**SUBMISSION – EQUALITY OF ARMS**

**NON-BANK VICTIM TEMPLATE**

ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

**THE FIRST SCREEN**

**Full name:**

**Email:**

**Phone number** (optional):

**State/Territory:**

**Who are you making this submission for:** Choose from (Myself/Business/Another Person?)

**THE SECOND SCREEN**

**Industry:** Choose from (Banking/General Insurance/Life Insurance – including total and permanent disability (TPD) insurance/Financial advice/Superannuation/Intermediaries between borrowers and lenders (e.g. Mortgage Brokers))

**Financial services entity:**

**Indicate the main nature of your dealings with this entity:** (Can select multiple)

* Personal financial (including bank account, credit card, personal loans and home loan/mortgage)
* Small business finance
* Farming finance
* Financial advice
* General insurance (including home, car, income protection)
* Life insurance including total and permanent disability (TPD) insurance
* Superannuation
* Business insurance
* Mortgage broker (entity that arranged home loan / mortgage)
* Other (select this option and state the following or similar)

**Lack of the effective of mechanisms for redress**

**THE THIRD SCREEN**

**Which of the Royal Commission’s terms of reference is your submission about?** (Can select multiple)

* Misconduct or conduct falling below community standards and expectations.
* Culture or governance practices and other practices (including risk management, recruitment and remuneration practices and/or the use of a superannuation member’s retirement savings by a financial service entity)
* Effectiveness of redress for consumers **(Select this option)**

**What did the financial service entity do that amounts to misconduct or conduct falling below community standards and expectations?**

**(Tell your story here, Maximum 3000 characters including spaces)**

**When did this happen?**

**What do you think caused or contributed to these events?**

**(Maximum 3000 characters including spaces)**

**Did you make a complaint in relation to what happened? (If you select ‘yes’ the following questions between the lines will appear)**

**When did you first make this complaint?**

**Who did you complain to?**

**What happened when you made the complaint? (Maximum 3000 characters including spaces)**

**What was the outcome of your complaint?**

**When was this outcome reached?**

**Were you satisfied with this outcome?**

**What culture or governance practices and other practices (including risk management, recruitment and remuneration practices and/or the use of a superannuation member’s retirement savings by a financial service entity) of the entity are of concern and why? (If selected above - Maximum 3000 characters including spaces)**

**How effective are the mechanisms for consumer redress and how could they be improved? (If selected Above - Maximum 3000 characters including spaces)**

There are no effective mechanisms for consumer redress.

**What changes would you like the Royal Commission to recommend? (Maximum 3000 characters including spaces)**

Item (e) of the signed letters patent for the Financial Services Royal Commission requires it to address, ‘the effectiveness of mechanisms for redress for consumers of financial services who suffer detriment as a result of misconduct by financial services entities’.

I would like the Royal Commission in financial service related matters to recommend a financial service funded scheme that ensures timely and proportional legal equity in this country’s court system, which replaces FOS, the new AFCA and all other financial service related public and private pseudo legal bodies.

A revitalised and expanded federally funded legal aid system should be used. For example, when a financial service with disproportional monetary advantage initiates legal proceedings against a consumer of financial services, it will be required to contribute/underwrite an amount equivalent to their total legal budget to legal aid, rather than fund FOS, the new AFCA, or other options. This would mean that the financial services client would have proportionate legal representation from day one, levelling the legal playing field. If successful a financial service would likely recoup its outlay eliminating a financial penalty.

Such an initiative would likely reduce litigation because the financial services with monetary advantage would no longer be able to use this country’s legal system as a weapon against their clients forcing a change in the culture described above. It would result in a greater degree of fairness and equity resulting in better common law precedents. It would be an incubator for lawyers and judges that have grounding in the force, rather than the dark side of law. It would likely be less expensive for financial services, as well as the public purse. It would be proactive in establishing “Equality of Arms” within our legal sector.

It would no doubt be argued by a financial service with the disproportionate advantage, that requiring them to contribute/underwrite an amount equivalent to their total legal costs to legal aid so that their client had equity within the court system would be punitive, but in that case so is the ineffective, not fit for purpose FOS. It is the plaintiff financial service and only the plaintiff financial service that chooses to use the legal system. It could choose another method to resolve the issue, thus avoiding the legal system and any associated cost. I also believe that such a measure would reduce the burden on the courts because legal action would become a solution of last resort and because there would be proportional equity, matters would progress in a fairer and a timelier manner.

(Continued in ‘Other Comments’)

**Other Comments (Maximum 3000 characters including spaces)**

(Continued from ‘What changes would you like the Royal Commission to recommend’)

The financial service funded initiative described above could enable a specialist cell within legal aid to develop the knowledge and skills to counter the financial service corporate legal partners. It could also be instrumental in supplying intelligence to ASIC and APRA in a timely and effective manner, improving those organisations’ effectiveness.

Importantly the initiative would give ‘access to justice’ to consumers of financial services that have nowhere to turn and lack the skills to effectively identify the ‘real issues’ and present them in an timely, proportional, equitable, and court compliant manner to this country’s courts.

Where one side has significant monetary advantage, not only do they gain a significant legal advantage, they are also able to finance an out of court monetary settlement in the event there is a danger of losing in the court, these settlements are generally accompanied by a gag agreement. The precedent that may have been established by a just but adverse judgement to a monetarised plaintiff is never established, which in itself has the effect of corrupting Australian law.

I say that if there was ‘equality of arms’ within this country’s justice system, this Royal Commission, and the plethora of inquiries that preceded it would not have been required.

The Australian Attorney General states on the official web site under the heading equality:

“…What constitutes a fair hearing will require recognition of the interests of the accused, the victim and the community (in a criminal trial) and of all parties (in a civil proceeding). In any event, the procedures followed in a hearing should respect the principle of 'equality of arms', which requires that all parties to a proceeding must have a reasonable opportunity of presenting their case under conditions that do not disadvantage them as against other parties to the proceedings. The UN Human Rights Committee has found a violation of article 14(1) in a case in which a right of appeal was open to the prosecution but not to the accused…”

<https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Fairtrialandfairhearingrights.aspx>