



ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY FINAL REPORT – INITIAL OBSERVATIONS ON RECOMMENDATIONS FROM THE STAKEHOLDER LOCKUP

4 FEBRUARY 2019

CCLSWA is honoured to have been invited to attend the stakeholder lockup of the release of the final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. This is a monumental day in the history of consumer protection. For years, consumer advocates have been listening to the types of stories exposed by the Commission. We have been assisting people where possible, but “[t]he asymmetry of knowledge and power between consumers and financial services entities has been evident throughout the Commission’s work” (final report page 490).

The colossal might of the financial institutions, with their comparatively unlimited resources, and the devastating complications of a mighty power imbalance, means the successful remedies we have been able to obtain for people have been few and far between.

Any settlement is usually on confidential terms meaning we’ve been unable to talk about the problem, from a regulatory and systemic issues perspective.

And these are just the people we have been able to meet with.

Many, many more go unrepresented. Not being able to get an appointment with us. Not being eligible for an appointment with us due to our funding restrictions. Not understanding their problem is a legal problem. Not knowing that our services exist. Not being able to seek assistance as they are so overwhelmed by their problems.

The recommendations in the report go a long way to addressing the power imbalance. We highlight the following key recommendations and observations which will lead to greater consumer protections.

RESPONSIBLE LENDING: BENCHMARKS NOT TO BE USED IN PLACE OF INQUIRIES & VERIFICATIONS

From page 56 onwards of the report, the Commissioner extensively examined the use of benchmark figures in calculating expenses. At page 57-58, the Commissioner states that in relation to the Household Expenditure Measure (HEM): “the measure should not, and cannot, be used as a substitute for inquiries or verification.” We are satisfied with the Commissioner’s observations, although not a recommendation. This is a win for WA consumers and will go some way to preventing unsuitable loans being provided to borrowers who cannot afford the repayments.

ADD-ON INSURANCE: DEFERRED SALES MODEL & CAPS ON COMMISSIONS

From page 288 onwards, the Commissioner recommends, at recommendation 4.3, the introduction of the deferred sales model for add-on insurance, as set out in ASIC’s proposal. This proposal was also set out in CCLSWA’s submission which is referred to at page 289, footnote 121 of the Final Report.

The commission also goes further to make recommendation 4.4, that there should be a cap on commissions that may be paid to dealers, which CCLSWA wholeheartedly supports. For too long we have seen unscrupulous dealers bundling add-on products into loans, incentivised by the commission they will receive.

THE REGULATOR

CCLSWA is pleased to read the Commissioner's recommendation 6.1 that the current regulatory structure be retained. We agree with the Commissioner's observations that "detaching significant parts of ASIC's remit would disrupt the processes of responding to what ... has now been brought into the public gaze by the Commission's work."

The commissioner goes on to say that the enforcement culture of ASIC and not the size of ASIC's remit should be the focus of change, and then at page 446 makes recommendation 6.2 that ASIC should adopt a particular approach to enforcement.

Finally, at Recommendation 6.14, the Commissioner also recommends the establishment of an oversight authority who would in effect, regulate the regulator.

OTHER IMPORTANT STEPS: COMPENSATION SCHEME OF LAST RESORT

At page 487, the Commissioner makes Recommendation 7.1, to establish a Compensation scheme of last resort. This recommendation will assist consumers who have been unable to obtain remedies where the financial institution is unable to pay compensation. CCLSWA welcomes this recommendation as it goes some way to providing peace of mind to consumers, knowing that their chances of obtaining a remedy for misconduct will not be affected by the solvency of the institution.

OTHER IMPORTANT STEPS: FUNDING

Finally, the report looked at funding for legal assistance and financial counselling services. Although not a recommendation, at page 493, the Commissioner says: "I offer no views about the most appropriate sources, level or mix of funding. However, the desirability of predictable and stable funding for the legal assistance sector and financial counselling services is clear and how this may best be delivered is worthy of careful consideration. Such consideration should look at all options that may be available to supplement existing funding." CCLSWA welcomes this observation as for years, financial counsellors and consumer advocates have struggled on shoestring budgets and threats of funding cuts, which all detract from being able to provide proper services.

CCLSWA CLOSING COMMENTS

We also wish to take this opportunity to thank all of our clients who have had the courage to share their stories with us. We acknowledge that without your trust in us, we would not have been able to advocate for the recommendations that were released today.

This is only the first step. It's now up to us, consumer advocates, government and industry, to work together to implement these recommendations so that the stories we heard at the commission, we never hear again.

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