

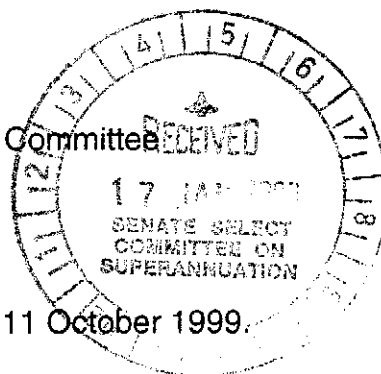
**Senate Select Committee on  
Superannuation and Financial Services**

**Main Inquiry  
Reference (a)**

**Submission No. 10**

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The Secretary  
Senate Superannuation & Financial Services Select Committee  
Parliament House  
CANBERRA ACT 2600



Submission in relation to Terms of Reference dated 11 October 1999.

Introductory comments:

Care Inc provides information, advice and representation to low to moderate income earners in the Australian Capital Territory experiencing difficulties with consumer credit and debt. Our main areas of service delivery are financial counselling and the provision of a consumer credit legal service. Care has operated in the ACT since 1983.

The comments made in this submission are drawn from our recent casework and policy experience and focus on issues affecting our client group.

The submission will be split into three areas – some general notes in point form, a case study example and some recommendations. These materials are necessarily brief for the following reasons:

- Care is a small regional service with limited resources. Our main focus is the delivery of direct client services. Whilst we do have a policy role, in undertakings of this type we would normally rely on the assistance of peak associations like the Australian Financial Counselling & Credit Reform Association (AFCCRA) and the Consumers' Federation of Australia (CFA), for the preparation of more detailed policy comment, research, etc. Both AFCCRA and CFA were defunded by the current Federal Government in its first budget, severely limiting the capacity of agencies like our own to provide fully informed and detailed comments.
- The nature of our client group and our service delivery experience limits the comments that we can make to those concerning Term of Reference a).
- The Terms of Reference currently being considered by the committee are brief and little explanatory material has been provided to assist those making submissions.

Notes in relation to Term of Reference a):

1. Changes in the make-up and responsibility of the major regulators in the area of financial services have been poorly communicated to consumers, limiting access to information and redress.
  - The split between ASIC and ACCC is not easy to understand for either consumers or consumer advocates. One such example is the separation of credit from general financial services issues.
  - Intervention by regulators is rare, as is obtaining feedback in relation to referrals. This issue is expanded upon in the case study example to follow.
  - Our clients have reported similar difficulties to us in relation to their direct communications with regulators. The general impression is that unrepresented consumers have difficulty in obtaining useful or

understandable information, or intervention. There are also barriers in the manner in which consumers make contact with regulators. From our experience these include poor information about contact points, over formalising the manner in which complaints must be communicated, little or no follow up, etc. These barriers are exacerbated for the most vulnerable consumers, who lack the skills or resources to take action on their own behalf.

- Both ASIC and the ACCC have made efforts to overcome communication difficulties and assist in understanding their processes through various consultations, stakeholder fora etc. The effectiveness of these endeavours is hampered by the lack of co-ordination between regulators. There are also resourcing difficulties for consumers wishing to access consultative processes.
2. The dismantling and downgrading of Consumer Affairs as a Commonwealth priority is of concern.
    - Transferral of Consumer Affairs to Treasury limits the consideration given to consumer issues, has inhibited policy development and has weakened communications between Government and consumer stakeholders.
    - The withdrawal of funding for peak consumer agencies has shut the majority of consumer advocates out of policy comment and consideration. It appears to us that no consistent or effective processes exist to ensure Commonwealth policy development is informed by research and casework experience.
  3. The gap in the types, numbers and appropriateness of financial services available to low to moderate earners and well resourced consumers is widening and no effective processes exist to address this gap.
    - Low, moderate and fixed income consumers are being shut out of many main stream financial services. The continuing, unchecked upward spiral in Bank fees and charges is an obvious example.
    - The Government has committed to so called “soft touch” regulation or regulation by market forces. This limits the effectiveness of the Regulators to investigate and act on reports of unfair practices. The most vulnerable consumers are the most disadvantaged by this approach.
    - The case study below is an example of a lateral solution to a consumer protection issue. Insufficient resources hold back the development of these types of responses, again to the detriment of the most vulnerable consumers.

#### Case Study:

Throughout 1998 and 1999, Care received a number of similar complaints in relation to a Bank. The common thread between the complaints was an alleged failure on the Bank's part to confirm, document or adhere to the terms

of agreements reached with customers directly. In most instances the agreements between the customer and the Bank varied the previously understood position. There was a mix of reasons for the variations ranging from changes in the customer's circumstances because of hardship, to amending account errors.

The complaints were communicated to the Bank originally on an individual basis. When the similarities became more apparent, they were referred to senior management as an example of a systemic problem. No attempt was made by the Bank to respond to the systemic issues. Whilst individual agreements were reached in relation to specific complaints, the Bank later breached several of those agreements. This served to confirm the nature of the original complaints and the existence of a systemic problem.

With the permission of several clients, the matter was raised with the Australian Banking Industry Ombudsman, as a systemic problem. No specific intervention was requested from the Ombudsman on an individual case basis. Again the Bank was informed and comment requested. The Ombudsman held that the referral was not within the ABIO Terms of Reference. The Bank declined to comment. Continuing examples of similar errors were received by Care.

Again with the permission of several clients the systemic nature of the problems were raised with a number of regulatory agencies, particular the ACCC and ASIC.

There were some potential overlaps in regulatory responsibility, given that some of the accounts referred to in the complaints were credit accounts. With the assistance of ASIC's Office of Consumer Protection, a joint letter was sent to the Bank requiring response to the systemic issues.

We believe this action had the effect that the Bank took the concerns as being serious. In spite of this intervention Care has never received a direct, substantive response from the Bank, addressing the systemic issues raised.

#### Recommendations:

- i) The division of regulatory responsibilities be reviewed and areas of possible overlap be simplified through clear protocols.
- ii) Regulators who have direct communications with consumers ensure their referral processes are easy to understand, user friendly and effective and
- iii) Government commit an appropriate level of resources to specialist regulatory agencies like the ASIC Office of Consumer Protection, to enable regulators to develop responses in anticipation of market activity and to respond swiftly to new consumer protection issues.
- iv) The Commonwealth Government make a commitment to inform itself of and respond to financial services issues effecting vulnerable consumers
- v) Resources be provided to consumers and consumer advocates to facilitate proper consultation and research of consumer issues OR Government pays for the preparation and provision of comment/research to inform policy effecting vulnerable consumers commensurate with the actual cost of providing such input.

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