

Response to the Financial System Inquiry Interim Report

Submission by the Financial Rights Legal Centre

The Financial Rights Legal Centre (*formerly known as the Consumer Credit Legal Centre (NSW)*) is a community legal centre that specialises in helping consumer's 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 Credit & Debt Hotline, which is the first port of call for 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. Financial Rights took over 22,000 calls for advice or assistance during the 2013/2014 financial year.

Financial Rights also conducts research and collect data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

General comments

Thank you for the opportunity to comment on the Interim Report released by the Financial System Inquiry. The Financial Rights Legal Centre (Financial Rights) supports many of the consumer-related observations made by the interim report, and we agree with the broad conclusion that the financial system is largely as it should be and has supported Australians well over the past fifteen years. However, we believe changes are needed to ensure better consumer outcomes in some areas.

Due to the breadth of the Inquiry our submission is unable to comment on all of the policy options proposed by the Interim Report. Instead this submission focuses on some competition issues in the banking and payments sector and consumer outcomes in the insurance sector. In particular we hope the inquiry will respond to our comments in these areas by recommending that the Treasury enhances competition through improved disclosure and standardizing insurance coverage; ensures replacement value cover is available for consumers; implements the recommendations in the Choice and Trowbridge Report; and urgently introduces unfair terms legislation for insurance.

Financial Rights strongly supports the suggestion that ASIC should be given the power to ban products or product features. We agree that regulator accountability should be ensured and that ASIC should need to demonstrate that a significant number of consumers are being caused significant detriment. Financial Difficulty Predator Businesses (a term used among consumer advocates) are an example of an area of financial products and services where licensing and enhanced ASIC banning or intervention powers would be most welcome.

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Specific Responses to Interim Report Observations and Policy Options

1: Overview

No comment.

2: Competition

We support the comments by Consumer Action Law Centre and CHOICE on competition. We have some further comments which appear below.

Banking sector

Comprehensive credit reporting (CCR)

We do not support making CCR mandatory. We note that CCR was introduced after an ALRC Report¹ reviewing the Privacy Act and an extensive consultation process. The ALRC Report did not recommend mandatory reporting and the Government accepted this approach.

It is our understanding from talking to major credit providers and the industry association, ARCA, that the delay in listing further information on credit reports is due to the extensive systems changes required and not because of a reluctance to list the extra data sets.

We would support a careful approach by lenders in listing the extra data to ensure it is accurate and consistent. Financial Rights has already run a dispute where consumer credit liability information for a statute barred debt just appeared on a client's credit report. It was inaccurate and has now been removed. This does indicate the problems with making sure data is accurate and we would strongly prefer accurate data over rushed inaccurate data which will no doubt cause consumer disputes and consumer detriment.

As an example of the challenges of implementing the new data sets we are aware that there is still considerable confusion about the operation of repayment history information amongst credit providers. It is reasonable and necessary that those issues are resolved to avoid inaccurate data being listed. We also believe the review should acknowledge that CCR has only recently been introduced and any review or change should only be considered after it has had ample time for implementation.

Recommendations: No change to current arrangements.

A review should be conducted by Treasury in partnership with the Privacy Commissioner to review the effectiveness of the new credit reporting laws after 5 years commencing in March 2019.

Switching banking products

We contend that enhancing the ability to switch banking products enhances competition. We support the measures being introduced on bank account portability and the banning of mortgage exit fees. We would recommend that continuing work is done in this area to both improve portability and provide information to consumers about its availability.

Recommendation: Account portability should be improved to enhance competition.

¹ ALRC Report 108: For Your Information: Australian Privacy Law and Practice at <http://www.alrc.gov.au/publications/report-108>

Payments sector

The removal of the ban on surcharges in 2003 was made when the difference between debit cards and credit cards was very clear. It was arguable in 2003, that transparency in surcharging would encourage consumers to use the cheaper EFTPOS savings account option rather than a credit card. To some extent this signalling was successful.

However, since that time most consumers have had their debit cards turned into MasterCard or Visa debit cards. There is considerable confusion for consumers as to when they are using their credit card or debit card. In fact, the savings or credit decision can sometimes be made by the EFTPOS terminal regardless of the intention of the consumer. We refer to the recent investigation by ASIC of ALDI in relation to a surcharge that was hidden from consumers when using “tap and go” which registered as a credit card transaction.² This case demonstrates the problems with disclosure of surcharges and the confusion over how “tap and go” works.

In addition, it is very clear that a number of merchants continue to surcharge more than the reasonable cost with impunity. This indicates a failure of competition. Although there are some industries (for example, airlines and cabcharge) where overcharging is systemic, there is still considerable anecdotal evidence that overcharging appears across a range of merchants across a range of industries.

In our view, the current regulations are failing consumers and it is also clear that competition does not work well to control surcharge price. Consumers still remain very confused about the actual cost to the merchant of using a credit/debit card. It follows that if consumers are confused about cost then the transparency approach is not working.

We contend that customer surcharging rules need to be reformed urgently as many consumers continue to be overcharged for using their credit card and even debit card.

Recommendation: We recommend that the following elements be enacted in order to deliver effective transparency in pricing and encourage competition:

- 1. Merchants can only charge their reasonable costs**
- 2. A regulator (ASIC) must be given effective powers to enforce the regulation**
- 3. Consumers must be able to enforce a failure to charge a reasonable cost directly against the merchant in an external dispute resolution scheme**
- 4. Merchants and consumers are provided with real-time pricing information by the merchant**
- 5. Consumers are provided disclosure of the charge up-front**
- 6. Tap and Go or paypass payment mechanisms must default to debit card transactions and not credit card unless the card is only a credit card**

Insurance sector

² See article from the Sydney Morning Herald at <http://www.smh.com.au/business/asic-pings-aldi-for-credit-card-failure-20140818-105cct.html> and also see ASIC media release 14-204MR at <http://www.asic.gov.au/asic/asic.nsf/byheadline/14-204MR+ASIC+acts+to+ensure+better+disclosure+by+ALDI+of+credit+card+and+contactless+payment+surcharges?openDocument>

See below under the chapter consumer outcomes for a detailed overview of the regulatory and consumer issues in the insurance sector.

3: Funding

No comment.

4: Superannuation

We support the comments by CHOICE. Please see our comments on insurance and superannuation below in the consumer outcomes chapter.

5: Stability

No comment.

6: Consumer outcomes

Consumer protection framework in financial services

We contend that the consumer protection regime in financial services relating to credit was vastly enhanced when the National Consumer Credit Protection Act 2009 (NCCP) was enacted. The NCCP contained a number of important improvements including: licensing; compulsory membership of an external dispute resolution scheme; regulation of finance brokers; interest rate cap and responsible lending provisions. Responsible lending provisions ended over a decade of misconduct including:

- The systemic problem of banks providing credit card limit increases with no assessment of ability to pay; and
- No doc/low doc loans and equity stripping in the mainly non-bank lending market.

The current existence of responsible lending provisions means that Australia is in a sound position to avoid the mortgage backed security problem that was a major impetus for the Global Financial Crisis commencing in the USA.

It is worth contrasting the regulatory framework in credit with that in place for the insurance industry. In our view, the insurance industry regulation needs urgent review. It is completely unequipped to deal with the challenges coming in a number of areas. The current legislation continues to fail consumers in critical consumer protection areas. A summary of the issues appears below:

- The last review of the adequacy of insurance regulation occurred in 2003³ and is only being implemented now even though it is seriously out of date.
- The review in 2003 did not consider the impact of climate change as a pressing issue for industry, consumers and the government.

³ See information at <http://icareview.treasury.gov.au/content/default.asp>

- The review and recommendations following the catastrophic 2011 floods in QLD being the *Natural Disaster Insurance Review: Inquiry into Flood Insurance and Related Matters*⁴ issued in September 2011 has not been implemented nor any alternate measures discussed.
- The numbers of Australians that are underinsured and completely uninsured continues to grow and measures to date to stop this have been ineffective. There are statistically significant pockets of people with varying risk of natural disaster that have no access to affordable insurance. The insurance industry has data on this but it is not available to the public.
- The transparency on premium pricing is poor.
- Every single insurance company in Australia contracts out of the standard terms referred to in the Insurance Contracts Act meaning that suitability and coverage vary enormously.
- The disclosure process in insurance is extremely poor with consumers being given a short novel in the form of a PDS that is so long and usually poorly structured as to be impenetrable.
- The vast majority of consumers obtain life insurance through industry superannuation which involves no disclosure and seemingly no competition at all on coverage.
- Consumers are protected from unfair terms in all consumer contracts but insurance which is a poor outcome for consumers and also creates an unfair regulatory advantage for the insurance industry.

Overall, we contend that the issues in the insurance industry require urgent review and regulatory reform. We contend that a failure to undertake that review in the context of climate change leaves consumers, the Government, the insurance industry and other financial services providers (and the economy as a whole) at serious risk.

The above issues are discussed in more detail below:

1. Insurance

1.1. Disclosure

1.2. Affordability

1.3. Underinsurance

1.4. Transparency and pricing

1.5. Group insurance arranged through superannuation

1.6. Natural disasters

1.7. Unfair terms

1.8. Product suitability

1.9. Standard terms/default product features

2. Credit

2.1. Financial difficulty predator businesses

2.2. Payday lending

Assessing the regulatory framework

1. Insurance

⁴ Report is at <http://icareview.treasury.gov.au/content/default.asp>

Recommendation: Review of the regulation of insurance with a focus on future proofing insurance in the context of the challenges of climate change, improving consumer outcomes and competition. Detailed recommendation on regulations that should be implemented appear below.

1.1. Disclosure

Disclosure is a key part of making sure consumers have enough information to choose the right product for their needs, especially in the context of insurance. Financial Rights believes that mandatory disclosure must remain a part of the regulatory regime for providing financial products and services. However, we strongly agree with the Interim Report that disclosure alone has not been sufficient to enable consumers to make informed decisions and consistently purchase financial products and services that meet their needs.

We strongly agree with the Interim Report's Observation that *the current disclosure regime produces complex and lengthy documents that often do not enhance consumer understanding of financial products and services*. For example, the disclosure regime for insurance contracts is particularly poor and inadequate. Details of the inadequacy of the current disclosure regime include:

- No information at all about the insurance policy at the time of purchase when buying insurance over the phone except details of the type and premium;
- Key Facts Sheets (KFS) commencing in November 2014 which will be provided after purchasing insurance on the phone or by clicking a link to another page on the internet (ie not front and centre for consumers); and
- Product Disclosure Statements (PDS) (which is usually many pages long) are sent in the post to consumers after purchasing an insurance policy, and these documents have no required structure for setting out key information.

Overall, this has led to a situation where the vast majority of consumers do not read their PDS. This means that the critical information on coverage and exclusions can be over 20 pages into the PDS. It is hoped that the KFS may improve this situation but there has been no testing or research on this point. Significantly, there has been no testing or research on the current disclosure process in insurance at all.

It cannot be stressed enough that suitable insurance cover is critical for consumers (and in fact society as a whole). Information disclosure is the way that consumers determine suitability of cover. If disclosure works poorly then many consumers may have unsuitable cover. The consequences of unsuitable cover can range from financial hardship to (in the case of natural disasters) homelessness and widespread need of government assistance.

In our view, a complete review of the adequacy of disclosure is required, including the following steps:

- 1) The current disclosures used under the *National Consumer Credit Protection Act 2009* and the accompanying research on effectiveness should be emulated for insurance disclosure.
- 2) The KFS should be redesigned to be more targeted and to include disclosure over the phone and internet.
- 3) The PDS should be redesigned and regulated to use structured disclosure as well as 'schumer boxes'.
- 4) All of the disclosure must be tested for effectiveness before implementation.

Finally, we contend that although improvements of disclosure are sorely needed, they are not sufficient to deliver adequate consumer outcomes in insurance markets. There needs to be a review into the adequacy of coverage and how coverage and suitability can be improved. We do not believe that a reliance on comparator websites can

address the coverage problems. The current comparator websites seem to concentrate on premium price comparison only.

Specific Recommendations

Research and testing

Although the Interim Report cites a number of research projects into consumer understanding of disclosure documents, we submit that much more research is needed in this area. We contend that disclosure needs to be tested for it to be effective. Otherwise, it is more than possible that the disclosure may be ineffective.

Financial Rights consulted Dr Paul O'Shea, Senior Lecturer, at the TC Beirne School of Law, University of Queensland and he stated that all mandated disclosure regimes should be based on empirical evidence and not just stakeholder submissions. He suggests that any proposed statutory notices be tested in controlled scientific experiments with representative samples of consumers. This is to test their effectiveness and through an iterative process of re-drafting and re-testing to explore how they may be improved.

We recommend reviewing Dr. O'Shea's previous research into pre-contractual disclosure in consumer credit. See "*Simplification of Disclosure for the Consumer Credit Code*" Report to the Ministerial Council for Consumer Affairs, March 2010; and "*Consumer Credit: Too much disclosure is not enough*" (2009) 90(Jan-Feb) Precedent 22; "*Consumer Credit Code Disclosure: Does it work?*" (2005) 16 Journal of Banking and Finance Law and Practice .

Recommendation: Any proposed disclosure forms must be tested with consumers by an iterative process of redrafting and retesting.

Timing and delivery of the disclosure

We contend that determining the important information that they need to read when entering into an insurance contract is a great challenge for consumers. A key part of making the process work is to ensure that consumers are provided a notice that is prominent, easy to read, clear and timed when the decision is being made.

Again, the way to determine the optimal way to do this is by testing. At a minimum however, we submit that this notice must:

- Be provided verbally for insurance sales over the phone;
- Include details from the insurer on what is relevant to the consumer's duty of disclosure or include regulated and standardised answers for the insurer to use; and
- Be presented prominently and before other text if the policy is being purchased online.

Recommendation: The method of delivery of any insurance notices should be prescribed to ensure timely and adequate disclosure

Interim Report's Policy Options for consultation

- ***Layered disclosure*** — *place less reliance on long hard-copy documents and move to make layers of disclosure available to consumers.*

Financial Rights supports this approach.

- ***Better information presentation*** — *improve disclosure through greater use of shorter disclosure documents, plain English and graphics, and by breaking down complex information to improve consumer understanding.*

Financial Rights supports this approach.

- **Risk profile disclosure** —improve consumers' ability to understand risk.

Financial Rights supports this approach.

- **Online comparators and choice engines** — place more reliance on making financial product and service information more accessible to consumers, including information brought together by third-party providers through online tools and comparators..

Financial Rights supports this approach but cautions any over-reliance on aggregator websites and online comparison tools. Current comparison websites for home and contents insurance compare some features, but not others. For example:

CANSTAR – home and contents comparison



Company	Product	Star Rating	Online Discount	Pay Monthly at No Extra Cost	Nil Excess Available	Flood Inclusions			Home Inclusions		
						Riverrine Flood Cover	Flash Flooding	Storm Surge	Accidental Damage	Fusion Cover	Under Insurance Protection

As can be seen from the above screenshot, the comparison is on price (online discount, monthly premiums, and excess), flood, and 3 features (accidental damage, fusion and underinsurance).

The comparison is ultimately cursory and limited to the listed features. It ultimately requires the person to read their PDS themselves to determine the extent of their coverage for things like general exclusions; or whether the insurer matches materials, and to what extent.

Compare the Market - for car insurance comparison. This site does not provide live quotes. An example screen shot of some features is as follows:

Caravan - Loss or Damage Whilst Attached	✗	✗	✗	Limited
Emergency Accommodation	Limited	Limited	✗	✗
Emergency Travel	Limited	Limited	✗	Limited
Genuine Parts Guarantee	✗	✓	✗	✗
Insured's Choice of Repairer	Limited	✗	Limited	✓
Lifetime No Claim Bonus	✓	✗	✓	✗
No Claim Bonus Protection	Optional	✗	✓	Optional
Personal Property Stolen or Damaged	Limited	Limited	✗	Limited
Rental Vehicle After Accident (Excluding Running and Incidental Costs)	Optional	Optional	✗	Optional

The feature comparison is more extensive than the CANSTAR website above, and provides certain clarifications as to the differences in the features between products.

Select states:

- ☐ I am aware that only products from iSelect General's participating car insurers (only products for which I may be eligible) will be displayed on the results page. It is important that I read and understand the insurer's Product Disclosure Statement before purchasing a policy as the products compared do not compare all features that may be relevant to me.

and in prompts you to nominate features that are important.

Please tell us what features are important to you.

	Important	Not so important
<input type="checkbox"/> New Car Replacement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Emergency Transport & Accommodation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Variable Excess to Reduce Premium	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Freedom to nominate your preferred repairer	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Pay by the month option	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Lifetime guarantee on repairs for as long as you own the car	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Trailer	<input type="checkbox"/>	<input checked="" type="checkbox"/>

In our experience, consumers are:

- i) price sensitive;
- ii) rarely read the PDS (even when warned and prompted); and
- iii) are unaware of policy limitations and variations in wording until it is time to claim.

The vast majority of callers to our national Insurance Law Service are seeking clarification as to their rights and entitlements under their policy wording. Many consumers have had no regard to the policy wording until they have suffered a loss and have claimed. The complaints we hear are often consumers not being aware of the contractual terms of the policy. Policy wordings can be difficult to compare, as levels of coverage, options and rights can be very nuanced.

For example, the term "Choice of Repairer" in motor vehicle policies can mean significantly different things depending on the insurer. Insurers may advertise heavily that you have a "Choice of Repairer" as a special benefit but "choice" needs to be assessed in context, as it is rarely the unfettered choice of the consumer and is often limited or restricted. It may even carry certain disincentives within the wording itself.

For example:

- **GIO**— You get to choose a repairer only if GIO agrees after they have assessed your car at their assessment centre and the quote is reasonable and cost effective.
- **Coles Insurance** – You get your choice of repairer if the total repair costs do not exceed the quoted repair by the Coles authorised repairer.

- **Shannons** – Your ‘choice of repairer’ policy term allows for adjustments made by the Shannons assessor including the method of repair.
- **Youi** – ‘choice of repairer’ means Youi will pay the fair and reasonable costs of repairs as determined by their assessor to your chosen repairer.

An approach like “Compare the Market” communicates the multitude of differences in policies, for example, a random selection of policies compared on Insured choice of repairer resulted in the following:

Insured's Choice of Repairer	Limited ▲	✗ ▲	Limited ▲	✓ ▲
	Limited, Insurer will appoint a repairer or Insured may choose their own, Insurer will either (a) authorise repairs or (b) decide to have repairs done by an alternative repairer decided by them or (c) pay the Insured the reasonable cost of repairs, - please see Part A page 16 of the PDS	No, Insured may obtain one quote which will be considered by Insurer, - please see page 36 of the PDS	Limited, Insurer will appoint a repairer or Insured may choose their own, Insurer will either (a) authorise repairs or (b) decide to have repairs done by an alternative repairer decided by them or (c) pay the Insured the reasonable cost of repairs, - please see page 6 of the PDS	Yes, Insured may choose a repairer from the Insurer's repairers network or they may choose their own, if the Insured chooses their own repairer the Insurer may require a second quote from a repairer within the network and settlement will be based on either (a) repairs authorised at repairer of Insured's choice (b) payment made to Insured for reasonable cost to repair Vehicle or (c) Vehicle moved to a mutually agreed repairer in which case a rental Vehicle will be provided for 3 days in addition to any other benefit provided under the policy, - please see page 50 of the PDS

The extensive list is comparable to the extensive policy benefits and possibility of nuances, while the other sites still focus largely on the consumer reading their PDS. However, Compare the Market does not compare prices, or provide sample quotes.

An aggregator site should provide a useful tool for a consumer not to just compare price, but prompt them to consider their needs, risks and preferences for the insurance product. A consumer will hopefully then get a suitable product, and will be more likely to make conscious decisions to reduce cover in return for a cheaper product or pay more for a product with better benefits.

Many of the current sites have “related articles” or some built-in mechanism to prompt consumers to consider their risks and consider the various scenarios that they may face; but it requires the consumer to read it. In our experience consumers are likely to focus on the key comparison tool and ignore the surrounding information. For an aggregator to have value in ensuring the consumer is resourcing themselves as to the operation of the product, it should employ a mixture of information and prompting of the consumers needs.

Whilst “big event” information is important (whether or not you are covered for flood or storm surge), other day to day information is equally important; for example, whether materials will be matched, choice of repairer, and how a claim is settled (cash or store credit). Many consumers are just as concerned for minor claims as they are for large ones.

Recommendations:

- (1) Aggregator sites must compare points of coverage (and this would need to be legislated and regulated)
- (2) All aggregator sites should have accessible links to the full PDS wording; and
- (3) The comparison site should prompt a consumer to think about risk and what, for a multitude of claims, are the comparison points.

(4) Whether Aggregators will improve competition needs to be thoroughly researched, through the experiences of other similar markets, before it is heavily invested in.

- **Financial literacy** —many stakeholders have expressed the importance of supporting and implementing financial literacy strategies that may assist consumers to make more informed financial decisions using the information available to them. However, studies are inconclusive about the extent to which financial literacy strategies have been able to improve consumer decision making in relation to financial services. Although the Inquiry considers that financial literacy strategies are important, alone they are not sufficient to ensure adequate consumer outcomes.

Financial Rights agrees with the Interim Report that financial literacy strategies are important, but alone they are not sufficient to ensure adequate consumer outcomes. In our view, the current financial literacy strategy could be improved by recognizing:

1. Providing Australians with more information and understanding about financial products does not necessarily assist with avoiding poor decisions and exploitative practices; and
2. The core financial literacy strategy should be focused on delivering independent, targeted and practical information at the time financial decisions are made.

Consumers need advice about decisions at the time they are making those decisions. Currently, there is nowhere to go to get free practical advice about a range of financial decisions. It is noted that people who are well off do exactly this – they get advice on serious decisions before making them. The Financial Rights Legal Centre attempts to focus its financial literacy strategies as much as possible at financial decision-making. Financial Rights participates in the following financial literacy strategies:

1. The creation and publication of legal information and resources on our two websites (fact sheets, sample letters, checklists, etc.);
2. Community legal education workshops for the general public; and
3. The providing advice about financial services through our two hotlines.

Many of our online resources are aimed at helping consumers ask themselves important questions before making financial decisions, and our advice lines are available every day for consumers that want to ask a legal question before committing to a certain financial product. Our 'Know Your Financial Rights' Checklists are specifically designed for consumers to print and take with them when they are getting a loan or talking to an insurance company.

1.2. Affordability and lack of access to insurance

There are a growing group of Australians who cannot afford insurance or obtain insurance. The consequences of being uninsured can be devastating including the loss of a home or car. Lack of insurance also has consequential effects including homelessness, reduced school attendance, reduced access to medical care to name a few.

There is a significant lack of data available on the issues with affordability and reduced access to insurance. The anecdotal information we have indicates that the following consumers either cannot afford insurance or cannot get insurance (without difficulty):

- Consumers living in areas with an identified (high) risk of natural disaster
- Low income and unemployed consumers
- CALD consumers
- Former bankrupts
- Young people (particularly men) and car insurance
- Criminal convictions

There have been attempts to analyse the non-insurance and affordability problems.⁵ The real difficulty is that non-insurance and affordability requires a multi-pronged policy solution. There is debate on what that solution should be. What can be agreed is that non-insurance for whatever reason can have a serious impact on the economy decreasing disposable income and increasing reliance on welfare.

Recommendation: Any multi-pronged policy solution needs to address the following issues:

- **Mandatory transparency in pricing**
- **Enhancing competition through improved disclosure and standardising coverage (default product design)**
- **Investigating and generating solutions for non-insurance**

1.3. Underinsurance

After the bushfires in Canberra ASIC issued a report in September 2005 called Report 54: *Getting Insurance Right. A Report on Home Building Underinsurance*.⁶ The report found that:

- There is a high level of underinsurance in Australia
- The underinsurance is caused by a range of factors including:
 - Consumers having difficulty estimating rebuild costs
 - Lack of access to effective tools to estimate rebuild costs
 - Failure to change rebuild values with rising prices; and
 - Home building policies are difficult and complex to compare
 - Consumer may choose to be underinsured due to affordability reasons or just simply because they agree to bear some of the risk

It is significant that the above factors have not changed since the report. This is despite several major natural disasters. Underinsurance continues to be a systemic problem for consumers with home insurance. The vast majority of consumers who call the Insurance Law Service with a total loss home building claim are underinsured.

We would add that consumers generally do not trust insurance companies to estimate rebuild costs.

⁵ Insurance Council: The Non-insured: Who Why and Trends by Tooth and Barker, Centre for Law and Economics 2007 at <http://www.insurancecouncil.com.au/assets/report/the%20non%20insured%20-%20report.pdf>.

⁶ Available at [http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/underinsurance_report.pdf/\\$file/underinsurance_report.pdf](http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/underinsurance_report.pdf/$file/underinsurance_report.pdf)

Recommendations:

1. Replacement value cover needs to be available for consumers
2. If that is not possible, consumers need access to an independent free service that estimates building costs

1.4. Transparency and Risk-Based Pricing

Insurance prices throughout Australia can vary depending on the actuarial and statistical data held by the insurer. Insurance pricing is increasingly becoming more granular. More and more information is being collected about consumer habits and risk profiling. Financial Rights is concerned that the more that granular and specific data is collected the greater the exclusion will be for some sections of the insurance market. The use of granular data may lead to more targeted (and lower) pricing for some consumers, but others will be left underinsured or uninsured.

Additionally, the more data used to calculate risk and price premiums, the greater the risk for error. Current competition is in our view adversely affected by the lack of transparency in premium pricing. There is currently no adequate mechanism to review whether premiums are being calculated correctly.

Through the Insurance Law Service, the Financial Rights Legal Centre regularly receives complaints from consumers about the level of their premium. This includes consumers believing that the premium is incorrectly calculated given their claims history, or on incorrect information used. From our experience, consumers who dispute their premium pricing or excess pricing with the insurer are generally left feeling unsatisfied. We are told:

- a) the sales team cannot explain why the premium is priced as it is;
- b) they are provided generic answers; or
- c) they do not feel the insurer has taken any steps to look at their particular issue.

For example in flood coverage in home and contents insurance products, an insurer may historically have priced premiums on a suburb level rather than an individual property level, creating a benefit to shopping around in some regions. Some consumers will benefit from using insurers which take into account specific hydrological data about their property (and price lower accordingly). Alternatively, where a specific property is assessed as high risk for its individual topography, a suburb-based premium could be more competitive. In some regions this does not occur because there are fewer insurers, or no insurers pricing on postcode or a higher peril.

As a consequence in higher peril areas with fewer insurers competition and contestability are likely affected.

Case study 1 – Failure of contestability in North Queensland

Sally lives in North Cairns. Her property was built in the 1940's and is located in the White Zone outside the Storm Tide Zone as advised by her Local Council. Since buying the property and after Cyclone Yasi, Sally made some structural changes to the property and was advised by her builder that it was now "cyclone rated". She was insured for Storm, but not Storm Surge or Flood, and her premiums were \$5,000 per annum. She was happy with her policy in light of the property modifications. In early 2014 at renewal time, the insurer wrote to her and declined to renew her insurance policy on the basis her property was an "unacceptable risk".

Sally rang them and told them about the building works and that she was zoned in the White Zone. The insurer did not change its position, and continued to refuse to renew the policy.

Sally rang around other insurers, each time telling them at the point of sale about the works undertaken and that she was in the White Zone. No insurer would offer a policy of insurance to her.

Eventually, she contacted a broker, who arranged insurance for her at a higher price, so she would not be left completely uninsured.

Financial Rights helped her dispute the insurer's refusal to renew, by requesting written reasons under s75 of the Insurance Contracts Act. Shortly after ILS raised the written dispute, the insurer changed its mind and offered Sally a policy at the same price as it was the year before.

Sally was disheartened as Financial Rights had not done anything more than what she had previously done apart from quoting a section of the Act and using legal letterhead. She was still in completely in the dark about the reasons for their original decision to decline to cover her, or indeed why this was later reversed. She chose to remain with her new insurer out of dissatisfaction.

On the basis of our clients' experience in Cairns and similar client reports across all forms of insurance, consumers have difficulty contesting premium pricing by insurers (despite section 75 of the ICA). Even when consumers do all the right things, they face impediments due to lack of competition and a lack of transparency as to the basis of an insurer's pricing decision. It is commonly accepted that insurers' premium pricing information is "commercially sensitive" and if pricing is known it would somehow detrimentally affect their ability to compete. This guarded approach leads to consumer suspicion, misunderstanding and sensitivity to change. It undermines the insurance industry's credibility in being consumer focused and drives the perception of gouging.

The following case studies demonstrate the lack of information and explanations that insurance companies provide to customers about changes to premiums. Many of these case studies come from our Insurance Law Service email inquiry form. Identifying information has been removed for this submission, but the content comes directly from each consumer's email.

Case Study 2 – Consumer awareness as to premium (Financial Rights email inquiry)

We have just received our renewal notice a while ago while discussing contents insurance we had been told that we were over insuring our contents which would be costing us more to insure so we rang INSURER and arranged to bring the figure down from \$80,000 to \$45,000, while on the phone we also changed our address details from QLD to NSW. This is when problems started we were told we live in a high risk area so it will cost us more. (we spoke to neighbour they claim rubbish) then our renewal came we had reduced the amount of cover we needed yet the renewal was going to cost us \$85.00 more than it did when we had double the amount my wife was told that it was because the government in different state charge more than others it is not the insurers fault but the government I realise that Australia is not one country but several all run by different people and we need passport it travel from one state to another. so is it true is there a cost hike caused be governments?

Case Study 3 - (Financial Rights email inquiry)

My insurance premium for my investment property and my house insurance have gone up 600% in the last 4 years, this company said there is nothing they can do for us and you will find the same quotes elsewhere so I wouldn't even try. My investment property is the problem, as we have fixed the first one. The problem is the [address in SUNSHINE COAST QLD]. the last years premiums were \$347 a month. I could no longer afford this and tried a few insurance companies to see if they could help. I recently had to cancel my policy with INSURER1 and joined INSURER2, their charge was \$90.00 a month. i feel like I've been ripped off and would like to make a claim, if i look back at the other house premiums and they were as bad so there might be a case there as well. can you please help ??

Case Study 4 – Lack of transparency in premium pricing (Financial Rights email inquiry)

My car insurance policy is \$700 more expensive because of my address. The "a" after my street number is causing the problem. I own a free standing house with my own title. There are 3 homes with the same issue in this street.

Case Study 5 - (Financial Rights email inquiry)

Between one policy renewal schedule and the next, my excess increased from \$100 to \$500. My concerns are these:

1. The extent of the increase is 500%. This seems excessive and unreasonable, to say the least.
2. The only notification of the increase was a one-liner in the wording of the schedule itself, and a note at the foot of the reverse of the schedule. There was no prior notification warning of the increase - no letter warning that this might be coming. In my view, INSURER has acted in bad faith in not pre-announcing such a significant increase and therefore failing to allow its customers to consider their continued association with INSURER.

Renewal schedules come out as a matter of course; but a 500% increase in excess is something so out of the ordinary that it should have been flagged separately, and well in advance.

Had I not heard a INSURER Customer Service officer mention in passing a few days ago that the excess had increased by 500%, I would have been in the dark.

Case study 6 – Unexplained *decrease* in premiums

Matthew has an apartment in Queensland. He was paying contents insurance of \$740 in 2012, and then \$841 in 2013 but his renewal this year was for \$231; a reduction of \$500 and over 50%. He rang them and asked what the reason for the reduction was and the insurer has told him they can't tell him. Now he wonders whether they calculated it correctly before and whether he has been overcharged. He worries he may not be covered for events and is now suspicious.

Case study 7 – Unexplained discounts

John has insured his cars and homes with INSURER for over 15 years. John rang up to switch his building insurance to landlord's insurance and was told that he should ring back when the rent is known as that may affect the premium. John did so and spoke to another representative; they noted the rental and the new policy price changed. In the course of the call, the representative said "I'll just make sure all your discounts have been applied, for all the policies" after a few minutes they came back and further reduced the policy price plus reduced the price on his other policies. John was irritated, why hadn't the first person done that and he has had these policies for over 15 years. Had they been doing it before?

This in our view is detrimental to the insurance industry, and it does not foster transparency or accountability. The general insurance industry is increasingly using more granular data and factors to price products. Home and contents insurance is priced on specific localised data, and consumer premiums in motor vehicle insurance are more and more based on "big data" findings by insurers about risk and price. In our view the more granular the insurer becomes in the assessment of its risk, the higher the chances of error or misapplication.

The insurance industry should not be able to shield relevant information on the grounds that there are using "commercially sensitive" rating factors and weightings. Consumers should have access to such information if they have a legitimate dispute about the reasons behind a premium or excess price or the policy conditions as applied to their insurance. There is currently no dispute resolution mechanism for a consumer notwithstanding the consumer's insurance policy may:

- Be offered with a premium the consumer believes to be unreasonable due to inappropriate assessment of risk; or
- Have complex terms and conditions the consumer cannot understand and, as a consequence, the consumer finds they have an inappropriate policy.

In its recent publication entitled "Enhancing the consumer experience of home insurance: Shining a light into the black box"⁷ the Fire Services Levy Monitor (FSLM) reasoned that by improving the efficiency of insurance markets, through removing information asymmetry and making competition more effective, policyholders will be better informed and premiums will fall, thereby making insurance more accessible. In order to achieve this goal and to improve consumer awareness the FSLM specifically recommended that FOS:

Provide easier access to information and dispute resolution – by removing hurdles to information provision by insurers and dispute resolution by the Financial Ombudsman Service, consumers are less likely to be disadvantaged by opaque risk rating practices of insurers.

The FSLM report argues there is a need for greater contestability of premium pricing and cost pricing.

Recommendation:

1) Require insurers to disclose the basis of the premium pricing

⁷ Fire Services Levy Monitor, "Enhancing the consumer experience of home insurance - Shining a light into the black box" (July 2014) Available at:
<http://www.firelevymonitor.vic.gov.au/home/news+and+information/publications/publication+shining+a+light>

2) Amend section 75 of the ICA in relation to reasons given when a contract of insurance is cancelled, otherwise not renewed or renewed on less advantageous terms that the insurer provides more detailed information than what is currently being provided.

1.5. Group life insurance arranged through superannuation

Many Australians now rely on insurance that they pay for through their superannuation fund. All industry superannuation funds offer life insurance and income protection insurance when a consumer joins a superannuation fund. The premiums for the insurance are paid through superannuation contributions. This makes the insurance very attractive to consumers as there is no out of pocket expense.

Group insurance policies can represent very good value for consumers as there is a considerable discount for being in a large group. The Insurance Law Service gets a lot more calls about group insurance claims than life insurance provided by private insurers. We predict that the trend towards relying on insurance through a superannuation fund is likely to increase.

When the last review of the Insurance Contracts Act occurred in 2003 there was little consideration of this issue. This needs to be remedied to ensure that consumers have the same consumer protections in place as if the consumer had obtained life insurance outside superannuation.

Recommendations:

- 1. A review of consumer protection in group insurance policies with recommendations tailored to improve consumer protection**
- 2. A review of the coverage in group insurance policies**
- 3. A review to investigate how to improve competition to deliver benefits for consumers and adequate coverage**
- 4. Require disclosure to enable consumers to determine suitability of the insurance**

1.6. Natural disasters/climate change and insurance

Climate change (whatever the cause) has been scientifically established and can have a significant impact on insurance. According to the Intergovernmental Panel on Climate Change (IPCC) human interference with the climate system is occurring, and climate change poses risks for human and natural systems. The IPCC is the leading international body for the assessment of climate change. It was established by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) in 1988 to provide the world with a clear scientific view on the current state of knowledge in climate change and its potential environmental and socio-economic impacts. In 2013 they released their most recent Assessment (AR5) and a key finding of that Assessment is that, “it is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century.”⁸

⁸ [WGI AR5 SPM Section D.3, 2.2, 6.3, 10.3-6, 10.9. Available at: <http://www.ipcc.ch/report/ar5/index.shtml>]

CHOICE and The Climate Institute of Australia have issued a report *Buyer-Beware: Home Insurance, Extreme Weather and Climate Change*⁹. The report was issued this year. The report predicts that changes to premiums due to increasing risk could mean increases of up to 92%. It is noted that we are already aware of premium increases due to risk can be much higher than 92%. We have seen insurance premiums jump from \$2400 per annum to \$32,000 per annum.¹⁰ The report makes a number of recommendations and we believe all of those recommendations should be implemented.

We contend that the insurance industry continues to fully realise and adapt to the issues related to climate change. It is noted that:

- The recently revised General Insurance Code of Practice only has a few paragraphs providing very little in relation to natural disasters; and
- The focus is on mitigation and resilience when there is little evidence that this approach will successfully manage the issues relating to climate change; and
- The insurance industry campaigned against the recommendations in the Trowbridge Report

Recommendations:

- 1. Implement the recommendations in the CHOICE Report**
- 2. Implement the recommendations in the Trowbridge Report**
- 3. Consider a taskforce on insurance and climate change**

1.7. Unfair terms

Insurance is the only financial services area that is not subject to unfair terms legislation. Arguably insurance is the area where consumers most need protection from unfair terms because consumers insure their main assets.

It is our understanding that legislation has been drafted to implement unfair terms regulation into the Insurance Contracts Act. The introduction of unfair terms in insurance has been the subject of several consultations. There is no reason why the legislation should not be enacted. We contend that unfair terms legislation is urgently needed to ensure a level playing field and adequate consumer protection in insurance.

Recommendation: Urgently introduce unfair terms legislation for insurance

1.8. Product suitability

There is considerable evidence that consumers are often buying insurance that is unsuitable for their needs. In our view, this is happening and will continue to happen because:

- Unless the consumer is using an insurance broker, there is never (or almost never) a conversation with the insurer about what the consumer needs;

⁹ Available at www.choice.com.au

¹⁰ This remains very difficult to explain and could possibly be an error. Although the client checked with the insurer and was assured it was not an error.

- Disclosure is so poor that consumers find it hard to work out what their coverage is;
- There is enormous competition on price but little competition on coverage. Comparison websites deepen that problem;
- The insurance companies do very little work in the area of suitability; and
- Many consumers erroneously believe there is basic coverage.

In credit, there is a legislative responsibility on credit providers to make sure the product they are providing or arranging is suitable. There is no such requirement in insurance. Like in Credit, this is an issue that will need to be dealt with through legislation. The insurance industry will no doubt argue that 'suitability discussions' for insurance is tantamount to financial advice. We contend that argument is misconceived.

Recommendation: Insurance products should be suitable and insurance companies should be required by law to seek information from the consumer on what they need from their insurance and ensure the product sold is suitable.

1.9. Standard terms/default product features

There are (arguably out of date) standard terms in the Insurance Contracts Act. The standard terms are completely ineffective because all insurers contract out of them. This needs to be changed because there are many insurance products that are poor value or simply never worth buying because the coverage is so poor.

Standard terms are a way to protect consumers from very poor coverage. Consumers are entitled to expect a minimum standard of coverage.

Recommendation: Standard terms be introduced for all consumer insurance to ensure consumers have at least reasonable minimum coverage.

2. Credit

2.1. Financial Difficulty Predator Businesses

Financial difficulty predator businesses are those businesses that charge consumers sums of money to assist with a range of financial difficulty problems. There are a number of different types of businesses:

- That manage a consumers budget for a fee;
- That negotiate with creditors for reduced lump sum settlements for a fee;
- That consolidate debts (although this often leads to a part IX debt agreement); and
- That repair credit reports which in theory will enable a consumer to get a loan.

None of the above businesses are subject to regulation. They are all part of a regulatory loophole or series of loopholes. As a consequence, the businesses are not licensed, not required to be in EDR, can charge large fees, cause significant consumer detriment and consumers have limited access to redress.

Consumer detriment from these businesses is primarily financial, but can also be non-financial. In financial terms, these businesses invariably charge significant fees when free options to assist struggling debtors may be available (i.e. financial counselling). Non-financial detriment can arise if services do not meet consumer needs (increased

financial stress alone can lead to health problems, mental illness and relationship breakdown). In some cases the financial detriment can be severe, including:

- Adding a significant debt owed to the financial difficulty predator business when the consumer is already in financial hardship;
- Consumers becoming subject to legal proceedings because they have paid a 3rd party instead of their creditors and/or they have been advised to stop paying their original creditor for the purposes of creating greater leverage in negotiations;
- Consumers having their credit report impaired after following advice to stop paying their debts;
- Consumers being placed in Part XI Debt Agreements when it's not in their best interests;
- Consumers being made bankrupt in circumstances where this was unnecessary and highly detrimental; and
- Consumers being prevented from going bankrupt when this is their most appropriate option.¹¹

The Financial Rights Legal Centre submits that ASIC's ability to take action in relation to these entities is very limited. Some of these businesses have an Australian Credit Licence, but the services offered may not necessarily be regulated by consumer credit or financial services legislation (i.e. debt agreement brokers, credit repair services). Although the fees that these businesses charge may be very high and disproportionate to the service provided, this may not itself be unlawful, even though consumers suffer great detriment.

Recommendations:

- 1. Obligation to be licensed under NCCP**
- 2. Obligation to be a member of an External Dispute Resolution scheme**
- 3. Specific consumer protection legislation in the NCCP to cover the problems with these businesses**

2.2 Payday lending

Payday lending is an unsafe product. In our casework experience almost every loan provided by a payday lender breaches the responsible lending laws under the National Consumer Credit Protection Act. This means that consumers are being given loans they cannot afford to repay without substantial hardship all over Australia everyday. This is a systemic issue and consumer advocates have made repeated complaints to ASIC to take action. ASIC has taken action against some payday lenders but as this is an industry wide problem it seems it may be necessary to take action against all payday lenders.

The consumer detriment caused by this unsafe product is immense and ongoing. Payday lenders are often lenders of last resort. Consumers cannot get access to credit elsewhere. The reason consumers cannot get access elsewhere is that other mainstream lenders actually comply with the responsible lending obligations under the credit law. This means there are now many thousands of consumers in Australia caught in debt traps with payday lenders.

¹¹ Some consumers have reported being told they cannot go bankrupt until they have made payments over a set period to the service provider

The payday lending industry also has a long history of attempted avoidance of the law. This is the hallmark of a dodgy and disreputable industry.

Recommendations:

That the Inquiry acknowledges that payday loans are an unsafe product and that the growing use does not indicate a demand for credit that will be used to improve a borrower's financial situation

That the inquiry direct the Federal Government to reconsider the 2012 Treasury consultation on reducing reliance on payday lending and develop a comprehensive policy response

Interim Report's Policy Options

- *No change to current arrangements.*

Financial Rights Legal Centre does not support this Option for the reasons discussed above.

- *Improve the current disclosure requirements using mechanisms to enhance consumer understanding, including layered disclosure, risk profile disclosure and online comparators.*

Financial Rights supports all of these Options, but strongly submits that more research must be done about what works and what doesn't work when it comes to disclosure before any of these Policy Options can be effectively implemented.

- *Remove disclosure requirements that have proven ineffective and facilitate new ways of providing information to consumers, including using technology and electronic delivery.*

Financial Rights supports this Policy Option, but again strongly submits that more research must be done about disclosure before removing any disclosure requirements or facilitating any new ways of providing information to consumers.

- *Subject product issuers to a range of product design requirements, such as targeted regulation of product features and distribution requirements to promote provision of suitable products to consumers.*

Financial Rights supports this.

- *Provide ASIC with additional powers such as:*
 - *Product intervention powers to prescribe marketing terminology for complex or more risky products.*
 - *A power to temporarily ban products where there is significant likelihood of detriment to consumers.*

Financial Rights strongly supports providing ASIC with additional powers, including the two listed in this Policy Option.

Financial Rights strongly supports the suggestion that ASIC should be given the power to ban products or product features. We agree that there regulator accountability should be ensured and that ASIC should need to demonstrate that a significant number of consumers are being caused significant detriment. Nevertheless, we believe the powers that the ACCC have to ban harmful products, and the powers that the regulator has in the UK to temporarily intervene with harmful products are powers that should be extended to ASIC.

Financial Difficulty Predator Businesses (a term used among consumer advocates) are an example of an area of financial products and services where licensing and enhanced ASIC banning or intervention powers would be most welcome.

Additional Recommendations relating to ASIC's powers:

1. ASIC's role in identifying and making recommendations to government in relation to gaps in the law should be explicitly recognised and retained;
2. All commercial entities involved in regulated credit advice, negotiations, credit reporting and personal budgeting/repayment services should be subject to licensing, EDR and specific tailored provisions to improve outcomes for consumers (and prevent the identified harm); and
3. Responsibility for the enforcement of credit reporting regulation should be transferred to ASIC.

- *Consider a move towards more default products with simple features and fee structures.*

See our comments under 1.9 above.

- *Do similar issues in relation to the PDS disclosure regime apply to prospectuses, and is there a need to review prospectus requirements?*

No comment.

- *What evidence is there on the effectiveness of financial literacy strategies in enhancing consumer confidence and decision making at particular points in time, and in achieving increasing literacy over the long term?*

See comments about financial literacy above in section 1.1.

Interim Report's Policy Options Regarding Financial Advice

We support the comments and recommendations made by CHOICE.

Access to Credit

Is there a role for Government and/or industry to facilitate further development of microfinance initiatives, in collaboration with the not-for-profit and community sector? To what extent would this improve access to small amount credit?

We support the comments of Consumer Action Law Centre on this point.

Consumer Loss and Compensation

Policy Option: *Given the limitations of professional indemnity insurance, what options, if any, exist for addressing the issue of consumer loss?*

Getting paid their awarded compensation is an ongoing problem for consumers who have had disputes against financial services providers. FOS currently has \$10,157,401.23 in unpaid determinations¹². This means that both a significant amount of consumers are being denied compensation, and FOS is forced to spend time chasing money on behalf of consumers when they could instead be resolving cases.

There are three possible options for compensating consumers given the limitations of professional indemnity insurance.

- a) Create a last resort compensation scheme equivalent modelled on the UK Financial Services Compensation Scheme^[1].
- b) Create a scheme that did the minimum necessary to ensure EDR scheme and court awards are paid.
- c) Require FOS and COSL to amend their terms of reference so that they can compensate consumers where determinations are unpaid. This could be achieved by a levy.

We strongly support option 1 but as a minimum option 3 should be implemented as a first step.

Recommendation: Introduce a comprehensive compensation scheme for unpaid consumer losses

Additional Policy Options:

- *Are there elements of the consumer framework not covered in this chapter that require consideration?*
- *In addition to the current regulatory framework, what role can industry self-regulation play in improving consumer outcomes generally?*

Self- Regulation

There is significant self-regulation in the financial services sector in Australia. Almost every industry sector has a code of practice and some form of disciplinary scheme.¹³ There is significant variation between the standards of Codes and disciplinary schemes in financial services.

ASIC has developed regulatory guidance in this area (RG 183) for industry based codes. We contend that RG 183 is well drafted, comprehensive and provides a good set of benchmarks for industry codes. Unfortunately, a major problem is that no industry code has applied for registration under RG183. The Insurance Council of Australia indicated it would apply for approval under RG183 from ASIC but that application has not been made as yet. Overall, the financial services industry in Australia is reasonably mature and it is now time to lift industry standards by requiring industry Codes and requiring that the Code meet set benchmarks.

¹² See the FOS Circular August 2014 at <http://www.fos.org.au/the-circular-18-home/fos-forum/unpaid-determinations-update.jsp>

^[1] <http://www.fscs.org.uk/>

¹³ We note that there is no code for the Life Insurance industry. This is a major deficiency for consumers.

Recommendations:

1. There must be an industry code for all major financial services industries
2. The Code must be registered under RG183 and approved by ASIC

Other Consumer Issues:

Further consolidation of EDR and the Superannuation Complaints Tribunal

There are currently 3 low cost or no cost schemes available in financial services:

1. Finance Ombudsman Service
2. Credit Ombudsman Service
3. Superannuation Complaints Tribunal

There is considerable overlap between all 3 schemes. There is a complete overlap between the Financial Ombudsman Service and the Credit Ombudsman Service. Members switch between schemes regularly and there is considerable consumer confusion on which scheme to lodge in. In some cases it is necessary to lodge in both schemes against two separate members to get the dispute resolved.

The SCT and FOS are involved in a significant amount of cross referral. Financial Rights receives regular calls from consumers having a great deal of difficulty navigating the system. It is also arguable that superannuation consumers should have access to EDR before having to consider going to a Court or Tribunal. The backlog and delay at the SCT is now significant. The SCT also has a less proactive approach to dispute resolution than FOS or COSL.

Recommendation: A review is conducted to determine whether it would be more efficient to combine FOS, COSL and the SCT into one scheme ensuring that access to justice is enhanced and not reduced.

7: Regulatory architecture

No comment.

8: Retirement income

No comment.

9: Technology

No comment.

10: International integration

No comment.

Summary of Recommendations

Competition – Banking Sector

Recommendations: No change to current arrangements. A review should be conducted by treasury in partnership with the privacy commissioner to review the effectiveness of the new credit reporting laws after 5 years commencing in March 2019.

Recommendation: Account portability should be improved to enhance competition.

Competition – Payments Sector

Recommendation: We recommend that the following elements be enacted in order to deliver effective transparency in pricing and encourage competition:

1. Merchants can only charge their reasonable costs
2. A regulator (ASIC) must be given effective powers to enforce the regulation
3. Consumers must be able to enforce a failure to charge a reasonable cost directly against the merchant in an external dispute resolution scheme
4. Merchants and consumers are provided with real-time pricing information by the merchant
5. Consumers are provided disclosure of the charge up-front
6. Tap and Go or paypass payment mechanisms must default to debit card transactions and not credit card unless the card is only a credit card

Consumer Outcomes - Insurance

Recommendation: Review of the regulation of insurance with a focus on future proofing insurance in the context of the challenges of climate change, improving consumer outcomes and competition. Detailed recommendation on regulations that should be implemented appear below.

1.1 Recommendation: Any proposed disclosure forms must be tested with consumers by an iterative process of redrafting and retesting.

1.1 Recommendation: The method of delivery of any insurance notices should be prescribed to ensure timely and adequate disclosure

1.1 Recommendations:

1. Aggregator sites must compare points of coverage (and this would need to be legislated and regulated)
2. All aggregator sites should have accessible links to the full PDS wording; and
3. The comparison site should prompt a consumer to think about risk and what, for a multitude of claims, are the comparison points.
4. Whether Aggregators will improve competition needs to be thoroughly researched, through the experiences of other similar markets, before it is heavily invested in.

1.2 Recommendation: Any multi-pronged policy solution needs to address the following issues:

- Mandatory transparency in pricing
- Enhancing competition through improved disclosure and standardizing coverage (default product design)
- Investigating and generating solutions for non-insurance

1.3 Recommendations:

1. Replacement value cover needs to be available for consumers
2. If that is not possible, consumers need access to an independent free service that estimates buildings costs

1.4 Recommendation:

1. require insurers to disclose the basis of the premium pricing
2. Amend section 75 of the ICA in relation to reasons given when a contract of insurance is cancelled, otherwise not renewed or renewed on less advantageous terms that the insurer provides more detailed information than what is currently being provided .

1.5 Recommendations:

1. A review of consumer protection in group insurance policies with recommendations tailored to improve consumer protection
2. A review of the coverage in group insurance policies
3. A review to investigate how to improve competition to deliver benefits for consumers and adequate coverage
4. Require disclosure to enable consumers to determine suitability of the insurance

1.6 Recommendations:

1. Implement the recommendations in the Choice Report
2. Implement the recommendations in the Trowbridge Report
3. Consider a taskforce on insurance and climate change

1.7 Recommendation: Urgently introduce unfair terms legislation for insurance

1.8 Recommendation: Insurance products should be suitable and insurance companies should be required by law to seek information from the consumer on what they need from their insurance and ensure the product sold is suitable.

1.9 Recommendation: Standard terms be introduced for all consumer insurance to ensure consumers have at least reasonable minimum coverage.

2.1 Recommendations:

1. Obligation to be licensed under NCCP
2. Obligation to be a member of an External Dispute Resolution scheme
3. Specific consumer protection legislation in the NCCP to cover the problems with these businesses

2.2 Recommendations:

That the Inquiry acknowledges that payday loans are an unsafe product and that the growing use does not indicate a demand for credit that will be used to improve a borrower's financial situation

That the inquiry direct the Federal Government to reconsider the 2012 Treasury consultation on reducing reliance on payday lending and develop a comprehensive policy response

Consumer Outcomes – Self Regulation

Recommendations:

1. There must be an industry code for all major financial services industries
2. The Code must be registered under RG183 and approved by ASIC

Consumer Outcomes – Regulator Powers

Additional Recommendations relating to ASIC's powers:

1. ASIC's role in identifying and making recommendations to government in relation to gaps in the law should be explicitly recognised and retained;
2. All commercial entities involved in regulated credit advice, negotiations, credit reporting and personal budgeting/repayment services should be subject to licensing, EDR and specific tailored provisions to improve outcomes for consumers (and prevent the identified harm); and
3. Responsibility for the enforcement of credit reporting regulation should be transferred to ASIC.

Consumer Outcomes – Compensation

Recommendation: Introduce a comprehensive compensation scheme for unpaid consumer losses

Concluding Remarks

Thank you again for the opportunity to comment on the Australian Government's Discussion Paper. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



Katherine Lane

Principal Solicitor

Financial Rights Legal Centre

Direct: (02) 8204 1350

E-mail: Kat.Lane@financialrights.org.au