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ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

Submission on behalf of Consumer Action Law Centre (Part 2)

1. Introduction

1.1. This submission responds to the following questions posed by the Commissioner:

- For each of the kinds of conduct, practice, behaviour or activity identified in Part 1 of Consumer Action's submission to this Royal Commission, what are the:
  - broader cultural and governance practices that contributed to the conduct?
  - other practices (including risk management, recruitment and remuneration practices) that contributed to the conduct?
- To what extent, and in what respects, are there effective mechanisms for redress available to consumers of financial services who suffer detriment as a result of the identified kinds of conduct?

2. Drivers of misconduct or conduct falling below community standards and expectations

2.1. For the purposes of this submission, drivers of misconduct or conduct falling below community standards is categorised into the following areas:

(a) sales culture, complexity and technology;
(b) misaligned incentives (including remuneration and commissions);
(c) inadequate supervision of third party distributors;
(d) delays in regulatory reform;
(e) regulator powers and resources; and
(f) inadequate laws and avoidance practices.

2.2. *Sales culture, complexity and technology*

2.3. Much of the finance sector has demonstrated a culture that has prioritised sales over customer service. Remuneration, commission payments and targets linked to product sales have been a key feature of the sector.[1] There appear to be much more limited business incentives that ensure quality after-sales service or complaints handling. Incentivised sales targets are an impediment to achieving a goal of customer-centric and service focused banking and insurance.

2.4. Financial institutions invest many millions in researching how to sell consumers products,[2] but it seems comparatively little is invested in proactively identifying problems or potential customer harm and responding to it appropriately. Instead, it seems many of the banks and insurers are in reactive crisis-mode, waiting for enforcement action or public scandals before responding.

2.5. Treating customers fairly improves trust and confidence in the financial system, and potentially delivers long term gains to banks and insurers. Approaching banking and insurance with an ethical framework that aims to enhance

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[1] Stephen Sedgwick AO, *Retail Banking Remuneration Review* (April 2017), available at: https://www.betterbanking.net.au/wp-content/uploads/2018/01/FINAL_Rem-Review-Report.pdf.
[2] Paul Harrison, Charles Ti Gray and Consumer Action Law Centre, *Profiling for Profit: A Report on Target Marketing and Profiling Practices in the Credit Industry* (2012), available at: http://dro.deakin.edu.au/eserv/DU:30064922/harrison-profilingfor-2012.pdf.

financial wellbeing and inclusion would also have benefits for the economy and promote a more equitable society. However, these priorities appear to have been eclipsed by the short-termism of our capital markets, which has seen short-term profits and shareholder returns put before customer interests. Disappointingly, this is commonly couched as a concern to 'balance' the interests of customers and shareholders. In a competitive market, the owners of an institution should be rewarded where the institution serves its customers well—it should not be a matter of balancing stakeholders.

2.6. Consumers must make financial decisions in an increasingly complex and technology-driven market place. This has arguably exacerbated the effect of poor conduct in banking and insurance. While technology and increased consumer choice is generally seen as a positive development, academic research suggests otherwise. Professor Amelia Fletcher from the Centre for Competition Policy has found that people may be more likely to make mistakes if they are given 'too much information (information overload), too much choice (choice overload) or too little time to make a decision'.[3] A market with a large number of choices can therefore be just as inefficient as a market with few choices if consumers do not understand what is on offer, cannot easily compare different offers, or are not rewarded for making the effort to search, compare and switch.

2.7. Technology in financial services has been trumpeted as 'innovation' and 'fintech'.[4] Fintech does offer the possibility of some improved service. For example, fintech should allow information to be gathered, analysed, and shared more cost effectively. If cost reductions are passed on to consumers, this should increase the number of consumers who are considered commercially viable for financial providers (including non-profit providers) so aiding financial inclusion.

2.8. However, there is limited evidence that fintech is delivering on the goal of consumers being able to access better value, more suitable, personalised products and services.[5] Moreover, it does not appear that fintech is fundamentally 'disruptive'—for example, new forms of credit (such as 'buy now, pay later' services) are simply different forms of point-of-sale credit, with the same risks of irresponsible lending and over-indebtedness. The Reserve Bank of Australia has noted that increased choice in consumer credit has counter-intuitively pushed prices up.[6]

2.9. More consumer data than ever before is in the hands of financial services firms, and this has increased their ability to 'profile for profit'.[7] It has significantly added to the imbalance of market power between consumers on one hand, and banks and insurers on the other.

2.10. Recently announced data-related reforms intend to re-balance the relationship, making customer data more accessible.[8] However, experience at home[9] and internationally[10] suggest that these reforms will results in 'riskier' borrowers paying higher interest rates and premiums, potentially contributing to financial exclusion rather than reducing it. Price discrimination should be a cause for concern where it contributes to people on lower incomes paying higher prices than others, or where pricing discrimination negatively affects particularly marginalised groups. These are key issues of fairness and equity.

2.11. As more data becomes available, technology can also be used to identify consumers who are likely to be profitable, tailor and price products that the most profitable customers are likely to accept, and develop strategies to reduce the likelihood that the most profitable customers will close their accounts.[11]

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[3] Professor Amelia Fletcher, Centre for Competition Policy, *The Role of Demand-Side Remedies in Driving Effective Competition: A Review for Which?* (7 November 2016), p 17.
[4] Australian Treasury, *Banking on Fintech,* available at: http://fintech.treasury.gov.au/.
[5] The Financial Inclusion Centre, *Fintech – beware of 'geeks' bearing gifts?* (January 2018), available at: http://inclusioncentre.co.uk/wordpress29/our-work/publications/fintech-beware-of-geeks-bearing-gifts.
[6] Reserve Bank of Australia, *Submission to the Financial System Inquiry* (March 2014), p 162.
[7] Above n 2.
[8] Hon Angus Taylor MP, *Media release – Australians to own their own banking, energy, phone and internet data* (26 November 2017), available at: https://ministers.pmc.gov.au/taylor/2017/australians-own-their-own-banking-energy-phone-and-internet-data; Hon Scott Morrison MP, *Media release – Mandating comprehensive credit reporting* (2 November 2017), available at: http://sjm.ministers.treasury.gov.au/media-release/110-2017/.
[9] See, eg, Consumer Action, *A cautionary tale about debt consolidation* (November 2014), available at: https://consumeraction.org.au/a-cautionary-tale-about-debt-consolidation/.
[10] Sarah Farnsworth, 'Concerns new credit reporting scheme will penalise people struggling with debt', ABC (2 November 2017), available at http://www.abc.net.au/news/2017-11-02/concerns-new-credit-reporting-scheme-will-penalise-the-poor/9111432.
[11] Above n 2.

2.12. *Misaligned incentives (including commissions and remuneration)*

2.13. Sales targets, product sales commissions and product-based payments inevitably distort adviser and sales-staff behaviour, elevating the sales imperative above considerations of consumer well-being. A number of international studies have confirmed a strong correlation between target-based sales incentives and consumer harm.[12] The frequency and extent of this harm is such that the role of commissions and product-based payments, indeed the whole sales-based culture of banking and insurance, should be fundamentally reconsidered.

2.14. The existing requirement to disclose commissions to consumers[13] cannot resolve the systemic conflict created by commissions structures. Disclosure does not necessarily alert a customer that they need to proactively assess the advice they receive. For example, US research has shown that requirements to disclose mortgage broker commissions actually increased trust in brokers, when it should have led customers to be more critical about the advice they received.[14]

2.15. The Australian Banking Association's Retail Banking Remuneration Review (**Sedgwick Review**) also found that some remuneration practices 'carry an unacceptable risk of promoting behaviour that is inconsistent with the interests of customers'.[15] Following the publication of the Sedgwick Review, many banks have taken welcome steps to remove 'financial outcomes' from bank tellers' and other bank staff's performance assessment criteria.

2.16. In place of commissions and product-based payments, some banks have adopted 'balanced scorecards' to reward bank staff for performance. These scorecards are intended to define good performance and behaviour for individuals, and are not supposed to over-emphasise revenue or sales volume measures. However, conflicted remuneration is not being removed completely from Australian banks. The Sedgwick Review recommendations relating to 'balanced scorecards' allow half of the variable rewards of tellers, sellers (home lenders and others) and managers to be based on financial measures (reducing to 30 percent by 2020). There is also evidence that 'balanced scorecards' are not effective, with research suggesting that the criteria can be subjective and therefore gamed.[16]

2.17. Conflicted remuneration remains widespread outside bank branches, particularly in the mortgage broking and life insurance sectors. While there have been efforts to reform these practices in both sectors,[17] there is yet to be any research or evaluation that finds these measures have been effective. The following sections examine these two areas further, as well as add-on insurance and finance in car yards.

2.18. *Add-on insurance and finance in car yards*

2.19. The sale of add-on insurance in car yards is an example of a market driven by commissions. As noted in Consumer Action's first submission to this Royal Commission, the Australian Securities and Investments Commission (**ASIC**) has found that fierce competition between insurers for access to car yards has resulted in commissions of up to 79 percent, and has seen insurers pay four times the amount in dealer commissions as they do in customer claims.[18]

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[12] A summary of this research is available in Consumer Action Law Centre's submission to the Retail Banking Remuneration Review, p 3-5, available at: https://consumeraction.org.au/wp-content/uploads/2017/02/170212-Consumer-Action-Submission-Sedgwick-Review-Issues-Paper-FINAL.pdf.
[13] See, eg, section 942B(2)(e) *Corporations Act 2001* (Cth) (**Corporations Act**).
[14] Lacko and Pappalardo, *The effect of mortgage broker compensation disclosures on consumers and competition: A controlled experiment*, Federal Trade Commission Bureau of Economics Staff Report, February 2004, https://www.ftc.gov/reports/effect-mortgage-broker-compensation-disclosures-consumers-competition-controlled-experiment (also cited in Financial Services Authority, *Consumer Research 69: Financial Capability: A Behavioural Economics Perspective*, July 2008).
[15] Sedgwick, above n 1, p 4.
[16] Elizabeth Sheedy, 'There's no evidence behind the strategies banks are using to police behaviour and pay', The Conversation (1 February 2018), available at: https://theconversation.com/theres-no-evidence-behind-the-strategies-banks-are-using-to-police-behaviour-and-pay-91064.
[17] In life insurance, the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017* introduced a regime to phase-down the upfront commissions paid to advisers to a maximum of 60 percent, along with the introduction of a maximum rate of 20 percent for ongoing commissions. A number of industry bodies have also recently proposed a package of reforms to 'deal directly with the issues of conflicted remuneration' in the mortgage broking sector: Combined Industry Forum, Response to ASIC Report 516, available at: https://www.bankers.asn.au/images/uploads/CIF_Report_Submitted_281117.pdf.
[18] See paragraphs 2.39-2.40 of Part 1 of our Submission to this Royal Commission.

2.20. The car sales industry, in attempting to preserve this revenue stream, has pointed to the extraordinarily high percentage of total revenue earned through insurance commissions (including add-on and comprehensive car insurance). New car industry representatives have stated that 23 percent of dealership net profit before tax comes from insurance commissions.[19] The necessity of these payments for car dealers mean that concerns about the suitability of insurance products for consumers is almost non-existent.

2.21. Consumers have also been exploited through flex-commissions on finance sold through car yards. Under flex-commission arrangements, dealerships set the interest rate on a car loan, irrespective of the risk or other features of the customer or loan. Flex-commissions mean that loan interest rates essentially depend on what the customer will bear. ASIC's analysis of car financier data found that that about 15 percent of consumers were charged an interest rate of 700 basis points or more above the base rate.[20] Flex-commission arrangements are generally not disclosed to consumers.

2.22. Our experience reflects ASIC's observation that people whose loan interest rates are well above the base rate are likely to be financially vulnerable.[21] Clients of our centre have been charged car finance interest rates as high as 28 percent per annum.

2.23. ASIC has introduced a legislative instrument to place a 'cap and collar' on commissions on car yard finance, which will commence in September 2018.[22] This will mean that the maximum interest rate must be advertised, which should reduce misleading advertising. Dealers will also not be able to negotiate down the rate by more than 200 basis points. However, vulnerable people who lack the knowledge or ability to negotiate interest rates will likely continue to pay more under this approach.

2.24. There is also a significant legacy issue associated with flex-commissions which remains unresolved—that is, an unknown but presumably significant number of people have paid more for their car loans purely so dealers could enjoy higher commissions. However, ASIC has taken welcome enforcement action in relation to one warranty provider whose commissions encouraged sales staff to sell warranties at the highest possible price, breaching the prohibition on conflicted remuneration in the *Corporations Act 2001* (Cth) (**Corporations Act**).[23]

2.25. *Retail life insurance*

2.26. Commissions have also been found to significantly distort retail life insurance advice. Prior to the recent life insurance advice reforms,[24] a 2014 ASIC report found significant failings in life insurance advice. This included:

- a high prevalence of poor quality advice, with 37% of advice not legally compliant.[25]
- a very close relationship between upfront adviser commissions and poor consumer outcomes, with 96% of non-compliant advice being given by advisers paid an upfront commission. This led ASIC to conclude that an upfront commission has a 'statistically significant bearing' on the likelihood of an adviser giving poor advice.[26]
- high lapse rates due to 'incentives for advisers to write new business or rewrite existing business to increase commission income', and a correlation between high lapse rates and upfront commissions.[27]

2.27. As noted at paragraph 2.17, these reforms are yet to be evaluated for effectiveness, given the legislative changes came into effect on 1 January 2018.

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[19] Australian Automotive Dealer Association, *A91566-A91577—Aioi Nissay Dowa Insurance Company Australia Pty Ltd & Ors (Applicants)—Authorisation: Submission— Australian Automotive Dealer Association* (21 October 2016), p 11, para 6.2.
[20] ASIC, *Consultation Paper 279: Flex commission arrangements in the car finance industry* (3 March 2017), para 9 http://download.asic.gov.au/media/4172141/cp279-published-3-march-2017.pdf.
[21] Ibid, para 10.
[22] ASIC Credit (Flexible Credit Cost Arrangements) Instrument 2017/780.
[23] ASIC, *MR18-011 National Warranty Company refunds $49 million for poor car warranty sales incentives* (January 2018), available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-011mr-national-warranty-company-refunds-49-million-for-poor-car-warranty-sales-incentives/.
[24] *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017* (Cth).
[25] ASIC, *Report 413: Review of retail life insurance* (October 2014), para 151, available at: http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-413-review-of-retail-life-insurance-advice/.
[26] Ibid, para 158.
[27] Ibid, paras 10 and 11.

2.28. *Home loans*

2.29. Consumer credit products, including home loans, are carved out from the ban on conflicted remuneration that applies to some other financial products under the Future of Financial Advice (**FoFA**) reforms. ASIC's recent review of mortgage broker remuneration found that lenders paid $1.42 billion in upfront commissions to mortgage brokers in 2015, plus $984 million in trail commissions.[28] ASIC concluded that this standard model of upfront and trail commissions creates conflicts of interest. Among others, ASIC found that lenders typically see an increase in average loan flow when offering campaign-based commissions to brokers. ASIC also found that brokers continued to send approximately 80 percent of loans to the big banks, which tend to offer more attractive remuneration than smaller lenders.

2.30. ASIC also found that when taking out a home loan, broker customers generally borrowed more, had higher loan-to-valuation ratios, take out more interest only loans and pay down their loan slower.[29] These conflicts of interest increase the risk that consumers will be sold an unsuitable or more costly home loan. ASIC is currently shadow shopping mortgage brokers to provide further insights into the quality of advice provided to consumers and the impact of commissions.[30]

2.31. As a result of its 2017 review, the industry has proposed removing bonuses and other payments for brokers that write a certain volume of loans.[31] However, the industry is not proposing to directly address upfront and trail commission structures. Consumers use brokers as guides for what is often their life's most significant financial decision—buying a home. While there is limited formal research available about the quality of recommendations that brokers are providing, the available data indicates that some brokers are not recommending good quality loans.[32] See paragraph 2.71 of this submission for further discussion.

2.32. The solutions to these problems are two-fold. First, conflicted remuneration that drives poor consumer outcomes must be addressed through an industry-wide solution with strong enforcement arrangements and sanctions for non-compliance. Second, mortgage brokers must be held to higher standards to protect consumers from poor advice.

2.33. *Inadequate supervision of third party distributors*

2.34. Third-party distribution of financial products such as finance and insurance is commonplace. It is used to increase the potential customer base for a product. When poorly executed and monitored, these distribution arrangements increase the risks of misconduct and mis-selling. Some product issuers have inadequate controls in place to prevent these risks eventuating.

2.35. While the proposed design and distribution obligations[33] may address some of these issues, there appears to be insufficient vetting before credit representatives and authorised representatives are appointed. Licensees can appoint third party distributors to engage in credit activities, or deal and provide advice in financial products on their behalf by simply lodging an online form notifying ASIC. Some aggregators and dealer groups have hundreds of representatives, many of which may be located across Australia. It is unrealistic to expect licensees to be able to supervise all of these third parties effectively. If distributing financial products through 'no advice' models, it is possible that the licensee does not even need to inform ASIC of its distribution channels or salespeople.

2.36. While licensees are ultimately responsible for the misconduct of their representatives, often it can be many years before ASIC is made aware of misconduct and is able to take enforcement action. Consumer harm has often already occurred by this stage. Some third party distributors may not be considered representatives at all. In the case of finance brokers, despite clear misconduct by the broker the bank may avoid penalty and still be able to recover the amount borrowed.

[28] ASIC, *Mortgage Broker Remuneration Review: What We Found* (March 2017), available at: http://download.asic.gov.au/media/4184781/mortgage_broker_review_what_we_found.pdf.
[29] Ibid.
[30] IFA, *ASIC to shadow shop mortgage brokers* (23 January 2018), available at: https://www.ifa.com.au/news/18815-asic-to-shadow-shop-mortgage-brokers.
[31] Above n 17.
[32] CHOICE, *Mortgage broker investigation* (2015), available at: https://www.choice.com.au/money/property/buying/articles/mortgage-broker-shadow-shop.
[33] Treasury, *Design and Distribution Obligations and Product Intervention Power – Exposure Draft Legislation* (21 December 2017), available at: https://treasury.gov.au/consultation/c2017-t247556.

Case study 1: Nicola's story

Nicola is 50 years old, and suffers from chronic migraines. Nicola told us that she was, and remains, reliant on Centrelink payments for her income. In March 2014, Nicola was recommended to visit a finance broker in Melbourne, who told Nicola that he could arrange a loan of $10,000 with Westpac. Nicola wanted to obtain a loan to purchase a car. The broker walked with Nicola to the Westpac branch in Coburg, where Nicola was provided with Westpac loan documents that she signed on the spot. Shortly afterwards, she obtained a loan for $31,600 from Westpac.

In 2015, the broker in question was banned by ASIC and his company's credit licence cancelled after ASIC found that the broker had submitted false documents to secure loan applications and failed to comply with licence conditions. Despite serious questions being raised about the broker's conduct and Nicola being unable to afford the loan, Westpac sold the debt to a third-party debt collector. The debt collector proceeded to commence proceedings in the Melbourne Magistrates' Court against Nicola. We are now assisting Nicola with her dispute, which remains unresolved.

2.37. The following provides further comment about third party distributor models that raise concerns.

2.38. *Credit sold by retailers*

2.39. Retail outlets commonly introduce consumers to consumer credit and facilitate the obtaining of goods and services under a credit contract or consumer lease. However, these 'point-of-sale vendor introducers' are exempt from the requirements of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**).[34] This means that they are not subject to the standards and sanctions faced by lenders and brokers, and the monitoring and supervision by product issuers can be minimal, relative to the nature of the products and sales channels.

2.40. In 2013, it was estimated that there were between 12,000 and 12,300 retailers engaged in credit activities and benefitting from the vendor-introducer exemption.[35] The amount of credit arranged through these channels is substantial.

2.41. Research suggests that consumers who purchase credit through a retail outlet are less likely to understand the cost or terms of the finance than when they purchase from a bank directly.[36] This is because their attention is focused on the purchase of the primary good or service rather than the credit contract. This inattention gives rise to a greater risk of credit being provided when it is inappropriate for the needs of the customer.

2.42. Store credit cards are a particular example of credit arranged by vendor introducers. These cards are often white-label cards, that is, they are branded by the particular store but the credit provider is a bank, or other lender. Marketing practices of these cards are also wanting—retailers commonly offer the initial purchase at a nil or lower interest-rate (i.e. the notorious '24-months interest free' deals common in retail outlets), but credit is provided on a store card. Additional purchases on these cards commonly come at higher interest rates, and if money is still owed when the interest free period expires, interest can be back-dated from the date of purchase of the goods. Over-indebtedness in relation to such cards are common sources of complaint to our National Debt Helpline financial counsellors.

2.43. While Treasury consulted on reforms to the vendor introducer exemption in 2013, this problematic regime remains unchanged.[37] Lenders do have an ultimate obligation to lend responsibly, however the lender is unlikely to be responsible for the conduct of the vendor introducer, creating risks of inappropriate sales and a lack of sufficient redress for the consumer.

2.44. *Car yard finance*

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[34] *National Consumer Credit Protection Regulations 2010* (Cth), regulation 23.
[35] The Treasury, *The exemption of retailers from the National Consumer Credit Protection Act 2009: Discussion Paper* (January 2013), p. 3, available at: https://static.treasury.gov.au/uploads/sites/1/2017/06/POS_Discussion_paper.pdf
[36] Malbon J, *Taking Credit: Report for the Consumer Credit Code Post-Implementation Review*, (Tasmania, Department of Justice and Industrial Relations, September 1999).
[37] The Treasury, *The exemption of retailers from the National Consumer Credit Protection Act 2009: Discussion Paper* (January 2013).

2.45. Car yard finance arrangements can also fall within the 'point of sale' exemption for vendor introducers, creating similar risks to the sale of credit by retail outlets—inadequate supervision or monitoring of the conduct of those arranging the finance in the car yard. While some car dealers have their own credit license or are appointed as a credit representative, ASIC states that the majority of car dealers engage in credit activities by relying on the point-of-sale exemption.[38]

2.46. *Add-on insurance in car yards*

2.47. Even where salespeople are authorised representatives of insurers or dealers with Australian Financial Services Licences (**AFSLs**), risks remain. The car yard add-on insurance market demonstrates the impact of systemic failures to appropriately administer distribution arrangements. ASIC has plainly stated the problem:

> *"The current level of supervision and monitoring by providers of their authorised representatives is manifestly inadequate… We consider that there is a correlation between:*
> *(a) the low levels of supervision and monitoring; and*
> *(b) the greater risks of mis-selling in the caryard intermediary distribution channel, including risks that arise from the amount and form of the commissions arrangements."*[39]

2.48. A market which is heavily incentive-driven and does not have adequate controls or monitoring is a recipe for widespread misconduct and exploitation. ASIC has indicated it intends to impose increased monitoring obligations on insurers that distribute add-on insurance through car yards.[40]

2.49. *Mortgage introducers*

2.50. Consumer Action has concerns that banks and other lenders may not be adequately vetting introducers, who are paid a fee to bring a customer to the bank's home lending business. Introducers and Referrers are not required to hold a credit licence.[41] Unlicensed introducers cannot 'sell' products but they may refer customers to the bank and provide the bank with the customer's name and contact details. Introducers and referrers include, but are not limited to, financial advisers, solicitors, accountants and real estate agents.

2.51. Particular concerns relate to practices of property developers and real estate sales companies (often referring to themselves as property investment firms) paying kickbacks to mortgage brokers, financial advisers and accountants for referrals. Often, these third parties are not considered as agents or representatives of the lender, which limits the borrower's access to effective redress. These concerns are demonstrated by the following case study from the Financial Ombudsman Service (**FOS**).

Case study 2: FOS case – John[42]

John wanted to purchase a new home. The real estate agent referred him to Sam, a mortgage broker, to obtain finance. Sam asked John to sign a low documentation (low doc) application. John subsequently accepted an offer from the financial services provider (**FSP**) for a $430,000 home loan, secured by a mortgage over his home. He failed to make his loan repayments on time and the FSP started legal proceedings for possession of his home. John lodged a dispute with FOS.

John said that the FSP should not have given him the home loan because he could not afford the repayments. After John signed the loan application, Sam changed information on the loan application so that it would meet the FSP's servicing requirements. If the FSP had checked the details in the loan application with John, the FSP and John would have discovered the inaccurate information and the FSP would not have provided the loan to John.

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[38] ASIC, *Regulatory impact statement: Flex commission arrangements in the car finance market* (March 2017), para 37, available at: http://download.asic.gov.au/media/4172129/attachment-2-to-cp279-published-3-march-2017.pdf.
[39] ASIC, *Consultation Paper 294: The sale of add-on insurance and warranties through caryard intermediaries* (August 2017), paras 247 and 249, available at: http://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-294-the-sale-of-add-on-insurance-and-warranties-through-caryard-intermediaries/.
[40] Ibid, page 59, Proposal E2.
[41] Regulation 25, *National Consumer Credit Protection Regulations 2010* (Cth).
[42] Financial Ombudsman Service, *Case studies*, accessed 3 February 2018, available at: https://www.fos.org.au/resolving-disputes/case-studies/#role-of-a-broker.

[FOS] considered that the FSP was not responsible for Sam's conduct. While the FSP did not have any agreement with Sam, it did have an agreement with a mortgage manager Sam was affiliated with. In that agreement, the mortgage manager acknowledged that it was independent and did not represent the FSP. Therefore, Sam did not have any actual authority to act as the FSP's agent. There was also no information showing that the FSP had represented to John that Sam was its agent. Even though the FSP paid commission to Sam, the commissions were not enough to establish an agency relationship.

[FOS] also considered that the FSP was entitled to rely on the information in John's loan application when assessing his ability to repay his home loan. There was no inconsistency in the loan application or other information provided to the FSP had which should have caused it to check any details with John or Sam.

[FOS] concluded that the FSP had acted responsibly when it granted the home loan to John.

2.52. *Delays in regulatory reform*

2.53. Delays in regulatory reform are another driver of misconduct and conduct falling below community standards and expectations. Once an emerging problem is identified in a particular financial firm or industry, swift action is needed to avoid consumer harm and to ensure that the problem doesn't take root. Where known problems are left unreformed for years—or even decades—those engaging in misconduct have no incentive to change. Delay creates the perfect conditions for even less scrupulous operators to enter the market, as we have seen in the debt management sector. While problems can often be identified relatively early, delays in regulatory reform mean that the number of affected Australians only grows.

Example – Credit card reforms to ban unsolicited offers of credit limit increases

On 1 July 2012, a number of reforms to credit card regulation came into effect. Among other things, these reforms banned unsolicited offers to increase credit card limits. The timeline for the implementation of this particular reform is set out below:

- **2008**: The Council of Australian Governments (**COAG**) agreed to implement a two-phase plan to transfer credit regulation to the Commonwealth and introduce new Commonwealth regulation to enhance consumer protection.
- **2009**: Consumer Action publishes a report examining the consumer harm and risks associated with unsolicited offers to increase credit card limits.[43]
- **2009**: The NCCP Act was introduced and implemented as phase one of the reforms.
- **August 2010**: The Government announces its intention to ban unsolicited offers to increase credit card limits as phase two of the implementation.
- **September 2010 – February 2011**: Numerous consultations held with industry and consumer groups.
- **4 March 2011**: Treasury releases an exposure draft Bill for consultation.
- **24 March 2011**: Draft legislation introduced to ban unsolicited offers to increase credit card limits.
- **May 2011**: Economics Committee inquiry established.
- **July 2011**: Date of Royal Assent for credit card reforms.
- **July 2012**: Credit card reforms came into effect.

As noted in paragraph 3.12 of Part 1 of our submission to the Royal Commission, these reforms allowed credit card providers to obtain customer consent to continue to receive this sort of marketing. Legislation is currently before Parliament to remove this exemption.[44]

Example – Debt management firms

Delays in regulatory reform have enabled debt management firms to flourish. Despite broad consensus between consumer groups, industry associations, ombudsman schemes, regulators, academics and governments that reform is needed to prevent misconduct, we are still waiting on action.

- **2011 onwards**: Consumer advocates raise concerns about debt management firms.
- **2014-15**: ASIC undertakes qualitative and quantitative research into debt management firms.

[43] Harrison, Massi and Consumer Action, *An analysis of credit limit upselling letters* (August 2009), available at: https://consumeraction.org.au/policy-report-an-analysis-of-credit-limit-upselling-letters/.
[44] Treasury Laws Amendment (Banking Measures No. 1) Bill 2017 (Cth).

- **2015**: Academic research on credit repair industry and options for reform.[45]
- **January 2016**: ASIC publishes *Report 465: Paying to get out of debt or clear your record—The promise of debt management firms*.[46]
- **February 2016:** Experts' roundtable with 40 representatives from government agencies, regulators, industry associations, ombudsman schemes, and consumer groups. Joint communique released calling for urgent action.[47]
- **Early 2016**: The issue is referred to the Policy and Research Advisory Committee of Consumer Affairs Australia and New Zealand (**CAANZ**).
- **April 2017**: Ramsay Review makes recommendations on debt management firms.[48] The Coalition Government accepts this recommendation, noting CAANZ is currently examining the issue.[49]
- **18 May 2017**: Exposure draft legislation following Ramsay Review fails to implement recommendations on debt management firms.[50]
- **31 August 2017**: Communique from Consumer Affairs Forum meeting noted work will commence work in 2018 on the 'merits and feasibility' of bringing firms within financial services regulation and that a consumer education campaign will be developed in the interim.[51]
- **September 2017**: Legislation introduced following Ramsay Review fails to implement recommendations on debt management firms.[52] This failing is identified in joint consumer submission to Senate inquiry.[53]
- **As at 5 February 2018**:
  - The regulatory gap remains and the harm continues.
  - The federal Government has not announced scope or timeframes for further work.
  - The Policy and Research Advisory Committee of CAANZ has not publicly released a report on the progress of its work.

2.54. While there is inevitably some time between an issue being identified as causing consumer harm, and actions from regulators and policy-makers, we consider that the delays inherent in the Australian system for reform create an inexcusable risk of exacerbating consumer harm. A key problem is that these delays can allow poor business models and practices become embedded, and thus more difficult to reform. A soon as there is a constituency advocating against change, politicians in particular can become vulnerable to inaction. Rather than take an active role in shaping market development, a 'wait and see' approach can be adopted.

2.55. Internationally, parliaments have devolved greater rule making power to regulators.[54] This approach may allow for swifter effective reform. Proposed product intervention powers[55] are a step in this direction, however providing greater powers to the regulator to adopt rules with the purpose of advancing objectives set by parliament could improve the responsiveness of the finance sector to dealing with consumer harm.

2.56. *Regulator powers and resources*

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[45] Ali, O'Brien and Ramsay, 'A quick fix? Credit repair in Australia' (2015) 43 ABLR 179.
[46] ASIC, *Report 465: Paying to get out of debt or clear your record: the promise of debt management* firms (January 2016), available at: http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-465-paying-to-get-out-of-debt-or-clear-your-record-the-promise-of-debt-management-firms/.
[47] Joint Communique available at: https://consumeraction.org.au/debt-management-firms-comm/.
[48] *Review of the Financial System External Dispute Resolution and Complaints Framework* (**Ramsay Review**), Final Report (April 2017) Recommendation 10, p 202, available at: https://static.treasury.gov.au/uploads/sites/1/2017/06/R2016-002_EDR-Review-Final-report.pdf.
[49] Hon Scott Morrison MP, *Media Release – Building an accountable and competitive banking system, Attachment B: Government response to the Ramsay Review* (9 May 2017), available at: https://cdn.tspace.gov.au/uploads/sites/72/2017/05/MR044b.pdf.
[50] Treasury Laws Amendment (External Dispute Resolution) Bill 2017—Exposure Draft.
[51] CAF Communique available at: http://consumerlaw.gov.au/communiques/meeting-9-2/.
[52] Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017.
[53] Joint Consumer Submission to Senate Economics Legislation Committee, *Inquiry into Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017* (29 September 2017), available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/PuttingConsumersFirst/Submissions.
[54] Section 137A, *Financial Services & Markets Act 2000* (UK); section 1022, *Dodd-Frank Wall Street Reform and Consumer Protection Act 1010* (US).
[55] Treasury, above n 33.

2.57. ASIC undertakes a wide range of effective compliance and enforcement work. It needs, however, additional resources and powers to ensure that it can tackle challenges in a timely manner. Recent moves to introduce an industry funding model for ASIC,[56] and to introduce product intervention powers, are welcome.[57]

2.58. Currently, ASIC is unable to intervene until consumer harm has already occurred. Often misconduct has been occurring for years before enforcement action is able to be taken. While the proposed product intervention power should assist ASIC to respond more quickly to risks of consumer harm, the draft legislation has limitations. For example, interventions are to be limited for 18 months. Without permanent rule making power, poor practices may be allowed to continue.

2.59. During 2017, the ASIC Enforcement Review Taskforce consulted on a wide range of changes to enhance ASIC's regulatory toolkit.[58] Issues consulted on included licensing powers (see paragraphs 2.73 to 2.77), surveillance powers, directions powers and penalties. This work identified some important gaps in the effectiveness of the regulatory framework and reforms should be adopted as soon as possible.

2.60. ASIC's funding needs to be at a level that enables it to be a proactive regulator that responds promptly to evidence of misconduct. Additional funding is required to enable ASIC to enhance its enforcement activities, financial literacy and outreach work, and to take on cases that test the law and challenge large players in the market, such as the banks. It is imperative that ASIC be provided with a level of funding that enables it to exercise its enforcement powers effectively to protect consumers and enhance confidence in the market. ASIC must also be able to offer remuneration comparable to the private sector in order to attract and retain experienced staff.

2.61. Lack of resources can contribute to delays between when misconduct is identified and when redress occurs. Delays can also be caused by inadequate systems within licensed businesses to identify and deal with misconduct. For the purposes of this submission, Consumer Action reviewed ASIC actions from 2014 present, focusing on consumer credit and insurance. This included enforcement actions through the courts, enforceable undertakings and negotiated agreements. There are often significant delays between misconduct by financial institutions and regulatory action. Of the 37 actions we identified, the average time period from when the misconduct occurred to the conclusion of the action (or the undertaking or agreement date) was approximately five years.

2.62. *Inadequate laws and avoidance tactics*

2.63. Other drivers of misconduct and conduct that falls below community standards and expectations are inadequate laws and legal frameworks. As set out above in paragraph 2.53, delays in the law reform process can mean that consumer harm continues for years before legislation is introduced to address the underlying causes. Innovation and the use of technology by financial firms also means that legislation is failing to keep pace with the rate of change. Inadequate laws have also resulted in regulatory arbitrage, whereby firms engage in avoidance tactics to ensure that they are not captured by certain regulations.

2.64. Outlined below are several examples of inadequate laws that we consider have contributed to misconduct and conduct falling below community standards:

(a) remedies for irresponsible lending;
(b) standard for responsible lending;
(c) gaps in ASIC's licensing regime;
(d) inadequate penalties;
(e) avoidance tactics by dealer issued warranty firms; and
(f) avoidance tactics by lenders to 'gig economy' workers.

2.65. *Remedies for irresponsible lending*

2.66. Inadequate remedies available to borrowers for irresponsible lending are a key driver of misconduct in the consumer credit industry, as lenders are generally able to recover the principal amount lent regardless of whether that amount was lent responsibly. The borrower remains liable for the principal sum owed, which is often still an unaffordable

[56] *ASIC Supervisory Cost Recovery Levy Act 2017* (Cth).
[57] Treasury, above n 33.
[58] Treasury, *ASIC Enforcement Review Taskforce*, available at: https://treasury.gov.au/review/asic-enforcement-review/.

amount. While the lender is arguably returned to its original position by being able to recover the principal amount lent, the borrower may have to sell assets such as a home or car to repay this amount.

Case study 3: Sarah's story

Sarah's (named changed) husband applied for several loans during 2013 and 2014. Sarah says her husband was very overbearing and that she was pressured to sign documents, meaning she didn't read the fine print. Sarah's husband later tragically died in an accident, and it was only then that she says the true extent of their indebtedness was revealed. Sarah discovered that they had outstanding bank loans in excess of $1 million.

Sarah made a complaint to the Financial Ombudsman Service (**FOS**), which found that the lender had irresponsibly lent one loan of $240,000. However, under the FOS determination Sarah was still responsible for over $200,000 owing on that loan. The bank then sought to accelerate all of the debts, including the loan that was found to be irresponsible, meaning Sarah would have lost her family home and holiday house. Since our intervention, the lender has been negotiating with Sarah for the repayment of the debt. However, Sarah's case exposes the inadequacy of responsible lending remedies, which effectively allowed the lender to accelerate the loan and get their security back in circumstances when the loan should never have been granted.

2.67. The remedies for irresponsible lending are contained in sections 178-179 of the NCCP Act. A person can recover loss or damage that results from a contravention or commission of an offence under the NCCP Act. Generally, this loss or damage is restricted to the interest or fees paid by the consumer, but does not extend to the principal amount lent. Additional remedies are available under section 180 if the lender engages in 'unlawful credit activity', which provide that the debtor will not be liable for future payments and is entitled to recover any amounts already paid under the contract in the event of a breach. However, 'unlawful credit activity' applies to limited offences under the Credit Act: engaging in unlicensed credit activity and providing short-term credit for a term of less than 16 days.[59] If the approach taken under section 180 was applied to responsible lending breaches, lenders would have a greater incentive to comply. Importantly, debtors would have greater ability to seek redress, as currently many debtors do not to pursue their claim or seek hardship support alone.

2.68. *Standard for responsible lending*

2.69. The standard for responsible lending, particularly for mortgage brokers, is inadequate and is a driver of conduct that does not meet community expectations. Under the NCCP Act, lenders and brokers must complete an assessment as to whether a loan is 'not unsuitable' for a consumer, having regard to their requirements and objectives, and ability to meet repayments without suffering financial hardship. In undertaking this assessment, they must make reasonable inquiries into about the consumer's requirements and objectives and financial situation, and take reasonable steps to verify the consumer's financial situation.

2.70. According to ASIC, making a preliminary or final assessment requires lenders and credit assistance providers to take 'active steps' to form a reasonable view about whether the contract is 'not unsuitable' for the consumer. However, as noted in Part 1 of our submission, it is not uncommon for these assessments to now be completed using automated processes that arguably do not meet these obligations.[60] Further, while ASIC's regulatory guidance is clear that the use of expense benchmarks is not a replacement for making inquiries about a particular consumer's current income and expenses, nor a replacement for an assessment based on that consumer's verified income and expenses,[61] the use of benchmarks in this manner is common.

2.71. The 'not unsuitable' standard is also arguably not in line with community expectations about how they will be treated by their lender or finance broker. Particularly in the mortgage broking market, consumers often expect that brokers are acting as trusted advisers and helping them to get the best deal. This perception is arguably promoted by the industry itself. For example, the Mortgage and Finance Association of Australia website claims that 'Finance Brokers have a duty of care to provide the best possible advice to clients' and that 'finance brokers often can offer you the best option'.[62] However, the reality is that mortgage brokers are not required by law to act in a borrower's best interests. This mismatch in expectations is problematic and poses a risk of consumer harm.

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[59] Also relates to providing credit assistance in relation to short-term credit.
[60] ASIC, *RG 209: Credit licensing: responsible lending conduct* (November 2014), p 30, available at: http://www.asic.gov.au/media/2243019/rg209-published-5-november-2014.pdf.
[61] Ibid, para 209.105.
[62] See https://www.mfaa.com.au/ and https://www.mortgageandfinancehelp.com.au/first-home-buyer-news/can-finance-broker-get-you-better-deal/.

2.72. *Gaps in ASIC's licensing regime*

2.73. The Australian Credit Licence (**ACL**) and AFSL regimes enable ASIC to act as a 'gatekeeper' to the industry. ASIC's powers in this area need to be strengthened in order to keep unscrupulous traders from entering the market and being legitimised by holding a licence.

2.74. An example of the misconduct that can occur in the absence of licensing involves the debt management industry. There is no fit-for-purpose regulation of debt management firms. While some firms are lightly regulated by the Australian Finance Security Authority (**AFSA**) for the administration of debt agreements, or by ASIC if they also provide consumer credit, most firms are not subject to any specific regulation beyond the general consumer law. These unqualified, unlicensed companies often use heavy, emotional and targeted advertising to promise a 'life free from debt'. As ASIC found:

> *Barriers to entry for firms providing debt management services are low. Firms are not required to satisfy threshold requirements (such as 'fit and proper' persons tests), satisfy competency standards, meet conduct of disclosure obligations, manage conflicts of interest or belong to an EDR scheme to resolve complaints.*[63]

2.75. It is not just unregulated firms falling through the licensing cracks. Firms with a history of misconduct can be granted a licence. One such example is consumer car finance and leasing firm Motor Finance Wizard (**MFW**).[64] Consumer Action and other advocates raised significant concerns about MFW's conduct since 2007, which included the apparent targeting of low income and vulnerable consumers, the charging of high costs for low value vehicles and, in some cases, the use of high pressure sales techniques and the supply of poor quality vehicles.[65] In 2011, the Victorian Civil and Administrative Tribunal (**VCAT**) found that MFW's contract was unjust, its conduct was misleading, deceptive or unconscionable, and that it had imposed a finalisation amount under the lease which was unenforceable because it constituted a penalty.[66] Despite these findings, MFW was granted a credit licence in 2011. Subsequent to this, Consumer Action has continued to receive many complaints about MFW's practices. In 2017, MFW was required by ASIC to repay over $11 million in remediation to vulnerable consumers due to responsible lending concerns.[67] In our view, this consumer harm may have been avoided if MFW was not granted a licence in 2011, or had its licence revoked following evidence of misconduct. MFW is still fully licenced to engage in credit activities as a credit provider.

2.76. MFW is a non-bank financier, and appears to fall outside the purview of the Royal Commission's inquiries. However, it is an example of the inadequacies of the licensing framework that applies to institutions more broadly. A licence should be a privilege and not a right. ASIC's powers to revoke and vary licences should be strengthened, to enable the regulator to take swifter action to prevent further consumer harm.[68]

2.77. *Inadequate penalties*

2.78. The Financial System Inquiry (**FSI**) conducted in 2014 concluded that the maximum penalties in financial sector laws were unlikely to deter misconduct by large firms and recommended substantially increasing civil and criminal penalties. The Government accepted the FSI's recommendations and in its response to the FSI's final report said that it would review ASIC's enforcement regime, including penalties. The ASIC Enforcement Review Taskforce has identified three key problems with the current penalty regime: (a) the variety of penalties available is inadequate;

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[63] ASIC, above n 45, page 5.
[64] Trading as DTGV1 PTY LTD.
[65] Inguanzo S, 'Centre lays down dealership law, Dandenong Star (3 July 2008), available at: https://dandenong.starcommunity.com.au/journal/2008-07-03/centre-lays-down-dealership-law/.
[66] *Walker v DTGV1 Pty Ltd* (Credit) [2011] VCTA 880.
[67] ASIC, *17-150MR Motor Finance Wizard to pay over $11m in remediation over responsible lending* concerns (24 May 2017), available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-150mr-motor-finance-wizard-to-pay-over-11-million-in-remediation-over-responsible-lending-concerns/.
[68] Treasury, *ASIC Enforcement Taskforce: Strengthening ASIC licensing powers* (June 2017), available at: https://treasury.gov.au/consultation/strengthening-asic-licensing-powers/.

(b) some penalties are too low to act as a credible deterrent; and (c) some penalties are inconsistent with the penalties for equivalent Commonwealth and State provisions.[69]

2.79. The ASIC Enforcement Review Taskforce has proposed that civil and criminal penalties be significantly increased, with companies to face criminal fines of $9.45 million, three times benefits gained or 10 percent annual turnover for criminal offences. Importantly, the Taskforce proposed that ASIC also be empowered to recover the profit gained or loss avoided as a result of the legal breach to make sure individuals do not profit from misconduct. These are known as 'disgorgement remedies'. Disgorgement remedies are particularly important, as until now penalties can be easily outweighed by the profits earned by the business.

2.80. Increased maximum penalties for contravening financial services are essential. Penalties must be set at a level to act as a credible deterrent against misconduct, and not just be factored in simply as the cost of doing business. Ministers have already accepted that penalties for breaching the Australian Consumer Law need to be increased substantially,[70] and this needs to be reflected in financial services and credit.

2.81. *Avoidance tactics: dealer-issued warranty companies*

2.82. As noted above, regulatory gaps can encourage avoidance tactics by financial services firms. Once example of this is the sale of dealer-issued extended warranties. Dealer-issued extended warranties sold by car dealers are purported to be ‘issued’ by the dealership and ‘administered’ by a warranty company. Because they are said to be issued by the retailer, they may fall within the incidental product exemption under the Corporations Act, and not be regulated as financial products.[71] Complaints made through our DemandARefund.com website indicate that these warranties are widespread in car dealerships throughout Australia. The current status of these products means that:

- dealers do not need to be members of an external dispute resolution (**EDR**) scheme in the way that financial product issuers are required to be, therefore customers cannot access free and relatively swift EDR if a dispute arises, and
- ASIC’s proposed requirements for the sale of add-on insurance products in car yards will not apply to the sale of these products.

2.83. In substance, these are financial products issued by the warranty company. This is an example of providers structuring products and practices to avoid regulation. It also means that the impact of ASIC’s work on car yard add-on insurance sales may be limited, despite the best endeavours of the regulator.

2.84. *Avoidance tactics: lending to gig economy workers*

2.85. An enduring area of complaint to Consumer Action involves lenders entering into credit contracts with vulnerable people purporting to be for a business purpose when the lender is on notice that:

- the person does not currently operate a business;
- the person has never operated a business; or
- the person is intending to use the vehicle solely or predominantly for personal use.

2.86. This conduct appears be increasing in prevalence with the growth of the 'gig' economy, where consumers may purchase a vehicle partly for business purposes (for example, for ridesharing or food delivery) or be encouraged to state this as the loan purpose on application forms. Complaints indicate some brokers and car yards are suggesting consumers apply for loans with ABNs to improve the likelihood of their loan application being approved, or suggesting that an ABN is required as part of the loan application process. This appears to be an avoidance tactic designed to circumvent consumer credit laws. Please refer to Case Study 4 in Part 1 of our submission for an example of this conduct.

2.87. A number of calls from consumers to the National Debt Helpline also suggest that they are taking out unaffordable car loans/leases for ‘business purposes’ to become ridesharing drivers. We are concerned that borrowers are

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[69] Treasury, *ASIC Enforcement Taskforce: Strengthening Penalties for Corporate and Financial Sector Misconduct* (October 2017), available at: https://static.treasury.gov.au/uploads/sites/1/2017/10/c2017-t232150.pdf.
[70] Hon Michael McCormack MP, *Media release – Consumer Affairs Forum delivers for consumers* (1 September 2017), available at: http://mfm.ministers.treasury.gov.au/media-release/115-2017/.
[71] Under section 763E of the Corporations Act.

entering these transactions without a complete understanding of their liabilities or the likely income earning potential of ride sharing schemes. For example, car financier Splend suggests drivers will earn estimated gross earnings of $1,269 per week after ridesharing app costs and fuel, but it is not clear what assumptions have been made for the purposes of this estimate.[72] Fairfax has also reported on claims Uber was partnering with subprime car financers.[73]

3. Effectiveness of redress mechanisms

3.1. Complete redress where harm is incurred is necessary not only for individual justice but for well-functioning markets. Where consumers cannot easily complain about poor treatment and seek redress, dishonest traders hold a competitive advantage over more responsible traders. Poor business conduct is a drag on efficient markets. Accessible and effective dispute resolution, active regulators and ready access to legal support improves the ability to hold poor business conduct to account and reduces the incentives for poor conduct.

3.2. The following section provides comments about the effectiveness of the consumer redress framework, including:
- (a) complaints and external dispute resolution framework;
- (b) uncompensated loss;
- (c) regulator remediation programs;
- (d) courts and class actions; and
- (e) access to financial counselling and legal assistance.

3.3. *Complaints and external dispute resolution framework*

3.4. One of the more significant advances in consumer protection in the past 20 years has been the establishment of mandatory EDR schemes in many industry sectors. EDR in the financial system has provided access to justice for hundreds of thousands of consumers who would have been unable to resolve disputes if they had to rely on existing courts and tribunals, which are expensive, slow, risky and largely inaccessible without legal representation.

3.5. There are, however, many ways in which dispute resolution must be enhanced to address community concerns. These concerns set out in detail in a series of joint consumer submissions to the recent Ramsay Review.[74] This was a timely opportunity to evaluate the effectiveness of the current non-Court framework for dispute resolution, which comprises the Financial Ombudsman Service (**FOS**), Credit and Investments Ombudsman (**CIO**), and Superannuation Complaints Tribunal (**SCT**).

3.6. We strongly support the considered and sensible recommendations of the Ramsay Review. The Government accepted[75] the recommendations of the Ramsay Review and has commenced implementation.[76] This includes:
- establishing a single external dispute resolution scheme for all banking, insurance and superannuation complaints, the Australian Financial Complaints Authority (**AFCA**), to replace FOS, CIO and the SCT;
- providing enhanced access to redress through higher monetary limits and compensation caps for consumers and, in particular, small business complainants;
- strengthening ASIC's oversight of EDR with a general directions power to allow it to compel performance from the AFCA if it does not comply with legislative and regulatory requirements; and
- improving the transparency and accountability of complaint-handling by financial firms by introducing an internal dispute resolution reporting regime.

3.7. These are promising developments. Consumer advocates have been strong supporters of the move to a single EDR body for all financial disputes for many years. Once established, AFCA should remove inconsistency and confusion caused by gaps and overlaps between FOS, CIO and the SCT. It will also remove competition between

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[72] https://www.splend.com.au/.
[73] Wilkins G, 'Uber battles claims of subprime car finance', Fairfax Media (10 June 2016), available at: http://www.smh.com.au/business/consumer-affairs/uber-battles-claims-of-subprime-car-finance-20160523-gp1vbe.html.
[74] Ramsay Review, above n 47.
[75] Morrison, above n 48.
[76] Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017; see also Treasury consultation on Establishment of the Australian Financial Complaints Authority (November 2017): https://treasury.gov.au/consultation/c2017-232832/.

EDR schemes, which only serves the interests of firms, not consumers.[77] Importantly, AFCA can extend the benefits of free, fair, and fast external dispute resolution to superannuation consumers for the first time.

3.8. AFCA's terms of reference will be crucial to its success, and whether or not it can a provide fair, fast and accessible service to help people resolve disputes against their financial firms. The terms of reference and operating guidance must build on and improve the beneficial features of the existing EDR framework that have resulted from years of continuous improvement and consumer advocacy. Our submission to the recent Treasury consultation on the establishment of AFCA identifies some of the most important features of an effective and accessible external dispute resolution scheme that must be retained.[78]

3.9. However, the following problems are likely to remain outstanding even after implementation of these reforms.

- *Monetary limits and caps for consumer disputes*: While consumer advocates are very supportive of increased monetary limits and compensation caps that have been announced for AFCA,[79] we maintain our recommendation that the appropriate general monetary limit and compensation cap is $2 million. A higher compensation cap is needed considering rising house prices (particularly in Sydney and Melbourne) and the needs of the rapidly increasing number of consumers living in multi-dwelling communities, where some insurance claims are likely to be made by the body corporate in relation to common property and one or more individual dwellings. Sub-limits must also be raised significantly, particularly the limit on third party motor vehicle insurance and consequential loss. Consequential losses due to misconduct by financial firms can have disastrous impacts on people, including the loss of a home, relationship breakdown, and mental and other health issues.[80] Given these serious and often lasting impacts, the sub-limit on consequential financial or non-financial loss of $3,000 at FOS and CIO is grossly inadequate.[81]

- *Gaps in EDR membership*: Current gaps in membership for small business and managed investment lenders, debt management firms,[82] debt agreement administrators and emerging products like fintechs and interest-free finance providers create real barriers to redress. Similarly, gaps in relation to dealer-issued warranties will remain (see paragraph 2.81).

- *Power to compel documents and information*: FOS and CIO currently have the power to request information and documents from parties and, if not provided, make an adverse inference. Consumer advocates have raised concerns that, in practice, the schemes tend not to use these powers. Even when the schemes do request documents, FSPs do not always provide the relevant information or documents. This is problematic where the documents held by a FSP are needed to prove its unlawful conduct or enable the EDR scheme to make appropriate findings of fact and come to a fair and just determination. Consumer advocates support new powers and practices for AFCA to overcome these difficulties.

- *Inconsistent outcomes for represented and unrepresented consumers*: Consumer advocates are concerned that consumers without access to free legal or financial counselling advice or representation can receive inferior outcomes.[83] Please refer to our comments at 3.41 to 3.45.

3.10. *Uncompensated loss*

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[77] Ramsay Review, above n 47, p 9.
[78] Joint Consumer Submission to The Treasury, *Establishment of the Australian Financial Complaints Authority – Consultation Paper* (November 2017) p16-8, available at: https://policy.consumeraction.org.au/2017/11/29/joint-submission-establishment-of-the-australian-financial-complaints-authority/.
[79] The Government has announced a monetary limit of $1 million and a compensation cap of $500,000 for consumer complaints: Hon Kelly O'Dwyer MP, *Media Release – Putting consumers first – improving dispute resolution* (14 September 2017).
[80] See e.g. See Joint consumer submission to the Senate Economics References Committee Scrutiny of Financial Advice Inquiry, *Consumer Submission in response to the St John Report on Compensation Arrangements for Consumers of Financial Services* (July 2012); ASIC, Report 240, *Compensation for retail investors: the social impact of monetary loss* (May 2011).
[81] Joint Consumer Submission, above n 77, p 3.
[82] The Government accepted Ramsay Review Recommendation 10 that all debt management firms be required to join an EDR scheme: see Morrison, above n 48. However, at the date of this submission there is no mechanism to enable this to occur.
[83] Joint Consumer Submission to Ramsay Review Issues Paper (10 October 2016), pp 9-10, 43-5, available at: https://consumeraction.org.au/wp-content/uploads/2016/10/EDR-Review-Joint-consumer-submission-1.pdf.

3.11. A series of financial scandals have left many Australians out of pocket and in some cases, resulted in the loss of the family home or a secure retirement. Scandals have not just occurred in relation to financial advice; many people have suffered uncompensated loss from the mis-selling of complicated investment products, collapse of managed investment schemes and predatory conduct by consumer credit providers. When the loss goes uncompensated, the impact on individuals and families can be severe, with flow-on costs for the community, government and trust in financial firms.

3.12. It is existing government policy that consumers should be compensated where they have suffered losses due to breaches of financial services law. This is implemented through the requirement in financial services legislation that requires licensed businesses to have arrangements for compensating consumers.[84] The law requires that this is generally satisfied through the holding of professional indemnity (**PI**) insurance.

3.13. The main circumstance leading to an uncompensated loss is insolvency of the firm. Where a licensee is insolvent (or missing), it can lack adequate PI insurance. Some of the factors as to why PI insurance cover may not result in consumers receiving compensation include:

- the total funds available under insurance may not cover the full award of compensation;
- insurance may not cover the conduct which is the subject of the award of compensation; and
- the amount of compensation awarded may be below the excess under the insurance policy.

3.14. The compensation requirements in the credit industry are even weaker than in financial services. Not all credit providers are required to have a PI insurance policy. Unless a credit licensee provides ‘credit assistance,’ it is merely required to have 'adequate compensation requirements'. Credit licensees are required to verify their compensation arrangements at the time they apply for their licence, which tends to be a multiple of their average expected loan or lease amount. However, ongoing compliance is only monitored by way of the annual compliance certificate, in which the credit provider self-certifies that they are compliant. The NCCP Act requirement for a credit licensee to have 'adequate compensation requirements' is therefore meaningless from a consumer compensation perspective, as the regulator may not discover compensation arrangements are inadequate until after the business becomes insolvent.

3.15. Other than insolvency, circumstances leading to ineffective redress include:

- where a firm is trading while unregistered or unlicensed, and is therefore not required to be a member of an EDR scheme;
- where a firm has been expelled from an EDR scheme and has not become a member of the alternative scheme;
- where a consumer has commenced a dispute in EDR, but the EDR scheme did not make a determination prior to the member leaving or being expelled from the EDR scheme;
- where a firm has closed down (not necessarily becoming insolvent) and is uncontactable; and
- where new business models emerge to exploit gaps in the regulatory framework, such as debt management firms, and there is no licensing requirement to maintain membership of an EDR scheme.

3.16. The impact of uncompensated losses on Australians has been well documented, including in previous consumer submissions to the Ramsay Review, consumer submissions to and the report of the Richard St John Review,[85] and ASIC Report 240, *Compensation for retail investors: the social impact of monetary loss*.[86] Uncompensated losses arising from FSP misconduct can cause a range of financial and non-financial losses, including:

- the financial, emotional and social costs to the individual consumer and their family—for example, ASIC Report 240 found that 17 percent of people affected by uncompensated losses were living below the poverty line and had either lost their home or were perilously close to losing it;
- impact on the community generally, particularly for communities with a significant cluster of victims; and
- costs to the government and community in increased welfare and health services, such as previously self-funded retirees become reliant on the aged pension.

[84] Section 48, NCCP Act; s 912B, Corporations Act.
[85] Joint consumer submission, *Response to the St John Report on Compensation Arrangements for Consumers of Financial Services* (July 2012); Australian Government, Compensation Arrangements for Consumers of Financial Services: A Report by Richard St John (April 2012).
[86] ASIC, Report 240, *Compensation for retail investors: the social impact of monetary loss* (May 2011).

3.17. Apart from the devastating impact on affected people, uncompensated losses also damage trust and confidence in the financial system as a whole. The FSI stated that 'confidence and trust in the system are essential ingredients in building an efficient, resilient and fair financial system that facilitates economic growth and meets the financial needs of Australians.'[87] The damage is exacerbated where the consumer has spent considerable time and energy pursuing a meritorious complaint through an EDR scheme—or worse, through the expensive court process—only to be left uncompensated.

3.18. It is critical that the establishment and design of a last resort compensation scheme builds trust and confidence in the financial sector as a whole. To do so, the compensation scheme must be broad in its scope. It should apply to all financial service providers, including credit licensees and operators of managed investment schemes. Such a scheme should be accessible to individuals and small businesses with unpaid EDR determinations, or court or tribunal orders. Consumer advocates have labelled a last resort compensation scheme is 'the missing piece of the necessary regulatory architecture for financial services'.[88]

3.19. The Supplementary Final Report of the Ramsay Review considered this issue in detail, and recommended the establishment of a compensation scheme of last resort that is initially restricted to financial advice failures and certain financial products.[89] While we support many of the findings of this review, we disagree that a scheme should initially exclude credit.

3.20. Access to effective redress for misconduct in the financial system should not depend on whether or not financial advice was involved. From a consumer's perspective, it matters little whether their uncompensated loss arises out of financial advice or another financial product or service—what matters is that despite a meritorious complaint, their loss remains uncompensated.

3.21. Credit providers and mortgage brokers should be included in the scheme as these types of disputes can often affect particularly vulnerable consumers. The below case study demonstrates this.

Case study 4: Carol's story

In early 2012, Carol (name changed) approached a 'rent-to-buy' caryard to trade in her old car and purchase a larger car. At the time, Carol was living in emergency accommodation and supporting three children. She had limited experience with complex transactions. Due to misrepresentations by staff members, Carol believed that she was buying a car under finance. She traded-in her old vehicle as part of the deal. However, the financial service provider (**FSP**) claimed that the agreement was for short-term rental only. At the end of 2012, the FSP repossessed the new car. The FSP sold both her new car and her old car. Carol lodged a dispute with FOS. In 2014, FOS made a determination in favour of Carol, finding that the FSP had engaged in misleading or deceptive conduct, irresponsible lending and inappropriate debt collection. Carol was awarded over $10,000 in compensation.

The FSP did not pay Carol. Having lost both the new and old cars, Carol was left with no car and no compensation.

At the end of 2015, FOS obtained an order for specific performance of the tripartite contract between it, the FSP and Carol in the Magistrates' Court of Victoria in respect of a number of unpaid determinations, including Carol's. The total order against the FSP was for over $50,000. The FSP is insolvent and did not pay.

In Victoria, the Motor Car Traders Guarantee Fund may pay compensation to a consumer as a result of a motor car trader's failure to satisfy a court order. In Consumer Action's view, the FSP met the definition of a 'motor car trader' under the Victorian legislation.

Consumer Action assisted Carol to make a claim to the Motor Car Traders Guarantee Fund. The Fund refused the claim on three grounds:

[87] Financial System Inquiry, Final Report (December 2014), page xv, available at: http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf.
[88] Joint consumer submission, *Submission to Senate Economics Reference Committee on last chance compensation* (5 May 2015), available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Scrutiny_of_Financial_Advice/Submissions.
[89] Ramsay Review, *EDR Review Supplementary Final Report* (December 2017), available at: https://treasury.gov.au/publication/supplementary-final-report/.

1. The FSP was not a Motor Car Trader under the Act.
2. The loss did not arise from a failure to satisfy a Court Order, but rather the FSP's breach of its contract with FOS.
3. The Court Order arose from the provision of credit not motor car trading.

Carol remains uncompensated. Consumer Action assisted two other people with unpaid determinations against the same trader as Carol, who also remain uncompensated. Carol, left without her car and without any compensation, says this experience 'left a massive financial impact and was incredibly stressful.'

3.22. In addition to the establishment of a compensation scheme of last resort, legacy unpaid EDR determinations must be paid, either as part of such a scheme or a separate one-off levy on industry.[90] Unpaid FOS and CIO determinations totalled $14,146,094 as at 30 June 2017. This is a key problem that continues to impact on those affected and reduce trust and confidence in the EDR framework and the financial system generally, particularly where people have invested time, energy and money into dispute resolution process that has been futile, as in Carol's case. In addition to legacy EDR determinations, the Ramsay Review found that there is a strong case in considering providing access to redress for past disputes in certain circumstances, for example, where the firm was no longer a member of an EDR scheme so a complaint could not be made.[91]

3.23. *Regulator remediation programs*

3.24. There has been an increasing focus on consumer remediation by ASIC in its enforcement work. For example, in the 2015-16 financial year, ASIC secured over $200 million in compensation and remediation for consumers and investors across the areas it regulates.[92]

3.25. This has been a very welcome development and has contributed to much more redress being provided to consumers than previously. This focus on remediation also aligns with the policy underlying provisions in the ASIC Act and the NCCP Act which, for example, require courts to give preference to making an order for consumer compensation if a wrongdoer has insufficient financial resources to pay a pecuniary penalty (or fine) and compensation.[93]

3.26. Much of this remediation has been through enforceable undertakings or through negotiation, in lieu of other enforcement proceedings such as criminal action or seeking a civil penalty. While ASIC also has powers to begin representative action to recover damages for people who have suffered loss, given ASIC has been largely able to obtain consumer compensation through negotiated mechanisms, this power is rarely used. ASIC states it will use enforceable undertakings if 'it provides a more effective regulatory outcome than non-negotiated, administrative or civil sanctions'.[94]

3.27. Remediation programs have been effective in delivering compensation to consumers. However, there are a number of limitations in this framework.

3.28. First, while ASIC has released guidance on its expectations of remediation programs, this guidance is limited to financial advice licensees.[95] This guidance is very helpful to stakeholders about considerations and expectations for remediation programs. It includes issues such as the scope of a program, timeframe, the adequacy of resources to manage remediation, the involvement of an independent person/expert, effective communication with consumers, and external review. ASIC states that the principles in the guide are applicable to review and remediation that is not related to personal financial advice, which would include lending and other areas within ASIC's regulatory remit.

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[90] Ibid, Observation 1.
[91] Ibid.
[92] ASIC, *Submission to Senate Inquiry into Consumer Protection in the Banking, Insurance and Financial Services Sector* (March 2017), p 71, available at: http://download.asic.gov.au/media/4536718/asic-submission-consumer-protection-in-the-banking-insurance-and-financial-services-sector-march-2017.pdf.
[93] Section 12GCA, ASIC Act; section 181, NCPP Act.
[94] ASIC, *RG100 Enforceable undertakings* (February 2015), para 100.16, available at: http://download.asic.gov.au/media/2976014/rg100-published-19-february-2015.pdf.
[95] ASIC, *RG256 Client review and remediation conducted by advice licensees* (September 2016), available at: http://www.asic.gov.au/media/4009895/rg256-published-15-september-2016.pdf.

3.29. Second, given remediation programs are a negotiated outcome, ASIC may be limited by the strength of its negotiating position (for example, by the evidence available to support the alleged wrongdoing and customer loss). This may mean that there are limitations in the scope of remediation because there must be agreement by the wrongdoer.

3.30. In 2017, the ASIC Enforcement Taskforce published a consultation paper noting this issue and stated that difficulties can arise where a wrongdoer has made appropriate amendments to its systems and processes to address how a breach occurred but has not established a remediation program.[96] While this is not stated in ASIC's Enforcement Policy, it may be that in such circumstances ASIC is less willing to take punitive court action and thus their negotiating position is weakened.

3.31. The ASIC Enforcement Taskforce proposed an enhanced directions power for the regulator which would allow it to direct an financial services or credit licensee to, inter alia, establish a program to assess claims for restitution and compensation to customers.[97] This would be a welcome enhancement to strengthen the ability of ASIC to seek remediation.

3.32. Examples of welcome and important remediation programs that have not been able to provide adequate or complete solutions to redressing customer loss include:

- Motor Finance Wizard:[98] contracts where consumers managed to make repayments for the initial 12 months are excluded from remediation (even though some of these contracts may have caused substantial hardship).
- BMW Finance:[99] consumers have complained of delays in the administration of the program; and
- Cash Converters:[100] redress was limited to those that had taken out loans in-store, rather than online.

3.33. These type of enforcement actions can be very effective in changing conduct through, for example, the appointment of independent compliance experts and other mechanisms. They have also facilitated redress for many thousands of consumers who would otherwise face significant hurdles in obtaining compensation. However, due to limitations described at paragraph 3.27 to 3.30, they are unable to offer comprehensive consumer redress.

3.34. ASIC's add-on insurance remediation schemes, which commenced in August 2017, are another very welcome development but not an entire solution to redress.[101] The refunds agreed to by insurers cover only certain classes of consumers who were patently mis-sold add-on insurance, and some may only be eligible for partial refunds. There will be people who are not eligible for refunds under the ASIC schemes, but who may nonetheless legally be eligible for full refunds, because the sale of insurance involved unconscionable conduct or misleading and deceptive conduct. These arrangements are negotiated outcomes only, not enforceable undertakings, which may limit the public accountability of the insurers in question.

3.35. *Courts and class actions*

3.36. Courts and class actions are a very important part of the consumer redress framework. Class actions in particular provide an important means for people to band together to pursue justice when companies engage in widespread violations of the law. For this reason, we strongly support a facilitative regime for class actions. Such a regime should avoid counterproductive barriers that stop people from being able to exercise their rights.

3.37. Class actions can be an efficient mechanism to enable redress for many people affected by the same wrongdoing, compared to those individuals seeking redress separately. It is, of course, highly unlikely that every affected

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[96] Treasury, *ASIC Enforcement Review Taskforce: ASIC's Directions Powers* (November 2017), available at: https://treasury.gov.au/consultation/c2017-t234325/.
[97] Ibid, Position 1.
[98] ASIC, *Enforceable Undertaking – Affordable Car Loan Pty Ltd & ors*, May 2017, available at: http://download.asic.gov.au/media/4266959/029490310.pdf.
[99] ASIC, *16-417MR ASIC action sees BMW Finance pay $77m in Australia's largest consumer credit remediation* program, 6 December 2016, available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-417mr-asic-action-sees-bmw-finance-pay-77-million-in-australias-largest-consumer-credit-remediation-program/.
[100] ASIC, *16-380MR Cash Converters to pay over $12m following ASIC probe* (9 November 2016), available at: http://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-380mr-cash-converters-to-pay-over-12m-following-asic-probe/.
[101] See para 2.43 of Part 1 of our submission to this Royal Commission.

individual would have the resources or capacity to seek individual redress. Given this, class actions can provide accountability for wrongdoing—they can ensure that the full scope of wrongdoing is assessed and remedied by a court. This benefits not only the class, but the fairness and efficiency of markets generally. Competitors of wrongdoers aren't disadvantaged for complying with the law.

3.38. Consumer Action acknowledges that in some circumstances, class actions can operate to exclude some parties from access to justice. For example, in the context of the NAB bank fees class action settlement, the parties agreed to a process of opening and closing the class to facilitate settlement. This meant that affected people were required to register with the funder of the class action in order to benefit from the settlement. Our concern was that many otherwise eligible claimants would miss out on participating in the settlement because they were unaware of the need, or were unable, to take steps to register. We were particularly concerned about lower income or otherwise disadvantaged people who were systematically charged penalty fees by banks. These people are unlikely to have responded to newspaper advertising alerting them to the class action and thus, through no fault of their own, missed out on the settlement.[102] Greater court oversight or other mechanisms may be required to ensure the interests of class members are considered at all stages of class action litigation.

3.39. A barrier to commencing public interest litigation, particularly in the context of cases which relate to private rights, is the risk of adverse costs orders. In Consumer Action's experience, the prospect of adverse cost orders can act as a deterrent for our clients in pursuing legal action. This risk arises for our clients if they challenge a trader in lower courts and are successful, but the trader then appeals to a superior court. If the trader wins the appeal, a costs order may be made against the consumer which they are unable to pay. The risk is particularly present where the claim relates to an area of law that is unclear and, if the claimant is successful, will have implications for the viability of the relevant trader's business model.

3.40. Efforts to deal with these risks, such as small claims procedures which are designed to facilitate more accessible dispute resolution, have had limited success. For example, the NCCP Act provides for a presumption against adverse cost orders for small claims proceedings, hardship and postponement matters.[103] However, compensation orders are limited to offences or contraventions of the NCCP Act, and should a plaintiff seek to include related claims (for example, breaches of general consumer protections in the *Australian Securities and Investments Act 2001* (Cth)), then the protections of the small claims jurisdiction are not available. This limits the usefulness of this forum.

3.41. *Access to financial counselling and legal assistance*

3.42. Overall, the availability of legal advice and representation for low-income consumers who have been impacted by misconduct is inadequate. Consumer Action provides free legal advice and financial counselling services to thousands of Victorians each year, many of whom have been impacted by misconduct in the financial services and credit industries. However, there are simply not enough free legal and financial counselling services to meet the huge demand for assistance.

3.43. The recipients of free legal assistance typically face a number of barriers to accessing the civil justice system, and if left unresolved, can deepen and complicate existing problems. While access to external dispute resolution services such as CIO and FOS have certainly improved access to justice, there are many instances where consumers still need guidance and representation in order to get fair outcomes. The Productivity Commission, in its Access to Justice Inquiry Report,[104] recognised this and acknowledged that there is a need for additional funding for the legal assistance sector, as not providing legal assistance can be a false economy as the costs of unresolved problems are often appear in other areas of government spending, including health care, housing and child protection.[105]

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[102] Consumer Action, *Media release—NAB locks out the most vulnerable from unfair bank fees refunds* (11 April 2016), available at: http://consumeraction.org.au/nab-locks-vulnerable-unfair-bank-fees-refunds/.
[103] Section 199, NCCP Act.
[104] Productivity Commission, *Access to Justice Arrangements* (December 2014), available at: http://www.pc.gov.au/inquiries/completed/access-justice/report.
[105] For more information, see Consumer Action Law Centre, *Submission to The Treasury on Priorities for 2017-18 Federal Budget* (January 2017), available at: https://consumeraction.org.au/submission-treasury-priorities-2017-18-federal-budget/.

3.44. In 2011, the *Consumer Credit Legal Services in Australia* report recommended specialist consumer credit legal services be available in every state and territory in Australia, and that these be integrated with financial counselling services.[106] In addition to supporting individuals, such a service framework can play an important role in identifying misconduct or problematic practices early. Unfortunately, this report has not been acted upon.

3.45. Co-ordinated legal and financial counselling services can create efficiencies in the delivering access to justice. Financial counsellors are qualified professionals who provide independent information, support and advocacy to people in financial difficulty. Through integrated practices, lawyers can offer specialist support to financial counsellors, including training and secondary consultations. Such models have been shown to efficiently enhance access to justice.[107]

3.46. In other countries, debt advice is funded through government levies on industry which also fund the regulator.[108] There is an opportunity to extend the recent changes to industry-based funding for the regulator so that free legal advice and financial counselling is also sufficiently resourced. This would reduce the impact of inconsistent and uncertain funding levels caused by changes in government budget demands.

3.47. We note that there are no free legal services for legal disputes relating to investment losses. Most free legal assistance services only provide advice in relation to very low-income and disadvantaged consumers, meaning many Australians who are affected by investment losses miss out. As we saw with financial advice scandals, many people have had their lives ruined, lost their homes, or lost their retirement savings, but did not qualify for free legal assistance. Legal advice and financial counselling should be sufficiently resourced to support people suffering from all losses associated with financial services, whether that is credit, insurance or investments.

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[106] ASIC, *Consumer Credit Legal Services in Australia* (25 October 2012), see: http://asic.gov.au/about-asic/freedom-of-information-foi/foi-disclosure-log/freedom-of-information-asic-disclosure-log-table/.
[107] Liz Curran, 'Multidisciplinary Practice Health Justice Partnerships: working ethically to ensure reach to the most in need' (2017) 26 *Nottingham Law Journal*, 11-36.
[108] See, Fiona Guthrie, *How debt advice services in Australia can be the best in the world*, 2014 Churchill Fellow, available at: https://www.churchilltrust.com.au/media/fellows/Guthrie_F_2014_Debt_Advice_Services_in_Australia.pdf.