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3. The criteria for early access to super should have been more finely honed to ensure people only got access to those funds where no other financial support options were available.
4. Appropriate information and resources should always be made available to Australians to consider the full pros and cons of accessing their superannuation early.

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## Bankruptcy thresholds

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On 22 March 2020, the Prime Minister announced changes to Commonwealth bankruptcy legislation in order to decrease the threat of insolvency. The key changes made were:

- The minimum amount for which creditors can have a Bankruptcy Notice issued against a debtor will increase from \$5,000 to \$20,000

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<sup>4</sup> <https://download.asic.gov.au/media/5546344/asic-letter-response-to-early-release-of-super-state-rei-3-april-2020.pdf>

<sup>5</sup> <https://www.afr.com/companies/financial-services/early-access-super-gambled-away-online-20200520-p54us7>

- The time a debtor has to respond to a Bankruptcy Notice will increase from 21 days to six months; and
- The relief that debtors' receive by submitting a Declaration of Intention to file a Debtors Petition will be extended from 21 days to six months.

The government also announced:

- temporary relief from director's personal liability for trading during this period;
- changes to the name of the declaration of intention form (renamed the Temporary debt protection form) with a transition to a fillable PDF to a fully digitised web-based form;
- provision to the Treasurer of an instrument-making power under the *Corporations Act*.

The temporary changes will be in place for six months from 25 September 2020.

These are good public policy measures that provided significant relief and assistance to Australians during this difficult period.

#### Case study – Randolph's story – C203248 (late-March)

Randolph is struggling with several debts and he has been in and out of hardship for years. Randolph is currently supporting his 19 year old son and 24 year old daughter who have lost jobs due to the coronavirus and his mother who lives overseas. In February he received a default notice for his home loan and on 24 March he received a bankruptcy notice for \$15,000 worth of strata fees. Randolph thought the Government changed the laws during this crisis so that he can only be made bankrupt for debts over \$20,000.

We however believe there is a strong case to extend the minimum amount threshold to beyond the temporary 6 month period.

In mid-2019 Financial Rights, the Consumer Action Law Centre and Financial Counselling Australia released the report *Who is making Australians bankrupt?*<sup>6</sup> The report highlighted serious issues with debt collection practices and with the bankruptcy regime itself. In 2019 together with Australian Banking Association (ABA) we wrote to the Attorney General to raise the need for legislative reform to ensure that rather than being made bankrupt, people in financial hardship should be given a fair go to make repayment arrangements to pay their debts.

The *Who is making Australians bankrupt?* report found that bankrupting Australians on a debt of as little as \$5,000 can have harsh and unfair consequences, particularly for vulnerable people. It can mean that a small credit card debt could lead to the loss of the family home. Using bankruptcy as an enforcement mechanism is particularly problematic for people who own or are paying off their homes, but experience loss of income due to unemployment, illness, disability or mental illness.

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<sup>6</sup> <https://financialrights.org.au/wp-content/uploads/2019/08/Who-is-making-Australians-bankrupt-July-2019.pdf>

Given the heavily indebted nature of Australian households<sup>7</sup> and the severe nature of a bankruptcy system that could potentially ruin millions of Australians' lives, the coronavirus crisis has clearly demonstrated the house of cards nature of the Australian economy.

The bankruptcy threshold was established in 1966 at \$500 and has been subsequently raised a number of times since, raising for the last time in 2010 from \$2,000 to \$5,000. At no time has a mechanism been put in place to ensure the threshold keeps pace with inflation. Household debt has also increased dramatically during this period. Both these factors have contributed to a significant lowering of the threshold in real terms, greatly increasing the number of people now susceptible to bankruptcy proceedings. It is time to both review this level and re-consider the mechanism by which the threshold should be increased.

We believe that the Government must review the Bankruptcy Act, modernise the thresholds and improve debt collection practices to ensure that rather than being made bankrupt, people in financial hardship should be given a fair go to make repayment arrangements to pay their debts.

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## Recommendations

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5. The Government should commit to review the Bankruptcy Act, permanently raise the minimum threshold required for a creditor to initiate bankruptcy proceedings against a debtor, and to improve debt collection practices more broadly.
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## Credit reporting

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When borrowers seek hardship assistance, they do so because they want to get back on top of their financial situation. Lenders want to help borrowers experiencing financial difficulty, recognising that with some assistance they can get on top of their debts. Banks therefore moved swiftly to provide financial hardship support and payment deferrals during the coronavirus period. However this raised the important question of how such offers when taken up by consumers would be reported on their credit reports.

This question is not new. It has been a systemic issue that consumer groups have been raising for five years, yet there is still no consistent industry-wide approach to reporting Repayment History Information (RHI) on a customer's credit report when that customer has entered into a hardship arrangement. There are now more customers in financial hardship arrangements than

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<sup>7</sup> Australians' record debt is making us work longer, spend less 18 October 2019, <https://www.abc.net.au/news/2019-10-18/household-debt-leaves-australians-working-longer-spending-less/11608016>

there have ever been at one time, and there is still no single industry approach to how payment pauses or deferrals should be reported on credit reports. Industry had hoped this question would be answered with new legislation, but the Draft Comprehensive Credit Reporting legislation<sup>8</sup> had not passed Parliament when the coronavirus crisis hit in early 2020.

If banks report customers as paying late while they are in a financial hardship arrangements, these customers would – through no fault of their own - end up with more and more negative information on their credit reports even though they thought they had done the right thing by proactively engaging with their lenders. Their ability to obtain credit in the future would be severely affected, making recovery from this economic disaster that much more difficult.

#### Case study – Dekka’s story – C203329 (late-March)

Dekka has an unsecured personal loan and she has lost her job at a casino due to COVID-19. She wants to take advantage of her banks hardship offer of 3 months of non-payment but her banks told her that her credit report will be impaired and that at the end of the financial hardship arrangement she will be asked to increase her normal repayment to catch up with her repayments. Dekka cannot have her credit report impaired because she will not get rehired by the casino if her record is not clean.

Without a clear framework in place, Financial Rights and other consumer groups worked with the Australian Banking Association (ABA) in coming to an agreed position for credit reporting during this crisis announced on 6 April 2020.<sup>9</sup> The position states:

*Any Australian who is granted a six month deferral on loan repayments on their mortgage or other credit products, such as a credit card, will not have their credit rating affected as a result of that deferral, provided they were up to date with repayments prior to COVID-19.*

*For those customers who are already behind in repayments when they are granted a deferral due to COVID-19, banks will not report the repayment history information, and leave the field blank for the duration of the deferral period. When the COVID-19 repayment deferral period has ended, banks will determine how to report the repayment history information.*

In other words if a customer is granted a deferral on their mortgage or other credit products because of COVID-19, banks will not report customers as having missed a repayment, provided they were all up to date when granted relief. As Anna Bligh stated:

*Customers in these circumstances should not have to worry about their credit rating as well.*

This industry commitment ensures that customers will not be deterred from seeking the financial assistance they require from their lenders. If such a commitment were not provided – customers would have thought twice about reaching out for this much needed assistance.

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<sup>8</sup> National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting And Other Measures) Bill 2019

<sup>9</sup> <https://www.ausbanking.org.au/a-covid-19-mortgage-deferral-wont-affect-your-credit-rating/>

Australians regularly ask Financial Rights on the National Debt Helpline about the impact on their credit report of any hardship assistance they seek from lenders – keenly guarding their credit report and ability to obtain credit in the future.

However the agreement referenced above only applied to ABA members, not smaller lenders participating in comprehensive credit reporting. And it is only for 6 months.

What is required is a fair and permanent approach to comprehensive credit reporting – one that takes into account the key issues that the coronavirus has highlighted. That is: we should not be punishing Australians facing financial hardship that reach out for assistance nor should they be deterred from accepting a financial hardship arrangements from their lenders.

Currently the Draft Comprehensive Credit Reporting legislation will negatively brand Australians facing financial difficulties by adding a financial hardship flag to their credit report every time they need assistance from their lenders. The current coronavirus crisis highlights the problem of credit reporting and financial hardship information therefore necessitates a rethink on the current draft legislation.

The ABA agreement about credit reporting during the pandemic (which says that RHI should not be affected by payment deferrals) makes the case that the addition of financial hardship information on credit reports is entirely unnecessary. The ABA are essentially agreeing that non-payment is not the ‘fault’ of these customers, and they should not be disadvantaged nor discouraged from seeking help out of concern about what is on their credit report.

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## Recommendation

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6. The draft *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting And Other Measures) Bill 2019* and its impact upon Australian’s experiencing hardship must be reconsidered In light of the issues highlighted by the coronavirus crisis and the credit reporting agreements the banks have made during the pandemic.
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## Debt enforcement

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Debt collection and enforcement can cause severe stress and hardship for people in normal times, but even more so during the current extraordinary public health crisis. While many major lenders announced in March that they would not be filing Default Notices during this time, there has still been a significant amount of debt enforcement action taking place across Australia. Action on this issue varied across the states.

In Mid-March 2020 the Queensland Courts and Tribunals announced that it would no longer be executing any enforcement warrants for seizure of property or land until mid-June 2020.<sup>10</sup>

**19 March 2020** - From today, enforcement warrants for seizure of property or land will not be executed before 18 June 2020. Until advised otherwise:

**Warrants for Seizure and Sale of Property**- If a property has already been auctioned and sold, the sale will proceed to completion. All currently scheduled auctions will take place, and if sold at auction, the sale will proceed to completion. Registries will not commence the enforcement of any new warrants.

**Warrants for Possession of Land** - No execution of existing warrants will take place. Registries will not commence the enforcement of any new warrants.

**Warrants for Redirection of Earnings, Debt or Regular Redirection** will continue as per the normal process. Registrars will be mindful that that people's income may be reduced.

**Warrants for Delivery of Goods or Seizure and Detention of Property** will continue as per the normal process.

**Warrants for Charging Order or Appointment of Receiver** will continue as per the normal process.

Financial Rights wrote to the NSW Sheriff's Office to strongly encourage them to take a similar position regarding enforcement action over the next several months. We also encouraged the NSW Sheriff's Office to go even further and postpone Warrants for the Redirection of Earnings and Warrants for the Seizure of Goods as well. Unfortunately NSW did not end up taking action like Queensland did to protect its residents from increased stress and hardship during the pandemic. The Sheriff indicated it was a matter for the Court and individual plaintiffs.

To our knowledge there has no co-ordinated approach by the States to address debt collection and enforcement action during the pandemic. We have spoken to numerous callers trying to manage debt collection and enforcement action during this health and economic crisis.

#### **Case study – Keith's story – C202944 (early-April)**

Keith and his wife are Aboriginal and have been served a Notice to Vacate for mid-April 2020. He and his wife are over \$40,000 behind on their mortgage payments, but they are expecting a \$20,000 tax return from the ATO and they can access their super too. They need help quickly because they want to save their home and they don't want to be evicted during this Covid-19 health crisis.

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<sup>10</sup> [https://www.qls.com.au/For the profession/Courts commissions and tribunals](https://www.qls.com.au/For_the_profession/Courts_commissions_and_tribunals)

Worryingly when Financial Rights spoke to the lender about their approach to enforcing Notices to Vacate during the shutdown period they indicated they had no policy. Thankfully the lender withdrew the eviction.

#### **Case study –Richard’s story – C204486 (late-April)**

Richard is married with dependent kids. He worked in hospitality, and was stood down. He has debts relating to a previous business he couldn’t keep paying. He has an Examination Notice and has to attend Court tomorrow. He wants to know, given the current shutdown does he still need to attend the Court? He can provide the material the plaintiff requested to them directly. We rang the Court with Richard and confirmed he had to attend, we also rang the plaintiff who also refused to adjourn the hearing if Richard provided the evidence to them now. The Court offered to let Richard attend by phone, but he does not want his kids and partner to have to witness it.

#### **Case study –Lonnie’s story – C204044 (mid-April)**

Lonnie received a Default Notice from her bank a few weeks ago. She is about \$6,000 in arrears on a mortgage over her home and an investment property which is rented out. She hasn’t worked for a few years and is on jobseeker, but she has a lot of personal problems. Lonnie also said that she went to Batemans Bay at Christmas and got caught in the bushfires with her pregnant daughter. She is traumatised by the memory of this and began crying over the phone. Lonnie does not want to sell the properties and she doesn’t think she could even sell the investment property at the moment because no-one is working or buying property because of the pandemic. Lonnie has no super.

#### **Case study –Alton’s story – C204146 (mid-April)**

Alton had a stroke in 2018 which causes him to speak slowly and with a stutter. He thought he had cleared out all of his outstanding debts but now a debt collector has turned up to pursue an old 2015 credit card debt he hasn’t made a payment towards for years. Alton has no assets, no income, no job, and he has only has been receiving Centrelink for the past 2 weeks. The debt was originally \$18,000 but he is now being chased for over \$30,000. Alton’s wife was working and supporting him, but she recently lost her job in COVID-19 and is now getting JobKeeper. They live in a rented apartment with their adult daughter and their Centrelink payments go towards living expenses.

Alton is still hoping to get a job in the next 12 months to pay off this debt, but with the pandemic and his stroke that might prove difficult. He used to work in a leadership role in sales/marketing.

#### Case study –AJ’s story – C204209 (mid-April)

AJ got a loan for \$10,000 about 18 months ago that his son signed as guarantor. However, because of COVID-19 AJ’s employment and income have been reduced and he is struggling to meet the payments. He has a couple of payday loans that he is paying off as well. AJ went to his lender and asked for a hardship arrangement, but they refused. AJ’s lender told him if his direct debits don’t go through they will pursue his son. AJ wants to know about entering into a Debt Agreement.

#### Case study –Jenny’s story – C204249 (late-April)

Jenny has a personal loan of \$5000 which was guaranteed by her niece. Jenny is in hardship due to business failure as a result of COVID-19 and she applied for hardship from her lender. They are insisting she provide them with her Centrelink application, asking if she has access to her super, and they have already direct debited her niece without issuing a default notice first.

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## Recommendations

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7. A nationally coordinated approach to debt collection and enforcement across all states and territories should be developed to ensure a consistent and compassionate approach is taken during times of national crisis.
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## Travel insurance

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One of the more significant issues Financial Rights' Insurance Law Service (ILS) saw during the first months of the pandemic was is significant confusion about is travel insurance. Travel insurance was the most called about product on the Insurance Law Service national helpline in March 2020, with over 50 calls on the matter.

Consumers across Australia found themselves with overseas holidays that were all cancelled in early 2020. For those consumers that had purchased travel insurance, most found that they were unable to claim for any cancellation losses because their policies included broad exclusions for pandemics. Many Australians we spoke to on the ILS were surprised by this and felt that travel insurance products had not met their expectations.

Due to the multiplicity of policy clauses, wording and definitions many people were confused as to their rights to cancel, claim or receive a refund of the insurance premiums they paid.

### Case study –Merle’s story – C203807 (early-April)

Merle had to return to Australia in a hurry from overseas when the pandemic was declared and the changed flights cost nearly \$1500. She tried to claim on her travel insurance but her claim was rejected because the insurer says her costly return was caused by “government intervention” which is excluded. The insurer says Merle returned because the Australian government told her to. But her policy has a more specific clause that deals with pandemics and says she is only excluded from cover if she “did not follow advice in the mass media or an official body’s warning” or if she “did not take the appropriate action to avoid or minimise any potential claim.” But she came back right away, following her government’s advice!

### Case study –Todd’s story – C202555 (mid-March)

Todd activated his premium travel insurance through his credit card in September 2019, and he confirmed that he met the requirements of cover. He called the insurer three days prior to his call to the ILS he called the insurer to inquire if he would he be covered if he got sick due to COVID-19 and they said yes. Todd told the insurer the key stops of his cruise in May and that he would be driving around Italy after. Todd asked if the cruise gets cancelled or something gets postponed due to COVID-19 will he still be covered and the insurer said yes. Three days later Todd called his insurer again and asked if he should start cancelling his accommodation and his insurer now says he is not covered. Todd read his insurance contract and he can't see that pandemics are excluded. His insurer tells him that if he looks at the definition of natural disasters he will see it includes any event or

force of nature that has catastrophic consequences...but not epidemics or pandemics. Natural disasters are covered, but not COVID-19. Todd is a savvy consumer and is comfortable reading long contracts. He was convinced he was covered when he asked the insurer last week.

Other travellers like Todd also reported poor sales practices by insurers during the pre-Covid-19 period and felt misled.

#### **Case study – Alasdair’s story – C202172 (early-March)**

Alasdair took out travel insurance for his family on the same day the insurer put a travel advisory about coronavirus on its website. Even though he spent an hour talking to the insurer during his application, the insurer never mentioned anything about coronavirus. Now the insurer says he’s not covered, he should have known.

#### **Case study – Crystal’s story – C203996 (mid-April)**

Crystal and her partner had an overseas trip planned for May. On 10 March she purchased travel insurance because she heard of one company that was still giving cover for travel restrictions caused by COVID-19. When Crystal paid for the policy she double checked that she would be covered if her trip was cancelled because of the virus and the customer service rep told her yes, she was covered. She even has a voice recording of this conversation. However now Crystal’s insurer is telling her she is not covered because she purchased the insurance after COVID-19 became a known event. The travel agent she booked the trip through is offering Crystal a travel credit but she has to use it by September 2020, and she doesn’t think the travel bans will be lifted before then.

Financial Rights observed that many travellers who had purchased add-on travel insurance via their travel agent found themselves without coverage due to poor service from their travel agent in arranging their insurance

#### **Case study – Sienna and Patrick’s story – C203178 (early-March)**

In November 2019, Sienna and Patrick went to a major travel agency (the same agency as that attended by Frank and Gabbie). Sienna and Patrick purchased tickets to France and

Morocco via China. Nearing the end of the meeting Sienna and Patrick mentioned that they needed to obtain travel insurance – Sienna mentioned she was concerned that if flights are cancelled that she would be out of pocket given the expense of the flights.

The travel agent mentioned that if they purchased the add-on travel insurance product they would receive "Cancel for any reason" cover. Patrick remembered it well because he asked jokingly that if the couple broke up or decided to go on separate holidays whether it would that mean they were covered. The agent replied "yes any reason". Normally Patrick would have used another direct insurance product through his health insurer as he had previously but this "cancel for any reason cover" was the main reason he decided to go with the add on travel insurance product.

The travel agent then organised the add-on travel insurance on the spot. Sienna and Patrick were only asked whether they were going skiing and they told them "no". No further questions were asked. They were provided with a brochure. They filled out no forms.

In February the flight was re-routed through Singapore and no longer going through China. Sienna and Patrick did not receive notification of this change. When they checked in late February they discovered the change and were then concerned that they may have to cancel their trip altogether because of the coronavirus pandemic. However the add-on insurance cover provided by the travel agent exempts pandemics and it turns out that the "cancel for any reason" cover that may have helped them was not included in their certificate of insurance. It was an optional extra to the add-on product and not actually automatically included.

If Sienna and Patrick had gone with the direct insurance product through Patrick's health insurer there is a strong and arguable case that Patrick and Sienna would have been covered because of a very different pandemic exclusion more favourable to their circumstances. Also it is likely that the cover would have been cheaper since Patrick's membership would have entitled him to a significant discount.

#### **Case study – Sakina's story – C202256 (early-March)**

Sakina took out travel insurance with her travel agent in mid-September 2019 for her trip to Europe in 2020. At the time of purchase Sakina said she wanted 'maximum cover' and she believed she took out comprehensive international insurance, a premium product. Now she wants to cancel her trip because of the coronavirus. She knows her insurer has a 'cancel for any reason' product but it turns out that is not what her travel agent arranged. Sakina's product has a pandemic exclusion.

Some clients we spoke to felt discouraged during the claims process with poor claims handling processes:

#### **Case study – Andrew’s story – C203574 (early-April)**

Andrew purchased a travel insurance policy in November 2019 for a trip overseas in April. In early March 2020, the Government banned overseas travel. Andrew contacted his insurer and requested his premiums be refunded. The Insurer’s representative told him in words to the following effect “By requesting a refund that is equal to making a claim. We are not accepting any claims because of the Covid-19 pandemic”. Even though he did not want to make a claim he felt discouraged by their response. He later emailed them requesting a cancellation again but did not receive a response back.

#### **Case study – Belinda’s story – C178371 (early-April)**

In September Belinda took out travel insurance for her trip to Europe in June. Her trip has been cancelled due to the coronavirus and she is trying to claim on her travel insurance. There is no exclusion in her policy for pandemics and her PDS says she is covered if her “pre-paid scheduled public transport services or pre-paid tour have been cancelled or restricted because of severe weather, natural disaster, riot, strike or civil insurrection.”

Belinda has now spent hours on the phone trying to get through to her insurer but she keeps being told she has called the wrong number only to be given the same number again. The couple of times she has been able to get through she is told the latest PDS does not cover cancellations due to the pandemic, but the PDS she was sent in September has no such clause. There is no definitions section in her PDS limiting “natural disaster” in any way, so the normal meaning should include the coronavirus.

A number of client’s were also concerned with the increased use of vouchers and credits when the conditions for the next year or longer were (and continue to be) particularly unclear.

#### **Case study – Alexia’s story – C202860 (mid-March)**

Alexia booked a trip in August 2019 to go to Europe in 2020. The tour company has told her if she pays \$500 per person she can postpone the tour. She took out comprehensive travel insurance in August but now looking at her policy she is not covered for cancellations due to a pandemic exclusion. She is also not covered for the \$500 postponement fees or any lost deposits, and the policy also says she is not covered if the tour company is unable to complete the tour due to not having enough people or financial

collapse. Alexia paid over \$10,000 for this family holiday. What if the tour company goes broke and can't honour the rescheduled tour? What was the point of getting insurance?

#### Case study –Zadie's story – C204439 (late-April)

In 2019, Zadie booked a walking holiday to NZ -with a friend who lives in NZ. Zadie obtained insurance in 2019. Zadie made a claim to recover flight, accommodation and walking tour costs. The insurer accepts Zadie is covered but say that she needs to accept credit from Virgin if Virgin is offering credit. Zadie doesn't want to take credit from Virgin as it's in administration. Zadie simply wants to be refunded. The insurer is also insisting that Zadie should accept a credit for the walking tour. Zadie is not sure if she'll be going to NZ in near future given the Covid-19 uncertainty and also her friend in NZ has now already gone on the walking tour. Zadie has been advised that she will not be covered if Virgin or the tour provider has offered a voucher. This is on the basis that the policy only covers cancellation costs which, "...you are unable to recover in any other way..."

AFCA confirms similar observations with respect to the complaints that they received during the early period of the pandemic.

*A lot of the early ones we've had, as you would expect, are around cancellation and changes to travel insurance, lack of cover—misunderstanding around cover that people may have—and refunded premiums for cancelled travel.<sup>11</sup>*

What is clear is that the general insurer sector's response to these issues in travel insurance was inconsistent across insurers, difficult to ascertain with minimal communication to their customers, and the measures to address the problems delayed – if measures were introduced to assist their customers at all.

In late March IAG, Australia's largest general insurer introduced the first measures to help those travellers impacted by COVID-19. These measures included travel insurance refunds for the unused proportion of premiums where customers have not yet travelled and have not claimed under their policy, with no administration or cancellation fees. While these measures didn't help customers hoping to recoup their losses on cancelled flights and accommodation bookings, IAG's commitment still stands as best practice for travel insurers in this pandemic. At least customers have access to premium refunds for policies they will never get to use.

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<sup>11</sup> David Locks, AFC, Page 19 House Of Representatives Standing Committee On Economics Australia's four major banks and other financial institutions: Insurance sector (Public) Tuesday, 28 April 2020 [https://parlinfo.aph.gov.au/parlInfo/download/committees/commrep/255cdcb7-f99c-4f8f-aef6-153ef68ae4dc/toc\\_pdf/Standing%20Committee%20on%20Economics\\_2020\\_04\\_28\\_7676.pdf;fileType=application%2Fpdf#search=%22committees/commrep/255cdcb7-f99c-4f8f-aef6-153ef68ae4dc/0000%22](https://parlinfo.aph.gov.au/parlInfo/download/committees/commrep/255cdcb7-f99c-4f8f-aef6-153ef68ae4dc/toc_pdf/Standing%20Committee%20on%20Economics_2020_04_28_7676.pdf;fileType=application%2Fpdf#search=%22committees/commrep/255cdcb7-f99c-4f8f-aef6-153ef68ae4dc/0000%22)

Other insurers did follow suit including Suncorp<sup>12</sup> and QBE.<sup>13</sup> However some smaller travel insurers took a lot longer to introduce measures for their customers<sup>14</sup> and others have yet to act at all.

Financial Rights and other consumer organisations engaged with ASIC to take a strong proactive stance with the insurance sector and their response to the pandemic. ASIC subsequently provided letters to insurers detailing ASIC's expectations of general insurers.<sup>15</sup>

Ultimately the coronavirus crisis and its impact on travel insurance consumers has highlighted a number of problems in the general insurance sector that need to be addressed by government. Some of the issues will be addressed via legislation mooted to address Royal Commission recommendations including:

- removal of the exclusion of handling and settling an insurance claim, or potential insurance claim, from the definition of a 'financial service';<sup>16</sup>
- introduction of a deferred sales process for add-on insurance (including travel insurance)<sup>17</sup>

while others are currently being considered by Treasury including disclosure practices in general insurance.<sup>18</sup>

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## Recommendations

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8. The Government should implement Royal Commission recommendations 4.3 and 4.8 as soon as possible and prioritise the disclosure in general insurance review upon completion of the Royal Commission implementation.
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<sup>12</sup> <https://www.suncorpgroup.com.au/news/news/suncorp-insurance-financial-hardship-coronavirus>

<sup>13</sup> <https://www.qbe.com/au/covid-19-support>

<sup>14</sup> Insureandgo only announced measures on 4 May 2020 and only after discussions with Financial Rights <https://www.insureandgo.com.au/travel-alerts/update-global-COVID-19-pandemic.jsp>

<sup>15</sup> <https://download.asic.gov.au/media/5573527/letter-to-directors-of-general-insurance-companies-27-4-20.pdf>

<sup>16</sup> <https://treasury.gov.au/consultation/c2019-36687>

<sup>17</sup> <https://treasury.gov.au/consultation/c2020-48919d>

<sup>18</sup> <https://treasury.gov.au/consultation/c2019-t354736>

## Landlord insurance

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When the economy was, for all intents and purposes shut down, and workers either lost their jobs or found themselves on reduced incomes, Australian renters found themselves in financial difficulty and had limited ways to keep up with their rental payments. Landlords too found themselves in a difficult position in not receiving rent and found themselves needing to negotiate with their mortgage banks. Even where tenants had the capacity to pay partial rent, some landlords refused to offer or accept reasonable rent reductions, and some tenants were scared to even ask.

As mentioned above we also heard from renters who had been asked to call upon their superannuation. ASCI appropriately stepped in to raise concern with the real estate institute regarding unsolicited advice.

However another issue emerged regarding the application of landlord insurance. Under many landlord insurance products is a rental cover option. Not all landlords have rental cover in their insurance policies, but for those that do, three clear issues arose with respect to their ability to claim for losses during the pandemic:

1. When a tenant falls into rent arrears, most insurance policies require the landlord to mitigate his or her loss and, in normal times, this is achieved by commencing eviction action against the tenant. There are currently eviction bans in place which prevent landlords from taking action against their tenants, and many landlords do not want to evict their tenants during the health crisis. The clauses created a moral hazard.
2. If a landlord enters into a negotiated agreement with their tenant for less rent (as most state governments are currently requiring them to do) then they have likely invalidated their claim to rental cover. This is either because they agreed to the loss, or because the lesser rent is considered a deferral not a waiver and so there is not loss to claim. Tenants will be expected to catch up on payments when their income returns.
3. If the landlord's insurance has paid the claim for lost rent, then the insurer is entitled to step into the shoes of the landlord and commence action to recover rent arrears through the court system. This is also known as subrogation. So even if the landlord thinks they have been able to help their struggling tenants by reducing rent and then making a claim on their insurance, the tenant could still be pursued by the insurer, sometimes years later.

### Case study - Jim's story - C204016 (mid-April)

Jim has landlord insurance which includes rental default cover. His tenants are not in default but they have asked for a reduction of their rent because of COVID-19 hardship. The Queensland government is passing a bill that says he must negotiate to reduce rent for tenants in hardship, but if he comes to an agreement with his tenants for lower rent then he thinks his insurance won't cover the loss. His insurer won't tell him anything until he makes a claim. Jim's policy says "We will pay your rent lost because a court or tribunal

has released your tenant from their obligation to pay rent due to hardship” but that means he needs to take his tenants to court first.

Tenants are relatively powerless to influence either the landlord or the insurer’s behaviour here, because they are not parties to the landlord insurance contract. Some landlords have been generous with tenants, negotiating lower rents, while others have refused to negotiate or taken deferrals with the expectation that rental arrears will be caught up on down the road.

After more than two months of uncertainty many insurers providing landlord insurance have now publicly committed to waiving eviction requirements and negotiated rent exclusions.<sup>19</sup> However, not all insurers have made these commitments, and some insurers may be more hard-nosed than others, because of their level of exposure to this issue - that is the amount of policies they write and the potential amount of money they need to pay out. The insurers that have made these concessions have only done so after repeated advocacy from consumer groups and pressure from media exposure.

Without certainty and clear commitments from Government and insurers, some landlords may have already taken steps to evict in order to claim on policies. This may also have scared tenants into vacating, and caused unnecessary stress and uncertainty for the many tenants experiencing financial stress. There continues to be a need for the Government or regulators to step in and issue a clear statement of expectations to the insurance industry about how to manage its rental cover claims when it announced moratorium on evictions.

Consumer advocates continue to advocate for insurers to waive their right to recover unpaid rent later, and for tenants to be aware that they have rights under the General Insurance Code of Practice about financial hardship in the event and insurer does show up later to collect a debt (insurers can exercise this right in most states for 6 years) in the future. As of 28 April in a Senate hearing the Insurance Council of Australia refused to confirm that its members would not go after tenants for their losses.<sup>20</sup>

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## Recommendation

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9. The Government should assist in coordinating solutions to address issues in tenancy and landlord insurance, including ASIC expectations of insurers with respect to their right to go after tenants in hardship for unpaid rental arrears during this period.
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<sup>19</sup> [https://www.domain.com.au/money-markets/major-insurers-waive-requirements-to-provide-financial-relief-for-landlords-during-covid-19-953284/?utm\\_campaign=featured-masthead&utm\\_source=smh&utm\\_medium=link](https://www.domain.com.au/money-markets/major-insurers-waive-requirements-to-provide-financial-relief-for-landlords-during-covid-19-953284/?utm_campaign=featured-masthead&utm_source=smh&utm_medium=link)

<sup>20</sup> <https://www.canberratimes.com.au/story/6738237/landlord-insurers-could-pursue-tenants-for-lost-rent/>

### Covid-19, life insurance and health care workers

We note that the Financial Services Council (FSC) confirmed in March that none of their life insurance members held products featuring

*no exclusions in their existing life insurance policies as at 11 March 2020 that would prevent the policy paying out for a death claim related to coronavirus, if you follow Government travel advice.*<sup>21</sup>

However it did note that if Australians have reinstated, increased or taken out new life cover since 11 March 2020 or are intending to do so, they:

*should ask [their] life insurance company or superannuation trustee when [their] new cover will start and whether there are any exclusions. ... You may be asked about your past or potential risk of exposure to coronavirus, for example, if you have recently travelled. Depending on your circumstances, the start date for your new cover might be deferred, for example for 30 days or until you have fully recovered from coronavirus if you have had it, or you might have an exclusion applied to your policy.*

Subsequent to this announcement, the FSC sought and obtained authorisation from the ACCC enable the Member Life Insurance Companies to discuss, agree and give effect to a commitment that has the purpose of assisting and supporting Australian frontline healthcare workers that may be adversely impacted by the outbreak of COVID-19 for a period of 12 months from the grant of final authorisation.<sup>22</sup> The commitment would:

*ensure that frontline healthcare workers are not prevented from obtaining life insurance cover purely through exposure, or potential exposure, to COVID19. The commitment is given in respect of new policies.*<sup>23</sup>

The reason for seeking this authorisation was clear. The underwriting of the risk of Covid-19 exposure and subsequent death necessarily would prevent health care workers being able to obtain life insurance, or act as a disincentive to continue working on the health care front line during the pandemic. The FSC wrote:

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<sup>21</sup> FSC Media Holding Statement, 27 March 2020, <https://www.fsc.org.au/resources/1991-fsc-statement-coronavirus-2/file>

<sup>22</sup> ACCC, Authorisations Register, Financial Services Council (FSC) on behalf of its Member Life Insurance Companies <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/financial-services-council-fsc-on-behalf-of-its-member-life-insurance-companies>

<sup>23</sup>Page 3, Application for interim and final authorisation under s88(1) of the Competition and Consumer Act 2010 (Cth) Lodged by: Financial Services Council (FSC) on behalf of its Member Life Insurance Companies 6 April 2020 <https://www.accc.gov.au/system/files/public-registers/documents/Application%20Received%20-%2006.04.20%20-%20PR%20-%20FSC.pdf>

*The COVID-19 pandemic has increased the demand for healthcare workers and the relevant risks taken by such workers in exercising their duties. Experience overseas, which the FSC hopes is not replicated in Australia, suggests that such workers are at a greater risk for COVID-19 illnesses. In this context, the FSC and its Member Life Insurance Companies want to ensure that frontline healthcare workers will continue to be able to access life insurance products and not face increased premiums, despite their increased risk of exposure to COVID-19.*

The FSC and Member Life Insurance Companies consider that the Commitment recognises the invaluable services provided by such workers on behalf of the broader community and provides direct support to such health workers both by providing assurances that insurance will be available and support to families and beneficiaries should the insurance be required.

...

*An industry Commitment also increases the availability of offers to relevant members of the public. The Commitment increases the likelihood of relevant offers being made available. By encouraging and facilitating material levels of adoption of the Commitment no individual insurers risk profile is likely to be materially affected by the adoption of the Commitment.*

The ACCC considered that the authorisation and measures would bring substantial benefit to health care workers allowing:

*Member Life Insurance Companies to promptly provide assurances regarding the availability of life insurance during the COVID-19 pandemic*

*increasing the availability of life insurance offers to relevant members of the public.*

*providing for a degree of financial relief for frontline healthcare workers where Member Life Insurance Companies choose not to charge a higher premium pursuant to the Proposed Conduct.<sup>24</sup>*

Financial Rights supports these measures taking place. We would however suggest that the Government needs to consider the consequences involved with respect to underwriting of future pandemic risks and their application to health workers.

The FSC and its membership should be commended for appropriately acting to prevent potential harms in underwriting for Covid-19 not just to individual health care workers but to Australian society as a whole. Without it, poor outcomes could have resulted. This however may be the case moving forward with future epidemics or pandemics.

The issue is somewhat analogous to the issues identified in the application of genetic testing to life insurance. With genetic testing a person has no control over their genetic makeup, and therefore it would be unfair to discriminate against them by using this information in life insurance underwriting. With respect to epidemics or pandemics the issue is also one of fairness or discrimination, but one that also leads to one of poor societal outcomes through its

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<sup>24</sup> [https://www.accc.gov.au/system/files/public\\_registers/documents/Interim%20Authorisation%20Decision%20-%2009.04.20%20-%20PR%20-%20AA1000494%20FSC.pdf](https://www.accc.gov.au/system/files/public_registers/documents/Interim%20Authorisation%20Decision%20-%2009.04.20%20-%20PR%20-%20AA1000494%20FSC.pdf)

application to health workers. Australian society needs health workers to engage in behaviour (ie health care work assisting pandemic patients) that in all other circumstances would be considered risky. Any market behaviour that acts in any way to prevent health care workers from taking part in this warranted behaviour or harms them financially for doing so is not an outcome that will lead to social benefits.

We therefore believe that the industry and Government needs to examine this issue and consider how this needs to be addressed moving into the future.

As with genetic testing, Financial Rights believes that given the ethical, social and moral issues involved this should be subject to government decision-making and potential intervention rather than this being left to the industry to make decisions.

## **Covid-19 and Total and Permanent Disability Insurance**

In mid-May, the FSC also announced an initiative to ensure that if people lose their job, are stood down or have reduced working hours due to COVID-19, this will not affect their total and permanent disability (TPD) cover.<sup>25</sup> The central issue here is, as FSC explains:

*Millions of working Australians have TPD cover through superannuation which pays out a lump sum if you become totally and permanently disabled because of illness or injury. ...*

*A claim for TPD is assessed on whether the person is expected to be able to work ever again. For this reason, the TPD definition used to assess a claim is based on the person's recent working arrangements. Typically, this depends on the number of hours the person was working and whether they were in casual work before the illness or injury happened. Broadly speaking, the fewer hours you work, the stricter the definition used to assess your TPD claim.*

*For most people, changes to TPD definitions happen only after their working arrangements have changed for 6 or 12 months (to cover parental leave, for example). For others, this change can happen after 3 months, depending on the particular policy wording. What this means is that some Australians who lost their job, were stood down or had reduced working hours due to COVID, could see their TPD coverage change from 11 June 2020.*

The arrangement ensures that if someone makes a TPD claim resulting from an illness or injury occurring since the pandemic has started, life insurers will assess a claim based on the insured's working arrangements as at 11 March 2020 - the date when COVID-19 was declared a pandemic. Insureds therefore keep the cover they had based on their working arrangements before the COVID pandemic declaration.

This is an acknowledgement that TPD cover is inappropriate for unemployed people and people working limited hours.

The issue with "activities of daily living" (ADL) tests have been long known, their application being against the best interests of superannuation members. It essentially acts harshly against

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<sup>25</sup> Media Release Tuesday 19 May 2020 Covid Total And Permanent Disability Claims Initiative <https://www.fsc.org.au/resources/2019-fsc-media-release-covid-total-and-permanent-disability-claims-initiative/file>

people working in intermittent, seasonal work or who have taken time out of paid employment to raise a family. It certainly acted harshly against Australians during this pandemic.

This acknowledgement of the problem by the FSC must be the starting point for further discussions between the industry, consumer groups and Government to address this issue.

We believe the government has a role to play to, at the very least, prohibit the application of these clauses under the Universal Terms within MySuper review. This current review is taking place in fulfilment of recommendation 4.13 of the Financial Services Royal Commission which recommended that Treasury, in consultation with industry, should determine the practicability, and likely pricing effects, of legislating universal key definitions, terms and exclusions for default MySuper group life policies.

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## Recommendations

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10. The Government needs to examine the ethical, moral and social impact of applying pandemic exclusions in life insurance to health care workers moving forward.
  11. The Government should prohibit the use of the more stringent eligibility criteria (including but not limited to Activities of Daily Living and Everyday Work Activities tests) for TPD insurance.
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## Concluding Remarks

Finally, we strongly endorse the recommendations made by the Consumer Action Law Centre for the Government to issue a pro-active directive banning disconnections from essential services, including energy, water and telecommunications, during the COVID-19 emergency and to enact the Small Amount Credit Contract reforms into law.

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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