



Friday 7 October

Senate Standing Committees on Economics

Via email: economics.sen@aph.gov.au

Financial Accountability Regime and Compensation Scheme of Last Resort

Consumer groups strongly support the passage of a well-designed Compensation Scheme of Last Resort (**'CSLR'**) and Financial Accountability Regime (**'FAR'**). These reforms are landmark recommendations of the Banking Royal Commission and are missing links in Australia's financial services framework.

In December 2021, consumer groups wrote a joint policy submission to the Senate Economics Legislation Committee (**'the Committee'**) responding to draft legislation which would establish a Compensation Scheme of Last Resort and Financial Accountability Regime. As the draft legislation before the Committee is the same, we have included our existing submission as a supplementary submission. We encourage the Committee to strengthen the draft legislation and adopt the policy recommendations put forward in the previous joint consumer submission.

This submission reiterates the key changes required to ensure the draft legislation is effective and achieves the spirit of the Banking Royal Commission.

Consumer groups will be writing an additional submission to the Committee that addresses Schedule 4 (consumer credit reforms) of the Financial Sector Reform Bill 2022.

Financial Accountability Regime

The Australian community expects that senior leaders of financial institutions are held to account when misconduct occurs under their watch. Commissioner Hayne was emphatic that primary responsibility for misconduct in financial services businesses lay with the senior executives who managed and controlled them. Every shocking example in the Royal Commission, “should be understood in the light of that one undeniable fact. Executives bear the responsibility”.¹

If designed correctly, the new Financial Accountability Regime could transform corporate culture in Australia’s financial services sector. Unfortunately, four important aspects of the proposed FAR fall short of driving the sort of change that is needed. We recommend the following changes to the proposed regime:

- 1) **There must be meaningful consequences for people who break the law.** The Treasury’s Proposal Paper in 2020 recommended civil penalties for individual executives who breach the FAR.² However, the draft legislation before the Committee does not include civil penalties for accountable individuals. It is critical that finance leaders are personally liable for misconduct. Consumer groups strongly support aligning maximum penalties for accountable persons under the FAR with the newly-imposed maximum penalty framework under existing financial services laws.
- 2) **Deferred remuneration obligations need to be bolstered.** As drafted, the deferred remuneration obligations are currently weaker than the existing requirements in the Banking Executive Accountability Regime (‘**BEAR**’). This represents a step backward in that there are weaker financial incentives for senior executives to avoid misconduct and unfairness. Accountable persons should be required to defer 100% of their variable remuneration for a period of seven years. This will discourage inappropriate risk-taking that harms consumers and can help to eliminate a culture of ‘short-termism’.
- 3) **The scope of the regime needs to be expanded to include executives and senior managers.** While executives must be accountable for corporate decisions, senior managers regularly make operational decisions that affect their customers. Senior managers should be held to account. The United Kingdom’s Senior Managers Regime, on which the Australian model was originally based, covers executives and senior managers. This will help promote lasting cultural change within financial services firms.
- 4) **The FAR should require executives and senior managers to treat customers fairly.** This conduct obligation should mirror the United Kingdom’s Senior Manager Regime’s

¹Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, Volume 1, p4

²Treasury 2020, Proposal Paper. Financial Accountability Regime (FAR)

conduct obligation requiring executives and senior managers to, 'pay due regard to the interests of customers and treat them fairly'.³ The Committee should recommend the inclusion of a fairness accountability obligation in the FAR.

Compensation Scheme of Last Resort

Consumer groups support the introduction of a Compensation Scheme of Last Resort for victims of financial misconduct. It has been over four and a half years since the previous government committed to establishing a CSLR. Thousands of Australian families have had their complaints and compensation awarded paused in the meantime. People who have lost their entire life savings have been stuck in limbo until the introduction of the scheme.

Consumer groups recommended the following core changes to the draft legislation:

- 1) The **scope of the scheme should be expanded** to include all financial products and services that fall under AFCA's jurisdiction, including funeral expenses products and managed investment schemes. The purpose of the CSLR is to stop people from falling through the cracks, so we must not design a system with cracks from the outset.
- 2) The scheme should also be expanded to **include all court and tribunal decisions**. The Ramsay Review and Banking Royal Commission recommended that court and tribunal decisions should be included in the CSLR. Access to effective redress should not depend on which forum heard a consumer dispute. Excluding court and tribunal decisions risks distorting a well-functioning dispute resolution system in Australia.
- 3) The **compensation cap of \$150,000 should be increased** to align with the compensation cap of the Australian Financial Complaints Authority ('**AFCA**'). This follows the Ramsay Review recommendation that the compensation caps of the CSLR and AFCA should be aligned.⁴ A \$150,000 compensation cap will be sufficient to cover the compensation bill for most clients that the casework organisations among us assist. However, this cap is too low for some people who have suffered losses from financial advice scandals. Many people who have been victims of financial advice misconduct may have lost their entire life savings or family home.

If you wish to discuss this further, Patrick Veyret, Head of Policy and Government Relations at CHOICE on pveyret@choice.com.au or 0431 822 372.

³Financial Conduct Authority, 'COCON 2.1 Individual conduct rules' <https://www.handbook.fca.org.uk/handbook/COCON/2/1.html>

⁴Ramsay Review, 2017, 'Review of the financial system external dispute resolution and complaints framework: Supplementary Final Report', pg 14

The joint consumer policy submission has been endorsed by:

CHOICE

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

Consumer Action Law Centre

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 marketplace for all Australians

Financial Counselling Australia

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia. Financial counsellors work in community organisations and provide advice and support to people experiencing financial hardship.

Financial Rights Legal Centre

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

Indigenous Consumer Assistance Network

Indigenous Consumer Assistance Network Ltd (ICAN) provides consumer education, advocacy and financial counselling services to Indigenous consumers across the nation, with a vision of "Empowering Indigenous Consumers". ICAN's services are free, independent and confidential.

Mob Strong Debt Help

Mob Strong Debt Help is a Aboriginal-led program embedded in the Financial Rights Legal Centre providing free nationwide legal advice for Aboriginal and Torres Strait Islander consumers. Mob Strong Debt Help specialises in financial counselling and legal advice about consumer loans, banking, debt recovery and insurance.

Super Consumers Australia

Super Consumers Australia is the people's advocate in the superannuation sector. Super Consumers Australia advances and protects the interests of people on low and middle incomes in Australia's superannuation system. It was founded in 2013 and received funding for the first time in 2018.

Uniting Communities Consumer Credit Law Centre SA

The CCLCSA was established in 2014 to provide free legal advice, representation, legal education, advocacy, and financial counselling to consumers in South Australia in the areas of credit, banking, and finance. The CCLCSA is managed by Uniting Communities who also provide general community legal services, as well as a range of services to low income and disadvantaged people including mental health, drug and alcohol, and disability services.

Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) was established as a community controlled Co-operative Society in 1973. We provide referrals, advice/information, duty work or case work assistance to Aboriginal and Torres Strait Islander peoples in the State of Victoria. Our solicitors specialise in one of three areas of law: Criminal Law, Family Law and Civil Law.