



Our ref: Law reform – 2014 Parliamentary Joint Committee – financial advisers

5 September 2014

Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
Canberra ACT 2600

*Submitted via the online system*

Dear Sirs or Mesdames,

**Parliamentary Joint Committee on Corporations and Financial Services  
Inquiry into proposals to lift the professional, ethical and education standards in the  
financial services industry**

Consumer Credit Legal Service (WA) Inc. (**CCLSWA**) is pleased to provide this submission on the Parliamentary Joint Committee's inquiry into proposals to lift the professional, ethical and education standards in the financial services industry (**Inquiry**).

This submission is made in relation to brokers in the financial services industry who negotiate and arrange home loans or other financial loan facilities on behalf of consumers with credit providers.

In this submission, we use the terms 'financial adviser', 'mortgage broker' and 'broker' interchangeably.

**About CCLSWA**

CCLSWA is a not-for-profit community legal centre based in metropolitan Perth. We provide:

- Legal advice and assistance to, and advocacy on behalf of, consumers with issues arising from their credit and debt related problems or from their Australian Consumer Law related problems. CCLSWA operates a daily telephone advice line service which consumers utilise to request legal advice and information;
- A resource for financial counsellors and other advocates working with low-income individuals for the resolution of their credit and debt related problems or their Australian Consumer Law related problems; and

- Community education programmes relating to credit and debt law, the Australian Consumer Law and the legal system generally.

In providing the above services CCLSWA aims to:

- Assist the Western Australian community develop just and fair relationships with banks and financial institutions;
- Create awareness, knowledge and understanding of consumer issues involving banks and other financial institutions;
- Develop a culture of consumer credit that is fair and just; and
- Create awareness, knowledge and understanding of consumer rights present in the Australian Consumer Law involving goods and services.

CCLSWA also engages in relevant social policy and law reform initiatives, including contributing to initiatives in our own capacity or when the initiatives are spearheaded by other organisations.

## **Summary**

CCLSWA regularly receives calls from consumers who are in financial difficulty due to acting on the advice of their broker. We **enclose** a case study with this submission which shows the type of complaint and issues we regularly receive from our clients.

Our view is that the law should impose more stringent regulations for brokers in the financial services industry to lift the professional, ethical and education standards of the industry. In this regard, we make the following submissions below referring to the Parliamentary Joint Committee's terms of reference.

## **The adequacy of current qualifications required by financial advisers**

### A significant investment

For most consumers, the purchase of their home will be the most significant investment decision they make in their lifetime, as that decision involves the outlay of a substantial amount of money.

The number of consumers who utilise mortgage brokers' services for such transactions continues to increase. According to the Mortgage & Finance Association of Australia (**MFAA**), mortgage brokers achieved a 47.3% market share for home loans provided in the December 2013 quarter; an increase from 46.4% for the September 2013 quarter.<sup>1</sup> The MFAA anticipates that 50% of home loans will be facilitated by a mortgage broker by the end of 2014.<sup>2</sup> Increasingly, consumers make this significant decision to buy their homes by relying on the

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<sup>1</sup> <https://www.mfaa.com.au/default.asp?artid=3088#sthash.ivKAETFd.dpuf>.

<sup>2</sup> Ibid.

“financial expertise” of brokers; and make their final decisions to enter into these loan transactions largely based on their brokers’ advice.

#### Trust placed in financial adviser

Based on experience gained from our legal practice, a consumer who had concerns about the information recorded in their loan application, or the appropriateness of the loan, generally did not articulate their concerns at the time because they believed their broker was more knowledgeable than they (the consumer) were. The consumer inevitably placed trust in their broker. However, the broker might have been willing to abuse that trust for financial gain.

Credit providers usually pay brokers a fee or commission for arranging a loan, so brokers have a financial incentive to arrange as many loans as possible. This creates the risk that brokers encourage consumers to enter into loans without fully considering whether the loan is in the best interests of the consumer.

#### Current qualifications

We submit that the current qualifications required of brokers are manifestly inadequate.

Financial advisers are required to meet a training standard broadly equivalent to the ‘Diploma’ level under the Australian Qualifications Framework (ASIC’s Regulatory Guide 146.55 – 146.59). However, this standard falls far below that of a tertiary qualification.

Financial advisers give financial advice to consumers and are instrumental in consumers’ decisions to assume liability for substantial debts. One would expect financial advisers to possess, and exercise, a high degree of skill and care, as one expects of doctors, lawyers and accountants. Yet, unlike those professionals, financial advisers are not required to possess any university qualifications. Furthermore, there are no requirements for financial advisers to obtain training in ethics.

#### Consumers’ complaints about brokers

Many consumers are unaware that financial advisers are permitted to operate without university qualifications, and are not required to complete ethics training.

Further, at the relevant time when a consumer seeks help from a broker, there already exists a bias towards proceeding with the loan. There exists an inherent imbalance which favours the broker: the consumer wants to secure a loan and the broker is ‘in charge’ of facilitating that loan.

In our experience from our legal practice, we find that consumers are reluctant to complain when they first encounter financial strife. This is because they normally assume that their financial strife is due to their own fault or misfortune, rather than the poor quality of the financial advice from their brokers. This may explain why complaints involving finance brokers account for only 9% of the total complaints received by the Credit Ombudsman Service Limited (**COSL**)

for the 2012/2013 financial year<sup>3</sup>, and why the Financial Ombudsman Service (**FOS**) accepted only 116 disputes involving finance brokers and 78 disputes involving mortgage brokers, out of a total of 25,338 accepted disputes, for the same period.<sup>4</sup> However, it is worth noting that the two highest types of complaints received by COSL in relation to finance brokers related to the appropriateness of the loan which the broker arranged and the broker's care, skill and diligence during the application process.

### Tertiary qualifications

We reiterate that one would expect financial advisers to be held accountable to a similarly high standard of skill and care as other professionals such as doctors, lawyers and accountants. We believe that rendering it compulsory for financial advisers to attain relevant university qualifications and training in ethics will increase the general standard of skill in the industry, and reduce the risk that financial advisers act in self-interest only, rather than in the best interests of the consumer.

### **The implications, including implications for competition and the cost of regulation for industry participants of the financial advice sector being required to adopt:**

- a. professional standards or rules of professional conduct which would govern the professional and ethical behaviour of financial advisers; and**
- b. professional regulation of such standards or rules**

While there is Commonwealth and State legislation<sup>5</sup> that gives consumers the right to obtain a remedy against financial advisers who have acted contrary to law, we consider that the existing legislation is not sufficiently proactive in nature, and is primarily reactive.<sup>6</sup>

We agree that the legislative framework should encourage professional standards that go beyond mere legal compliance.<sup>7</sup> Therefore, we submit that:

- a national code of conduct should be adopted to regulate the professional and ethical behaviour of financial advisers; and
- any national code of conduct should be subject to professional regulation.

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<sup>3</sup> <http://www.cosl.com.au/cosl/assets/File/COSL%20-%20Annual%20Report%20on%20Operations%202012-2013.pdf>.

<sup>4</sup> [http://www.fos.org.au/custom/files/docs/20122013\\_annual\\_review.pdf#sthash.ivKAETFd.dpuf](http://www.fos.org.au/custom/files/docs/20122013_annual_review.pdf#sthash.ivKAETFd.dpuf)).

<sup>5</sup> *The Finance Brokers Control (Code of Conduct) Regulations 2007 (WA)*; *The Australian Securities and Investment Commission Act 2001 (Cth)*

<sup>6</sup> Furthermore, existing legislation tends to place all the burdens associated with seeking redress upon the consumer, who, by the time of seeking redress, would already be experiencing significant financial and mental stress, and can hardly be expected to assume the onerous risks of litigating, lodging complaints and adequately gathering evidence. Therefore, while it is necessary to provide such legislative rights to consumers, there is merit in providing or enhancing consumer protection by firstly requiring that financial advisers meet minimum standards and rules of professional conduct.

<sup>7</sup> Chapter 24, Final Report, The performance of Australian Securities and Investment Commission.

Available at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/ASIC/Final\\_Report/c24](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ASIC/Final_Report/c24)

### Implications for competition and the cost of regulation for industry participants

The adoption and professional regulation of a national code of conduct would necessarily have implications for competition for industry participants. We believe that such implications on competition would be positive. We consider that regulating the professional and ethical behaviour of financial advisers should result in fairer competition in the industry over the longer term. It would potentially act as an additional disincentive for financial advisers who may engage in misconduct for their own financial benefit. This, in turn, may limit the participation of 'rogue' financial advisers in the industry. Ultimately, financial advisers who already hold themselves to higher professional and ethical standards are likely to remain more competitive as the playing field is levelled.

Further, we submit that the cost of regulation to industry participants should be balanced against the broader cost that a lack of professional regulation represents to consumers. We are aware that preceding inquiries have heard that the cost of poor financial advice may be as high as \$37 billion over the last decade.

### **The recognition of professional bodies by ASIC**

CCLSWA is aware that there are a number of professional bodies already in existence in relation to the financial advice industry. However, where membership to these professional bodies and adherence to the professional obligations they create is not formally recognised, their impact upon raising standards in the industry will be severely limited. We agree that this constitutes a gap in the regulatory design. We therefore submit that professional bodies should be formally recognised by ASIC.

We thank you for the opportunity to make this submission into the Inquiry and welcome any questions or comment on our submission.

If you would like to discuss this matter further, please contact Faith Cheok on [REDACTED].

Yours faithfully  
**Consumer Credit Legal Service (WA) Inc.**

Per  
Faith Cheok  
Principal Solicitor

*Enc: Recent case study*

### **Recent case study**

1. W was an unsophisticated lady who had worked in various unskilled jobs since her teens.
2. Many years ago, she severely injured herself and became 'totally and permanently' disabled. She became dependent on her weekly workers compensation payments of \$550.
3. W and her partner owed money on a home loan.
4. Subsequently W's partner suffered a stroke and stopped working. They defaulted on their home loan so decided to sell their home. They received a very good offer from a prospective purchaser for their home, which they were considering.
5. At that time, a broker advised W to:
  - Not sell her home, as her home would be worth a lot more later;
  - Sign up for a total loan in excess of \$300K;
  - Use the loan to buy 2 other properties.
6. W said she did not want to buy any property but the broker said that she would not otherwise get any finance.
7. W explained her ill health and financial situation. The broker did not attempt to assess W's partner's financial situation.
8. The broker asked W to sign a blank application for finance and said he would fill in the details later. The broker did not suggest for W to legal or financial advice.
9. W later discovered that the loan repayments for the loans were \$2,500 per month.
10. W could not service the loan repayments and was forced to sell her home. There was a shortfall of over \$20K.
11. W was in a much worse position than she had been before she met the broker and signed up for the finance in the manner he suggested.

- *The end* -