

Inquiry into the resolution of disputes with financial service providers within the justice system

Legal Aid NSW submission to the Senate
Legal and Constitutional Affairs Committee

March 2019

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Legal Aid
NEW SOUTH WALES 

About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 24 offices and 221 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with LawAccess NSW, community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 29 Women's Domestic Violence Court Advocacy Services.

The Legal Aid NSW Civil Law Division focuses on legal problems that impact most on disadvantaged communities, such as credit, debt, housing, employment, social security and access to essential social services. Consumer issues constitute the largest category of service for our Civil Law Division, with over 8,000 services in the 2017-18 financial year.

The case studies in this submission have been drawn from the work of our consumer law teams. They have been de-identified to protect the privacy of our clients.

Legal Aid NSW welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs References Committee regarding the *Inquiry into the Resolution of Disputes with Financial Service Providers within the Justice System* Should you require any further information, please contact:

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Introduction

Legal Aid NSW welcomes the opportunity to contribute to the *Inquiry into the Resolution of Disputes with Financial Service Providers within the Justice System*.

Legal Aid NSW provides legal advice, assistance and representation to disadvantaged and vulnerable consumers in NSW, including people in receipt of Centrelink benefits, Aboriginal people, people from culturally and linguistically diverse backgrounds, people with a disability, older people and people living in rural and remote areas.

In making this submission, we draw on our extensive casework experience throughout NSW, in particular from our specialist services such as the Mortgage Hardship Service and the Consumer Law Specialist Team.

The ability of consumers and small businesses to exercise their legal rights through the justice system, and whether there are fair, affordable and appropriate resolution processes to resolve disputes with financial service providers, particularly the larger banks, is the primary focus of our submission.

Legal Aid NSW notes the well documented barriers for disadvantaged and vulnerable people accessing their legal rights through the justice system, and the large gap that exists between the demand for free legal services for disadvantaged Australians, and the current supply.

The Productivity Commission's *Access to Justice Arrangements – Inquiry Report (2104)* found that 'disadvantaged Australians are more susceptible to, and less equipped to deal with, legal disputes. Governments have a role in assisting these individuals. Numerous studies show that efficient government funded legal assistance services generate net benefits to the community'.¹ The report also noted that 'while there is some scope to improve the practices of legal assistance providers, this alone will not address the gap in services. More resources are required to better meet the legal needs of disadvantaged Australians'.²

We understand that Legal Aid NSW is the highest consumer representative user of the Australian Financial Complaints Authority (**AFCA**). We consider that AFCA is the most appropriate dispute resolution forum for vulnerable and disadvantaged consumers seeking to resolve disputes with financial service providers, including banks and other credit providers, insurance companies and superannuation funds.

This is because:

¹ Productivity Commission, *Access to Justice Arrangements – Inquiry Report (2014)* 2.

² Productivity Commission, *Access to Justice Arrangements – Inquiry Report (2014)* 2.

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- AFCA’s free and independent dispute resolution forum is more accessible for consumers than having a matter heard by a court or tribunal;
 - AFCA can resolve complaints without a complainant having to attend or appear in person. This is particularly advantageous for clients based in regional or remote areas;
 - AFCA can make a decision on the basis of what is fair and reasonable, and is not bound by the strict rules of evidence that apply to a matter before a court; and
 - Having a matter determined by AFCA means that vulnerable clients can avoid the complexity, costs and stress associated with having a matter determined by a court.

Our submission responds to the Inquiry’s Terms of Reference, and focuses on these broad themes:

1. The importance of AFCA as an efficient forum for our clients to resolve disputes with financial service providers;
2. Common challenges encountered by our clients seeking to resolve these kinds of disputes through the court system; and
3. How the current system could be improved.

Case studies used in this submission have been de-identified by changing names, rare characteristics and unique combinations of identifying factors.

TOR (a) Whether the way in which the banks and other financial service providers have used the legal system to resolve disputes with consumers and small businesses has reflected fairness and proportionality

In Legal Aid NSW’s casework experience, financial service providers can use the legal system to resolve disputes in a way that is not fair or proportionate for consumers. We have observed this trend in particular when lenders enforce guarantees and loan agreements against elderly and vulnerable people experiencing financial hardship. In these cases, lenders are slow to agree to hardship arrangements suited to the needs of the consumer, but quick to enforce the contract through legal avenues. In our view, this approach does not reflect fairness and proportionality, and falls far short of the standard that the community is entitled to expect from financial service providers.

Lenders can be slow to enter into practical hardship arrangements

Legal Aid NSW often provides advice and representation to consumers who have used their homes as security for loans primarily obtained for the benefit of a third party, usually a son or daughter. Many of these consumers are vulnerable elderly people, who seek our advice at the point where the loan is in default and they have received a Statement of Claim from the lender threatening to sell their home to satisfy the debt. Often, our clients are unable to service the loan as their main income source is a Centrelink pension. These clients do not have the resources, time and expertise to negotiate the legal system alone. In these circumstances, we have observed that lenders tend to be reticent to negotiate a hardship arrangement which will suit the needs of the consumer. The Banking Royal Commission's case study of Carolyn Flanagan is a notable example.³

Case study: Ms Flanagan and Westpac

When Ms Flanagan came to Legal Aid NSW for advice, she had already received a Statement of Claim from Westpac seeking to obtain a writ for possession of her home. Legal Aid NSW made a complaint to the Financial Ombudsman Service (**FOS**) on Ms Flanagan's behalf.

Ms Flanagan wanted FOS to negotiate a hardship arrangement with Westpac so that she could continue to live in her home for the duration of her life. Westpac rejected that request during the FOS process. FOS found in favour of Westpac. Following the FOS determination, Legal Aid NSW approached a senior contact at Westpac again seeking a resolution that would permit Ms Flanagan to remain in her home until her death. Westpac agreed to this proposal nearly a year after Legal Aid NSW originally suggested it.

Commissioner Hayne noted in his Interim Report that:

Once Ms Flanagan made her hardship application, I consider that the community would not think it right for Westpac to deprive Ms Flanagan of the use of her home during her life. And yet, despite her application to FOS, and her expressed desire to negotiate what would be, in effect, a life tenancy in the property, Westpac rebuffed the approach and insisted upon exercising its rights under the guarantee. That was conduct that fell short of what the community would expect.⁴

³ Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Interim Report* (2018) Volume 2, 257.

⁴ Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Interim Report* (2018) Volume 2, 269.

Further, Westpac said in its submissions to the Banking Royal Commission that:

Westpac should have progressed [the request Ms Flanagan made in her complaint to FOS] with greater urgency than it did, and with more understanding of, and compassion for, Ms Flanagan's situation. The outcome ultimately reached with Ms Flanagan could and should have been reached earlier.⁵

The case study of Mr and Mrs Jones below demonstrates a similar scenario where the lender strongly defended its position to enforce the loan in the FOS process, but later agreed to settle the matter, many months later, on terms favourable to the clients.

Case study: Mr and Mrs Singh

Mr and Mrs Singh were an elderly couple who entered into a loan as a co-borrower with their son. The loan was secured against their home on the understanding that the son would use the loan to build a house and that he would make all the repayments. Mr and Mrs Singh did not receive any independent legal or financial advice prior to entering into the loan.

A year later, their son requested an increase from the lender of the loan to a higher amount without Mr and Mrs Singh's knowledge. Mr and Mrs Singh then signed loan application documents but were not aware of the content or implications. Shortly after, their son approached a finance broker to refinance the home loan. Mr and Mrs Singh did not meet or communicate with the broker. Without instructions from Mr and Mrs Singh, the broker prepared and submitted an application for an investment loan secured against their home. Mr and Mrs Singh were the co-borrowers in respect of the loan which was used by their son to discharge the previous home loan. The balance of funds were released to the son's nominated bank account.

Legal Aid NSW assisted the clients by negotiating with the bank to reduce their liability under the loan, and to secure a life interest in the home. Unfortunately, this process took over a year, during which time Mrs Singh was unwell and attending hospital regularly.

⁵ Westpac Banking Corporation, Submissions on Rubric 3-12 Case Study, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* 8 June 2018, 11 [49].

Lenders can be quick to commence legal action

In our experience, lenders exercise their legal rights in court to obtain judgment against the debtor or guarantor, and quickly enforce that judgment to recover the debt. Often, our clients do not have the resources to defend these matters in court, or the expertise to navigate the legal system. As the case study below shows, the impact of this fast-paced, legalistic approach can be devastating for a vulnerable person, and the outcome is often disproportionate to the loan amount in question.

Case study: Mr Gregory

Mr Gregory's sole source of income is Centrelink benefits. His adult son applied for a loan of \$22,500 from a non-bank lender. The lender required a guarantor. Mr Gregory agreed to be a guarantor, securing the loan with his previously unencumbered property, and he understood that his son would make the loan repayments. Unfortunately, Mr Gregory's son breached the loan agreement.

The lender commenced proceedings in the Local Court. Mr Gregory did not understand that he needed to enter a defence, and the lender obtained default judgment against him. Shortly after, the lender commenced bankruptcy proceedings against Mr Gregory. At this point, Mr Gregory sought Legal Aid NSW's assistance.

Fortunately, Legal Aid NSW was able to set aside the default judgement in the Local Court and the bankruptcy proceedings were dismissed. Mr Gregory has now lodged a dispute in the Australian Financial Complaints Authority. If Legal Aid NSW had not assisted Mr Gregory, Mr Gregory most likely would have been made bankrupt, and faced losing his home.

TOR (b) The accessibility and appropriateness of the Court system as a forum to resolve these disputes fairly

The kinds of financial disputes experienced by our clients vary, but commonly include disputes with financial institutions relating to:

- Responsible lending practices in the provision of credit;
- Financial hardship;

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- Mis-selling of financial products, including unconscionable conduct and misleading and deceptive conduct; and
 - Failure to pay benefits under insurance policies.

Court action can be necessary or preferable

There are some circumstances where a court will be the necessary or preferable forum for a dispute with a financial firm. For example, where:

- The matter involves multiple other parties;
- There is a novel or complex legal question;
- The matter involves areas of law not within jurisdiction of AFCA, such as a where there is a linked credit contract or concerns about the quality of a product purchased or leased;
- The financial firm is operating unlicensed and/or is not a member of AFCA; or
- Where the compensation sought is greater than AFCA's statutory jurisdiction.

The need to have these types of matters heard in court raises significant access to justice questions given the limited availability of free or low cost legal assistance services. As some of the most complex matters are ultimately resolved through the court system, readily available legal assistance services are critical. Further comments are made about this below.

The court system also has a valuable role as a forum to resolve disputes where proceedings are brought by a regulator or via a class action. These types of proceedings have the ability to obtain remedies for a large number of consumers, even in matters where their individual loss is relatively small. Legal Aid NSW would like ASIC to have sufficient powers and resources to obtain consumer redress when undertaking court proceedings.

Most often Court action is impractical, inefficient and costly

However, in our casework experience, the court system can be an impractical, inefficient and costly means of resolving financial disputes. While in some small value and low complexity matters, court can be faster than having a matter heard through external dispute resolution, vulnerable clients are faced with significant costs and procedural barriers when attempting to resolve a matter through a court.

Even in circumstances where a vulnerable client is represented, whether through a grant of legal aid, assistance from a Community Legal Centre, or pro-bono representation, resolving these kinds of disputes through the court system is generally only appropriate as a last resort where negotiation and other forms of internal and external dispute resolution have failed to resolve the matter.

For disadvantaged and vulnerable clients *without* legal representation, the Court system is a largely inaccessible and inappropriate forum for the resolution of disputes between themselves financial institutions like banks and other credit providers.

This is because:

- Paying for private legal representation is rarely an option for vulnerable clients who may already be facing financial hardship (indeed, in many circumstances the dispute itself may be the result of financial hardship);
- Filing fees and other administrative costs can be significant (although we continue to support fee waivers for vulnerable consumers experiencing financial hardship);
- Without legal representation, disadvantaged clients are unable to navigate complex and confusing court practices and procedures;
- Consumers face significant costs risks if litigation is unsuccessful, particularly if matters are being heard in superior courts and claims are of high value and high complexity;
- Navigating the court system can be stressful, particularly where the outcome of the dispute is likely to have significant implications for a person's livelihood;
- Some common financial disputes before courts, for example, placing a stay for writ of possession in the Supreme Court, require a person to file some hard copy documents in person. These kinds of formal requirements present significant challenging for many disadvantaged clients, in particular those living in regional or remote areas; and
- Even disputes involving low value claims may give rise to complex legal questions that can be resource intensive to resolve.

The case studies above highlight the way in which client vulnerabilities, for example lack of financial literacy, can result in significant detriment to a consumer when up against a well-resourced financial institution.

For consumers with low literacy, who may live in a regional or remote area, or who require specialist support (for example, a tutor or other support person), a lack of access to the court system is particularly acute.

For these reasons, Legal Aid NSW has advocated for the creation of External Dispute Resolution (**EDR**) schemes as quick and efficient forums for resolving disputes with financial institutions, and for more robust internal dispute resolution processes within financial institutions themselves.

Case study: Mr Birra

Mr Birra attended a Legal Aid NSW office for advice about a credit card debt. He had received a Statement of Claim from a major financial organisation relating to an alleged debt of \$8,000.00.

Mr Birra did not have the money to pay a solicitor to represent him at court, and did not have the legal expertise required to respond to the Statement of Claim. He wanted to enter into a repayment arrangement for the debt.

On Legal Aid NSW's advice, Mr Birra filed a complaint with an External Dispute Resolution body. This placed court proceedings on hold and allowed Mr Birra time to negotiate a suitable repayment arrangement with the financial institution.

Mr Birra's case study above highlights the way in which an EDR body is often a more appropriate, quicker and cheaper forum for resolving disputes between individuals and financial institutions. Without an EDR scheme, Mr Birra would have had to represent himself in court, and may have found himself with a judgment debt that included court fees and solicitor costs.

TOR (c) The accessibility and appropriateness of the Australian Financial Complaints Authority (AFCA) as an alternative forum for resolving disputes

Legal Aid NSW considers that AFCA is a more accessible and appropriate forum than the court system for resolving disputes between individual consumers and financial institutions.

We support the strengthening of AFCA's mandate by increasing its powers and resources, and respond to the matters in this term of reference as set out below.

TOR (c)(i) Whether the eligibility criteria and compensation thresholds for AFCA warrant change

Legal Aid NSW welcomed the increase in AFCA's monetary limit to \$1,000,000 and compensation caps of \$500,000 for most non-superannuation disputes. However, the monetary limits and compensation caps need to keep pace with economic factors such as wage growth, home lending data, property price increases and total loss claim information. This would help ensure that the limits and caps are in line with the actual experience of consumers on an ongoing basis. For this reason, the monetary limit and compensation cap should be raised to \$2,000,000.

We also welcome the principles contained in ASIC Regulatory Guide 267.150 with respect to periodic reviews of AFCA's monetary limits, in particular that 'the monetary limits and compensation caps should reflect general economic indicators and the current values of financial products held by consumers'.⁶

We note that the Commonwealth Government is proposing a change to the AFCA Rules to enable AFCA to deal with disputes dating back to 1 January 2008. In order to properly manage the increase in casework that is likely to flow from the implementation of this proposal, the community legal sector, Legal Aid Commissions and AFCA need to be properly resourced.

TOR(c)(ii) Whether AFCA has the powers and resources it needs

Legal Aid NSW broadly supports the strengthening of AFCA's powers and resourcing to ensure its ability to provide quick and efficient redress to consumers in disputes with financial institutions.

A properly resourced and sufficiently funded AFCA is particularly important considering:

- The transitional period from three schemes – FOS, the Credit Investments Ombudsman and the Superannuation Complaints Tribunal – to one (AFCA) has resulted in a significant backlog of matters to be resolved;
- The likelihood of the Commonwealth Government establishing a 'compensation scheme of last resort' in response to Commissioner Hayne's recommendation in the Final Report of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*; and

⁶ ASIC Regulatory Guide 267.153(b).

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- The Commonwealth Government's proposed change to AFCA's Rules to allow AFCA to deal with disputes dating back to 1 January 2008 about any misconduct, which AFCA, its predecessor schemes or the courts have not yet dealt with.

The following measures would appropriately strengthen AFCA's powers and resources:

Additional power: Mandatory discovery

A significant barrier to resolving disputes in EDR is the trader's failure to provide all documents relevant to a consumer's dispute. The current lack of power in EDR to compel documents means that there is no reliable mechanism to force traders to comply with EDR directions, leaving consumers without access to evidence to pursue a remedy. Providing schemes with discovery powers and the ability to compel documents would increase the efficiency of dispute resolution and equity for consumers.

Legal Aid NSW welcomes Commissioner Hayne's recommendation in respect of section 921A of the *Corporations Act 2001* (Cth) to require that Australian Financial Services Licence holders take reasonable steps to cooperate with AFCA in its resolution of particular disputes, including by making available to AFCA all relevant documents and records relating to issues in dispute.⁷

Additional power: Award penalties that are multiple of any losses

Legal Aid NSW supports an increase in powers to award penalties that are a multiple of any loss to the consumer. We specifically support the increase in this power in relation to breaches of the responsible lending provisions. Allowing Ombudsman schemes to order penalties beyond the direct loss to the consumer will act as a greater deterrent to traders that engage in unlawful conduct.

Additional power: Increase caps on expenses and non-financial loss

The current caps on expenses and non-financial loss should be increased to allow schemes the power to award appropriate compensation to consumers. The increase should reflect the increased value of the cost of financial products in Australia, including the cost of home loans and a rebuild on total loss insurance claims.

⁷ Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (2019) Recommendation 4.11.

Additional power: Make directions that firms take steps that are just and appropriate, taking into account long term financial hardship

Many Legal Aid NSW clients experience long term financial hardship with no genuine ability to repay the debt in the short or long term. In these circumstances, AFCA should have the express power to determine that a debt should be waived.

To assist with AFCA making this kind of direction, we recommend that traders adopt a uniform definition of long-term financial hardship, and practices to address such hardship. Legal Aid NSW would welcome consultation on this definition.

In some cases, like Ms Flanagan's case study noted above, Legal Aid NSW clients may be income poor, but hold significant assets like a family home. Where there is a dispute about that asset, and the asset may otherwise be subject to enforcement by a financial firm, we submit that AFCA should have an express power to determine that a trader agrees to a life interest in a property where it is reasonable in all the circumstances.

TOR(c)(iii) Whether AFCA faces proper accountability measures

ASIC Regulatory Guide 267: *Oversight of the Australian Financial Complaint Authority* sets out how ASIC will perform its oversight role in relation to AFCA.

Legal Aid NSW considers that the oversight principles set out in that document mean that AFCA faces appropriate accountability measures. We also note the creation of the AFCA Independent Assessor, appointed by the Board of AFCA and responsible for complaints about AFCA's services.

TOR (c)(iv) Whether enhancement to their test case procedures, or other expansions to AFCA's role in law reform, is warranted

Test case procedures

Legal Aid NSW understands that 'test case procedures' refer to complaints involving a novel point of law or circumstances requiring clarification in accordance with the AFCA Rules. A 'test case' can give rise to AFCA exercising a discretion to exclude the complaint.

The AFCA Rules set out the specific circumstances in which a financial firm may commence legal proceedings under test case procedures, and include requiring the firm to:

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- (a) Institute proceedings in a court or tribunal – with the ability to decide the issue or point of law – in a timely way;
 - (b) Undertake to pay the complainant’s costs and disbursements; and
 - (c) Comply with any other AFCA requirements.

While Legal Aid NSW recognises the importance of the test case procedures, we consider that the procedures should be enhanced to require financial firms to provide reasons as to why they wish to treat a complaint as a test case.

We also consider that complainants should have the right to provide reasons as to why a case should not be excluded by AFCA under the procedures.

AFCA’s role in law reform

In terms of law reform and guidance, Legal Aid NSW would welcome clarity around AFCA’s approach to remedies with respect to leases and motor vehicle loans. We consider that further guidance in the ‘AFCA Approaches’ section of its website would help clarify the steps AFCA will take in determining loss in these types of matters.

Finally, while Legal Aid NSW welcomes the inclusion of procedures around systemic issues identified by AFCA in section A.17 of the AFCA Rules, Legal Aid NSW considers that consumers and consumer advocates would benefit from more detailed disclosure by AFCA about any systemic issues investigations it chooses to undertake pursuant to the Rules as well as the outcomes of these investigations.

Under ASIC Regulatory Guide 267, AFCA is required to identify, refer and report systemic issues, serious contraventions and other reportable breaches. The identification and reporting of systemic issues is an important feature of AFCA’s mandate and, if properly resourced, is likely to give rise to the prevention of future misconduct and the remedy of past harm.

Because systemic issues are issues that affect a class of people, it is important that when systemic issues are identified by AFCA that consumers, the legal profession and financial firms are made aware of them. This is likely to result in better consumer outcomes more broadly, may act as a deterrent against poor conduct from traders and will generally improve industry practice.

TOR (d) The accessibility of community legal centre advice relating to financial matters

For financial service disputes, consumer access to advice and representation is often critical. The accessibility of advice should be framed by reference to the *legal assistance sector*, which includes Legal Aid Commissions as well as community legal centres.

Legal Aid Commissions provide legal advice, representation and community legal education to vulnerable and disadvantaged clients. A number of Legal Aid Commissions also provide allied services such as financial counselling, Aboriginal field officers and social work support as part of a multidisciplinary approach to address people's legal and financial problems, and their root causes.

The *National Partnership Agreement on Legal Assistance Services 2015-20* (NPA) provides funding to States and Territories to distribute to Legal Aid Commissions and community legal centres. The NPA supports a legal assistance sector that is more integrated, efficient and effective. Services must be provided in a coordinated way in order to maximise service delivery. Legal Aid Commissions and community legal centres are able to use resources such as the Law and Justice Foundation's *Collaborative Planning Resource*, which brings together information on service design and data to support planning and monitoring of legal assistance services.

In NSW, Legal Aid NSW and community legal centres work together in a coordinated and collaborative way. We value our partnership work with the community legal centre sector and consider that specialist financial rights advice in community legal centres and Legal Aid settings is critical.

In the Final Report of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, Commissioner Hayne observed that the majority of consumer witnesses before the Commission had been able to resolve their dispute with the assistance of a lawyer or financial counsellor, and he remarked on the number of witnesses who were supported in their disputes by the legal assistance sector.⁸ He continued:

Accordingly, there will likely always be a clear need for disadvantaged consumers to be able to access financial and legal assistance in order to be able to deal with disputes with financial services entities with some chance of equality of arms.⁹

⁸ Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (2019) Volume 1, 489-490.

⁹ Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (2019) Volume 1, 491-492.

The legal assistance sector plays a critical role in assisting vulnerable consumers to resolve disputes with financial service providers, in bringing systemic issues to the attention of regulators and government, and to guide policy development. However, the legal assistance sector struggles to meet demand and consideration should be given to increased funding for this valuable service.

TOR (e) Any other related matters

Legal Aid NSW considers that consumer redress is most appropriately achieved by EDR bodies like AFCA, as well as through regulatory bodies like ASIC and the ACCC, rather than through courts.

We strongly support the proposed product intervention measures for ASIC contained in the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* (Cth), where it is satisfied that a financial product or credit product has resulted in, or is likely to result in, significant detriment to consumers. The new powers will enable ASIC to act swiftly and proactively to prevent consumer detriment rather than waiting until after harm has occurred. The measures contained in the Bill should reduce the number of consumers purchasing products that do not match their needs, promote the fair treatment of consumers and build confidence in the financial system.