

Chapter 1

Introduction

Referral and conduct of the inquiry

1.1 On 29 November 2016, the Senate referred the following matters to the Senate Economics References Committee (the committee) for inquiry and report by 28 March 2018:

The regulatory framework for the protection of consumers, including small businesses, in the banking, insurance and financial services sector (including Managed Investment Schemes), with particular reference to:

- a. any failures that are evident in the:
 - i. current laws and regulatory framework, and
 - ii. enforcement of the current laws and regulatory framework, including those arising from resourcing and administration;
- b. the impact of misconduct in the sector on victims and on consumers;
- c. the impact on consumer outcomes of:
 - i. executive and non-executive remuneration,
 - ii. incentive-based commission structures, and
 - iii. fee-for-no-service or recurring fee structures;
- d. the culture and chain of responsibility in relation to misconduct within entities within the sector;
- e. the availability and adequacy of:
 - i. redress and compensation to victims of misconduct, including options for a retrospective compensation scheme of last resort, and
 - ii. legal advice and representation for consumers and victims of misconduct, including their standing in the conduct of bankruptcy and insolvency processes;
- f. the social impacts of consumer protection failures in the sector, including through increased reliance of victims on community and government services;
- g. options to support the prioritisation of consumer protection and associated practices within the sector; and
- h. any related matters.

1.2 On 14 February 2018, the Senate granted the committee an extension of time to report by 26 June 2018.¹ On 25 June 2018, the Senate granted the committee a further extension to report by 15 November 2018.²

1 *Journals of the Senate*, No. 86, 14 February 2018, p. 2717.

1.3 The committee held three public hearings, in Sydney on 26 April 2017 and 28 June 2017, and Melbourne on 22 February 2018.

1.4 Submissions to the inquiry closed on 7 March 2017. The committee received 147 submissions, including 22 confidential submissions.

Scope and structure of the report

1.5 For most of the course of this inquiry, external dispute resolution services were provided by the government through the Financial Ombudsman Service, the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal. As such, this report focuses, where relevant, on the prior external dispute resolution arrangements. From 1 November 2018, the newly-established Australian Financial Complaints Authority replaced these dispute resolution bodies.³

1.6 This report focuses on a number of key issues in the current consumer protection system. The list of key issues is not intended to be comprehensive; rather, the report provides a 'snapshot' of concerns raised in evidence about consumer protections, or the lack thereof, in particular areas of the banking, insurance and financial services sector. Where relevant, the report references work undertaken to date by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

1.7 The report consists of five chapters:

- Chapter 1 (this chapter) provides an overview of the conduct of the inquiry;
- Chapter 2 details previous and current inquiries relevant to this inquiry's terms of reference;
- Chapter 3 outlines the current legislative and regulatory frameworks governing the protection of consumers in the banking, insurance and financial services sector, as well as government bodies responsible for oversight and external dispute resolution;
- Chapter 4 gives a snapshot of issues raised in evidence in relation to the consumer protection system and specific sectors of the banking, insurance and financial services industry; and
- Chapter 5 outlines the work of the Royal Commission into the Banking, Superannuation and Financial Services Industry, the committee's conclusions, and recommendations arising from the inquiry.

2 *Journals of the Senate*, No. 102, 25 June 2018, p. 3271.

3 In March 2018, the *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018* was enacted to create the Australian Financial Complaints Authority (AFCA). See *Corporations Act 2001*, Sect 761A; the Hon Kelly O'Dwyer MP, Minister for Revenue and Financial Services, 'Putting Consumers First: Australian Financial Complaints Authority Takes Shape', *Media release*, 1 May 2018. See also Australian Financial Complaints Authority, *About AFCA*, <https://www.afca.org.au/about-afca/> (accessed 1 November 2018).

Acknowledgements

1.8 The committee thanks all submitters and witnesses who provided evidence to the inquiry. The committee also recognises that many submitters and witnesses have experienced considerable impacts as a result of their experiences engaging with previous and current consumer protection systems in the banking, insurance and financial services sector. The majority of submissions provided to the inquiry concerned individual complaints against financial service providers or external dispute resolution services. Unfortunately, the committee is not in a position to resolve individual disputes. However, this evidence was invaluable in identifying problems in the consumer protection system, and has helped to inform the committee's conclusions.

