

**Senate Economics Committee
Inquiry – Consumer
Protection in the banking,
insurance and financial
services sector**

Submission by Legal Aid Queensland



Consumer Protection in the banking, insurance and financial services sector

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the Senate Economics Committee Inquiry into Consumer protection in the banking, insurance and financial services sector.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ seeks to offer policy input that is constructive and based on the extensive experience of LAQ’s lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ’s Consumer Protection Unit lawyers have extensive experience providing specialist advice and representation in banking, insurance and financial services matters. The unit provides advice to clients as well as lawyers and financial counsellors throughout Queensland in relation to mortgage stress, house repossession, debt, contracts, loans, telecommunications and unsolicited consumer agreements.

Terms of Reference

- a. any failures that are evident in the:
 - i. current laws and regulatory framework.

Unfair terms in Standard Form Insurance Contracts

LAQ made a submission following the ACL Review Interim Report supporting a proposal to review the current exemption that standard form insurance contracts have from the unfair contract terms regime of the Australian Consumer Law. As stated in that submission, there is nothing unique about insurance contracts that justifies them not being subject to the same prohibition on unfair contract terms as other types of standard form contracts. We are able to make a copy of that submission available if the Committee wishes.

Small Amount Loans and Consumer Leases

LAQ clients often experience problems with small amount loans and consumer leases. These products are usually taken up by consumers who are vulnerable due to their financial circumstances or because of poor physical or mental health. In its response to the final report of the review of the small amount credit contract laws²², released on 28 November 2016, the Government supports many of the recommendations of the review in full or in part.²³ We submit that legislation giving effect to these recommendations will address some of the current detrimental impacts of small amount loans and consumer leases on consumers.

ii. enforcement of the current laws and regulatory framework, including those arising from resourcing and administration

LAQ made a submission to the review of the financial system external dispute resolution (EDR) framework supporting the vital role that financial services EDR schemes play in providing a forum that provides low cost access to justice for vulnerable consumers in the banking, insurance and financial services sectors.²⁴ We support the expansion of the current monetary and subject matter jurisdiction of financial services EDR schemes to allow small businesses, and in particular rural producers and rural small businesses, access to the current benefits provided by EDR schemes to consumers.

LAQ does not fund court actions where the legal matter has escalated beyond EDR for rural producers and rural small businesses.

b. the impact of misconduct in the sector on victims and on consumers

LAQ provides advice and assistance to consumers who have been affected by misconduct in the banking, insurance and financial services sector. In our experience the impacts on consumers of misconduct in these industries can include:

- (a) financial hardship – difficulty paying mortgages, loans, utilities and other bills while waiting for their case to be heard or to receive redress;
- (b) financial loss because the entity guilty of misconduct being in liquidation, or ceasing to trade and having no assets;
- (c) stress and resulting ill health and adverse impact on family relationships;
- (d) adverse credit reports impacting the ability to obtain credit in the future.

²² <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2016/SACC-Final-Report>

²³ <http://kmo.ministers.treasury.gov.au/media-release/105-2016/>

²⁴

http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2016/Review%20of%20the%20financial%20system%20external%20dispute%20resolution%20framework/Submissions/PDF/Legal_Aid_Qld.ashx

These issues can flow through to cause increase reliance on community and government services.

c. the impact on consumer outcomes of:
ii. incentive-based commission structures,

In LAQ's experience, incentive based commission structures can lead to poor outcomes for vulnerable consumers.

LAQ provides advice and assistance to consumers who have purchased financial products that are not suitable for them. This often arises when consumers attend bank branches seeking to access a basic banking service and staff sell them new financial products they do not need. This particularly impacts consumers who are least able to determine whether it is in their best interest to purchase financial products.

We submit that undue emphasis on meeting sales and other targets as a performance measure contributes to consumers being sold products that are not suitable for their circumstances. An important part of ensuring consumer protection in the banking, insurance and financial services sector is working with institutions to help change from a sales driven culture to a service driven culture.

e. the availability and adequacy of:
i. redress and compensation to victims of misconduct, including options for a retrospective compensation scheme of last resort

LAQ refers to its response to (a)(ii) on the importance of financial services EDR schemes in assisting to provide redress for consumers.

We have assisted consumers who have been successful in showing a company's misconduct before an EDR scheme or court but who have received no compensation because the company has ceased trading and is in liquidation with little or no assets. This lack of compensation has serious financial impacts for the consumer as the lack of financial redress from a successful case makes it difficult for the consumer to financially rebuild their lives. LAQ therefore supports the establishment of a compensation scheme of last resort to provide consumers with financial redress where they have brought a successful case against a company but have received no financial redress.

ii. legal advice and representation for consumers and victims of misconduct, including their standing in the conduct of bankruptcy and insolvency processes

LAQ has four lawyers that provide free legal assistance and representation for consumers encountering problems in the banking, insurance and financial services sector, including assistance in relation to bankruptcy. However, the demand for legal assistance services in this area exceeds availability.

There is also a legal service gap in relation to small businesses. LAQ does not provide assistance to small businesses, unless they fall within the scope of our Farm and Rural Legal Service which provides assistance to rural producers and rural small businesses.

f. the social impacts of consumer protection failures in the sector, including through increased reliance of victims on community and government services;

LAQ refers to its answer to (b) which sets out the social impacts of consumer protection failure.