

25 January 2019

Mental Health Royal Commission Establishment
Department of Premier and Cabinet
1 Treasury Place
Melbourne VIC 3002

Dear Sir/Madam

Royal Commission into Mental Health Terms of Reference Consultation

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide our views on the Royal Commission into Mental Health Terms of Reference.

We strongly support the Victorian Government's announcement of this Royal Commission. This is a critical inquiry that has the potential to benefit some of our state's most vulnerable people.

Consumer Action's financial counsellors and lawyers speak regularly to individuals experiencing mental health issues who have range of consumer problems including excessive debt, essential service disconnection, multiple payday loans and rejected insurance claims. Our data shows that 10% of individuals who contacted the National Debt Helpline and had a financial counselling session in 2017-18 presented with mental health issues. Extensive research has also confirmed the links between financial vulnerability and mental health.

We recommend that these consumer issues, and their corresponding impact on mental wellbeing, fall within the scope of the Commission's terms of reference. We consider that particular attention should be given to automated processes established by businesses or the justice system that do not respond to the life experience of people with mental health issues. Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.



Debt

Individuals in financial difficulty experience considerable amounts of stress which has flow on impacts on mental health. Over-indebtedness is one area which has significant longer-term impacts, potentially affecting a person's capacity to provide for housing, health, education and retirement.¹ Problem debt can have a harmful effect on physical and mental health and personal relationships, and can contribute to family breakdown.² Debt worries also impact on people's ability to work, by affecting their attendance or concentration.³ Personal financial issues have been found to be the leading cause of stress by the Australian Psychological Society, while other studies have found that individuals with unmet loan payments had suicidal ideation and suffered from depression more often than those without such financial problems.⁴

Studies have also likened unpaid financial obligations with poorer subjective health assessments and health-related behaviour.⁵ A recent report examined payday and other short-term loans as distinct types of consumer debt that may be linked with disease risk.⁶

The Banking Royal Commission has highlighted some of the personal stories resulting from irresponsible lending practices. Consumer Action assisted a number of witnesses that gave evidence to the Commission where they detailed how irresponsible lending by financial institutions caused them severe financial hardship and had flow on effects which impacted their wellbeing.⁷

A 2016 Federal Treasury credit card consultation paper⁸ noted that credit cards pose a "substantial burden on financial wellbeing", and this financial stress "can have a significant impact on other indicators of wellbeing" (these other indicators include physical and mental health, and family wellbeing). This aligns with our financial counsellor's experiences and data collected through the National Debt Helpline.

The Royal Commission into Mental Health is an opportunity to put businesses that load people up with debt under the microscope. The effects of debt on mental health are well established and it's time to hold irresponsible lending businesses accountable. We recommend payday lenders, and other fringe finance providers that target people experiencing vulnerability such as pawnbrokers, be included in the

¹ Ali, McRae and Ramsay, 'Consumer Credit Reform and Behavioural Economics: Regulation Australia's Credit Card Industry', *Australian Business Law Review*, Volume 40, Issue 2, 2012.

² Step Change, *Statistics Yearbook Personal Debt*, 2014 p 24, available at: <https://www.stepchange.org/Portals/0/documents/media/reports/statisticsyearbooks/StepChangeDebtCharityStatisticsYearbook2014.pdf>.

³ Step Change, *Life on the Edge*, 2014, p 3, available at: <https://www.stepchange.org/Portals/0/StepChangeLifeontheEdgereport.pdf>.

⁴ Australian Psychological Society, *Stress and wellbeing survey*, 2015, p 27, available at: <http://www.psychology.org.au/Assets/Files/PW15-SR.pdf>; Turunen and Hiilamo, *Health effects of indebtedness: a systematic review*, *BMC Public Health*, 2014, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4060868/#B31>

⁵ Turunen and Hiilamo, *Health effects of indebtedness: a systematic review*, *BMC Public Health*, 2014, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4060868/#B31>.

⁶ E. Sweet, C. W. Kuzawa and T. W. McDade, Short-term lending: Payday loans as risk factors for anxiety, inflammation and poor health, *SSM - Population Health*, Volume 5, August 2018, Pages 114-121.

⁷ See: <https://policy.consumeraction.org.au/category/topics/royal-commission-2018-topics/>.

⁸ The Australian Government the Treasury, *Credit cards: improving consumer outcomes and enhancing competition*, 2016, available at: <https://treasury.gov.au/consultation/credit-cards-improving-consumer-outcomes-and-enhancing-competition/>.

Commission's terms of reference. Further, we urge the Commission to investigate the impact of over-indebtedness on mental wellbeing, and vice versa.

Uncompensated losses

Uncompensated monetary loss can have significant mental health implications, particularly where it results in the loss of the family home or retirement savings. Following the collapse of a number of financial firms post-Global Financial Crisis, research commissioned by ASIC found that that failure to fully compensate investors who lost money because of the conduct of their managed investment scheme or financial planner can cause the investor severe emotional and financial distress.⁹ Over half of the families surveyed had at least one person suffer from depression or anxiety because of what had happened.

The negative mental health and other impacts of uncompensated monetary losses have led many to recommend the establishment of a compensation scheme of last resort in financial services.¹⁰ We recommend that the mental health impacts of uncompensated financial loss be considered by the Commission.

Energy, water and other essential services

Consumer Action's work in the essential services space has found that disconnection of essential services results in significant distress for people. Participants in our *Heat or Eat* project¹¹ experienced feelings of shame, humiliation, fear and anxiety, and that disconnection events compounded existing mental health issues and had serious impacts on the participants' wellbeing. International studies have also shown that people with mental health problems are much more likely to struggle with a range of essential service issues—such as an issue with energy supply, a mobile phone contract or paying rent.¹² Accessing water to drink and clean, energy to heat our homes and cook with is essential for people to maintain good health, social participation and wellbeing.

We recently analysed call data from the National Debt Helpline which showed that 18.3% of callers with energy debts who were referred to face-to-face financial counselling reported experiencing mental health issues.¹³

Businesses that operate in Victoria should not be profiting to the detriment of their customers' health and wellbeing. Fair access to affordable energy, water, telecommunications and other essential services is crucial to a safe and equitable society.

⁹ ASIC Report 240: Compensation for retail investors: The social impact of monetary loss, May 2011, 10, available at: <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-240-compensation-for-retail-investors-the-social-impact-of-monetary-loss/>.

¹⁰ The Treasury, *Review of the financial system external dispute resolution and complaints framework: Supplementary Final Report*, September 2017, Recommendation 1, available at: <https://treasury.gov.au/publication/supplementary-final-report/>.

¹¹ <https://consumeraction.org.au/wp-content/uploads/2015/08/Heat-or-Eat-Consumer-Action-Law-Centre.pdf>.

¹² For example, see: <https://wearecitizensadvice.org.uk/rent-arrears-and-energy-supply-struggles-make-mental-health-problems-worse-ee9926845e7b>.

¹³ We have reviewed 1750 calls from 2 days each month since 07/17. 139 of those calls clearly mention energy in the notes. Of those calls 13 have Mental Health Issues flagged by the caller or FC as a contributing factor to financial disadvantage. Vulnerability fields are generally only coded where the client is being referred out for face to face financial counselling.

Insurance

Mental health can intersect with insurance in many ways. Consumer Action has concerns with how insurance companies design, price and offer policies and assess claims for people with past or current mental health conditions.¹⁴ There is evidence that insurers appear to be unreasonably denying cover or applying broad mental health exclusions that are not evidence-based and fall below community standards and expectations.¹⁵ The Public Interest Advocacy Centre has suggested that these practices are unfair and discriminatory and affect a large portion of the population.¹⁶ Anti-discrimination laws have a number of limitations and people can face considerable hurdles in pursuing a claim.¹⁷ Financial Rights reports that ,any people with an insurance policy are concerned that the 'simple fact of their mental health condition will impact negatively upon their claim.'¹⁸

We also have concerns with insurers mis-selling consumer credit insurance (CCI) and guaranteed asset protection (GAP) insurance (collectively known as 'add on insurance') often through 'third-party distributors' such as car dealerships.¹⁹ In many cases this insurance is unsuitable for clients as they are ineligible to claim on it due to a pre-existing mental health condition. This causes unexpected claims denials, which can impact people's housing security, mental health, families and work.²⁰

The cost of worthless CCI and GAP policies is staggering. IAG, which was at one time a significant player in this market, admitted at the Banking Royal Commission hearings that a 'significant number' of its add-on insurance products 'were of questionable or little value to the consumer'.²¹ This systemic problem has resulted in insurers agreeing to pay over \$122 million in remediation to more than 257,000 customers who were mis-sold add-on insurance in motor dealerships.²² We anticipate that the total cost of mis-sold junk add-on insurance will exceed \$1 billion.

The actions of insurers in claims handling and investigations can exacerbate mental health conditions.²³ A case study from the Banking Royal Commission demonstrated that the way insurers (and their service suppliers) undertake surveillance lacked empathy and respect, and could exacerbate a claimant's mental

¹⁴ Consumer Action Law Centre, *Denied: Levelling the playing field to make insurance fair*, February 2018, pp 12-15, available at: <https://policy.consumeraction.org.au/2018/02/13/denied-levelling-the-playing-field-to-make-insurance-fair/>.

¹⁵ *Ingram v QBE Insurance (Australia) Limited* [2015] VCAT 1936 (18 December 2015); Financial Ombudsman Service, *Determination 428120*, 31 March 2017.

¹⁶ PIAC, Submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Banking Royal Commission**), April 2018, available at: <https://www.piac.asn.au/2018/04/26/submission-to-the-royal-commission-into-misconduct-in-the-banking-superannuation-and-financial-services-industry/>

¹⁷ See *Denied*, above n 14, 13.

¹⁸ Financial Rights Legal Centre, *Guilty until proven innocent: Insurance investigations in Australia*, March 2016, 51, available at: <https://financialrights.org.au/wp-content/uploads/2016/03/Guilty-until-proven-innocent.pdf>.

¹⁹ Consumer Action Law Centre, *Junk Merchants: How Australians are being sold rubbish, and what we can do about it*, December 2015, available at: <https://consumeraction.org.au/junk-merchants-report-how-australians-are-being-sold-rubbish-insurance-and-what-we-can-do-about-it/>.

²⁰ *Ibid* 23 (Mathew's story, Case Study 11).

²¹ Banking Royal Commission, Transcript of public hearing 19 September 2018, 6140.

²² Productivity Commission, *Competition in the Australian Financial System*, Inquiry Report No 89 (2018), 425.

²³ Financial Rights Legal Centre, *Guilty until proven innocent*, above n 19, 50.

illness.²⁴ Surveillance is not an appropriate way of gathering information about mental health conditions which are, by their nature, 'hidden'. Surveillance is unlikely to be an effective method of finding information about a person's mental illness. There are other methods which insurers could use to gather information, such as interviews with third parties. Insurers should be prohibited from surveillance of claimants with mental health conditions.

Access to justice

We see examples where people are mis-sold unsuitable products that they don't want or need, or entered into onerous contractual obligations, while experiencing acute mental illness or heavily affected by medication.²⁵ It can be difficult for people to get out of these contracts, particularly without access to free legal assistance.

Managing legal problems while dealing with mental health challenges can be extremely difficult. For individual's with high levels of debt, who are disconnected from an essential service or unfairly denied an insurance claim the results are multiplied if someone is dealing with mental health problems.

A key problem involves automated business or justice processes that do not respond to the life experience of people living with mental health issues. For example, many people struggle to make telephone calls, open the post or navigate complex online forms. This can impact the effectiveness of certain justice processes and consumer protections:

- **Debt recovery processes including through court judgment and insolvency procedures.** Our experience is that people living with mental health issues often have limited capacity to engage in debt recovery processes, whether that is following up contacts from debt collectors or the legal process. Indeed, research suggests that many people have limited understanding of court judgment processes for even very small debts, and that they tend to take no action.²⁶ There can be a variety of reasons for this, but mental health concerns impact people's capacity to engage with the debt recovery system, and these automated processes can lead to harsh outcomes, including bankruptcy and/or loss of assets including a home.
- **Energy disconnection processes.** People who are living with mental health issues sometimes find it difficult to engage with energy retailers, particularly if they have accrued debt. While there are requirements placed on energy retailers to offer assistance to people experiencing financial difficulty, unless the person engages with the retailer, then the person will be disconnected. We have also assisted clients who have been sought to made bankrupt over small energy debts, because they did not engage with the debt recovery process.

²⁴ Banking Royal Commission, Transcript of public hearing, Commissioner Hayne, 6484-5; see also <https://www.news.com.au/finance/business/banking/life-insurance-company-spent-years-fighting-womans-claim/news-story/e66993b83f5070815409c9a08fd2b024>.

²⁵ See Margaret's story, page 4, in WEstjustice and Consumer Action Law Centre joint submission on the *Telecommunications Consumer Protections Code Draft (DR C628:2018)*, 13 August 2018, available at: <https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2018/09/180813-Submission-Draft-TCP-Code-CALC-WEstjustice.pdf>.

²⁶ Dr Eve Bodsworth, *Like Juggling 27 Chainsaws: Understanding the experience of default judgment debtors in Victoria*, June 2013, available at: <https://consumeraction.org.au/wp-content/uploads/2013/07/Like-Juggling-27-Chainsaws-June-2013-eVersion.pdf>.

These automated processes serve to exacerbate the financial situations of people experiencing mental health issues. Existing consumer protections are built on the ability of the person to engage in the process, which is sometimes an unreasonable expectation without assistance. While our legal framework does offer some protections for people with low income caught in debt recovery processes, for example, the inability of creditors to enforce judgments against social security income,²⁷ our experience is that people are not well informed about this and can end up making payments to the further detriment of their material wellbeing and mental health.

There are a number of important interventions that could be further considered by the Royal Commission:

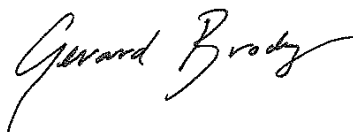
- An innovative project between WEstjustice and Mind which began in 2017 has delivered promising results that holistically addresses mental health and legal problems. WEstjustice CEO Denis Nelthorpe said the program has assisted a number of people experiencing homelessness, living with unsustainable levels of debt or experiencing consumer law problems providing them with expert legal advice and casework that they need to take back control of their lives.²⁸
- The UK Money and Mental Health Institute is an independent charity established to break the link between financial difficulty and mental health problems. The institute conducts research, develops practical policy solutions and works in partnership with both those providing services and those using them to find out what really works. Research conducted has included further understanding the difficulties of customers experiencing mental health issues when managing essential services,²⁹ and how regulators can develop policies and regulation that better addresses the needs of people experiencing mental health.³⁰

Consumer Action strongly urges the Commission to examine the interplay between mental health and access to justice to address the issues we have raised in this letter.

Please contact Cat Newton on 03 9670 5088 or at cat@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody
CEO

²⁷ Section 12 of *Judgment Debt Recovery Act 1984* (Vic).

²⁸ Mind Australia, *Media Release: Funding for legal assistance for people with mental ill-health*, 31 October 2018, available at: https://www.mindaustralia.org.au/sites/default/files/Media_release_Justice_in_Mind_funding.pdf.

²⁹ <https://www.moneyandmentalhealth.org/accessessentials/>.

³⁰ <https://www.moneyandmentalhealth.org/regulators-report/>.

