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## **SUBMITTED VIA TREASURY WEB-SITE**

Budget Policy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

### **Submission to The Treasury on priorities for 2017-18 Federal Budget**

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide input into the Treasury's budget development for financial year 2017-18.

Consumer Action has identified four budget measures that would, if implemented, enhance justice for all Australians. Justice in this context is about creating a level playing field, and about righting wrongs. These four initiatives are:

- Introduce a Retail Ombudsman or equivalent external dispute resolution (EDR) scheme for disputes involving consumer purchases of goods and services. This would give ordinary Australians access to free, quick and fair justice in consumer markets.
- Forgive VET FEE-HELP debts that were incurred as a result of "unacceptable conduct". The depth of the exploitation of vulnerable Australians demonstrates the need for the Commonwealth Government to remediate cases of unjust or unlawful enrolment, even when costs cannot be recovered from the offending VET provider.
- Increased for Financial Counselling services, funded through an industry levy, will give more Australians in financial hardship the support and guidance to dig themselves out of crippling debt.
- Restoring funding to, and increasing investment in legal assistance that provides access to justice for low income and disadvantaged people in our community. As demand increases for these services, there is an even greater need to adequately fund Community Legal Centres.

Our comments are detailed more fully below.

### **About Consumer Action**

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

# 1. A Retail Ombudsman for Australia

## The opportunity

Establishing an external dispute resolution (**EDR**) scheme for consumer purchased goods and services would give Australians certainty and justice in their consumer interactions and build trust in our retail markets. This type of scheme currently exists in the United Kingdom where it is known as the Retail Ombudsman.

Although consumers have legal protections in the Australian Consumer Law (**ACL**) such as consumer guarantees to a refund, replacement or repair when there is a problem with a purchased good or service<sup>1</sup>, if the trader refuses to assist to resolve the dispute it is very difficult for the consumer to obtain justice.

As Consumer Affairs Victoria (**CAV**), Victoria's state-based consumer law regulator identifies, "we cannot make anyone speak to us and we cannot enforce the outcome, as only a court or tribunal have this power."<sup>2</sup>

The Productivity Commission, in its review of the enforcement and administrative arrangements underpinning the Australian Consumer Law, is seeking further information on how a Retail Ombudsman could operate and the gaps it would fill.<sup>3</sup> The Commission is commonly tasked with investigating how the Government can improve Australia's "economic performance and community wellbeing"<sup>4</sup>.

The establishment of a Retail Ombudsman would also further the realisation of the Commission's 2008 recommendation for effective, properly resourced, government funded alternative dispute resolution (ADR) mechanisms that deal consistently with all consumer complaints.<sup>5</sup>

But would Australians use an Ombudsman service? In June last year, IPOS Australia released polling showing that sixty percent (60%) of Australians would use a Retail Ombudsman if available. This is remarkable given that the concept of a Retail Ombudsman is a new idea for Australia. The poll reported that less than 10% were unlikely to use such a service.<sup>6</sup>

This month, the Australian Competition and Consumer Commission (**ACCC**) released statistics that more than 20,000 shoppers complained to the regulator about consumer guarantees in 2016, with more than a quarter reporting problems returning electronics and whitegoods to retailers.<sup>7</sup>

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<sup>1</sup> Australian Competition and Consumer Commission, *Repair, Replace, Refund*, accessed 9 January 2017, <<https://www.accc.gov.au/consumers/consumer-rights-guarantees/repair-replace-refund>>.

<sup>2</sup> Consumer Affairs Victoria, *Resolve your problem or complaint*, accessed 9 January 2017, <<https://www.consumer.vic.gov.au/contact-us/resolve-your-problem-or-complaint>>.

<sup>3</sup> Productivity Commission, *Consumer Law Enforcement and Administration: Draft Report*, December 2016, <<http://www.pc.gov.au/inquiries/current/consumer-law/draft/consumer-law-draft-overview.pdf>>

<sup>4</sup> Productivity Commission, *How we contribute*, accessed 18 January 2017, <<http://www.pc.gov.au/about/contribute>>

<sup>5</sup> Productivity Commission, *Review of Australia's Consumer Policy Framework*, 30 April 2008, <<http://www.pc.gov.au/inquiries/completed/consumer-policy/report/consumer2.pdf>>

<sup>6</sup> Consumer Action Law Centre, *New polling shows that Australians are ready for a Retail Ombudsman*, media release, accessed 10 January 2017, <<http://consumeraction.org.au/media-release/>>

<sup>7</sup> Australian Competition and Consumer Commission, *20,000 complaints by shoppers about consumer guarantees*, media release, accessed 9 January 2017, <<http://www.accc.gov.au/media-release/20000-complaints-by-shoppers-about-consumer-guarantees>>.

These shoppers may have thought that the ACCC could take action on their behalf. This is not the case. There is a significant gap in ordinary Australians' ability to seek justice in these cases because it is likely to involve complex, lengthy and quite possibly expensive legal action in courts or tribunals.

This is magnified by the ACCC's concern that businesses continue to misrepresent the rights of consumers when they try to return a faulty product.<sup>8</sup> Consumers will continue to wear the cost, undermining consumer confidence and trust in our domestic economy.

### **How it is delivered**

Consumer Action has significant experience and specialist legal expertise in supporting and acting on behalf of consumers with disputes considered by industry ombudsman schemes, including the Financial Ombudsman Service, the Credit and Investments Ombudsman service, the Energy and Water Ombudsman (Victoria) and the Telecommunications Industry Ombudsman. We believe that, in providing access to justice, the establishment of these schemes has been one of the most significant advances in consumer protection of the past 30 years.

Without free access to these industry ombudsman schemes, hundreds of thousands of people would have been left with no avenue for redress other than courts, or more likely, because of cost and other access barriers, would have been left with nowhere to turn. Providing a similarly free, accessible and efficient means for Australians to have their retail disputes heard and resolved would bring justice to a significant and vital part of our economy.

We recommend that the UK Retail Ombudsman (UKRO) be used as a model from which Australia's Retail Ombudsman could be established. The UKRO covers disputes relating to goods and/or services purchased either in stores or online.<sup>9</sup> It was established as a not-for-profit with an independent standards board and a strong focus on online dispute resolution.

Unlike most industry ombudsman schemes in Australia, retail members of the UKRO are not required to join by law or as a requirement of their license. Broadly, the UKRO is funded by retailers who 'opt-in' and pay for membership according to the size of their business. Single shop 'bricks and mortar' retailers are able to join for free, but any retailer beyond that threshold must pay an annual fee according to a sliding scale.

By the time the Ombudsman commenced operation in January 2015, '3,000 retailers (were) signed up, (paying) between £100 and £2,600 per year to subscribe'.<sup>10</sup> The high concentration of the Australian retail market, dominated by large national chain-stores and franchises, lends itself to gaining substantial national coverage quickly.

Members can also pay a nominal annual fee to be vetted by the Ombudsman to gain enhanced accreditation as a 'trustworthy trader'. This would be an excellent initiative to

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<sup>8</sup> Australian Competition and Consumer Commission, *20,000 complaints by shoppers about consumer guarantees*, media release, accessed 9 January 2017, <<http://www.accc.gov.au/media-release/20000-complaints-by-shoppers-about-consumer-guarantees>>.

<sup>9</sup> see: <<https://www.theretailombudsman.org.uk/>>

<sup>10</sup> The Telegraph, *New Retail Ombudsman can investigate your shopping complaint - but it comes with a catch*, 19 January 2015, <<http://www.telegraph.co.uk/finance/personalfinance/11333939/New-Retail-Ombudsman-can-investigate-your-shopping-complaint-but-it-comes-with-a-catch.html>>

mirror in Australia to improve standards and consumer confidence when purchasing goods and services.

As with industry EDR schemes in Australia, the service is free to consumers and the Ombudsman's decisions only bind member retailers, who are contractually obligated to comply.

With the UKRO, only consumers that have genuinely attempted to resolve their complaint with the trader can seek assistance, after which the Ombudsman runs a two stage process. The first attempts to resolve the complaint through negotiation and then by making a recommendation if negotiation fails. If the recommendation is rejected, the ombudsman may then make a decision which is binding on the trader.

### **The investment**

Further investigation by Treasury is required to quantify the financial cost to Government to establish a Retail Ombudsman and the scope of its operation. This could be completed within recurrent expenditure.

The financial outlay by the Commonwealth on the operation of the Ombudsman would be limited to seed funding. This is because the service is considered to be best run as an industry-funded scheme, funded by traders through membership fees and fee-for-service trader payments to cover the cost of disputes.

For scale, were the Commonwealth to fund the first year (or years) of a Retail Ombudsman, the forerunner of FOS, the Banking and Financial Services Ombudsman (**BFSO**), which commenced operation in 1990, started with a staff of sixteen.<sup>11</sup> This would be a reasonable starting point for an Australian Retail Ombudsman.

## **2. Debt Forgiveness for VET FEE-HELP victims**

### **The opportunity**

With the enactment of the VET Student Loans legislation in January 2017, the VET FEE-HELP era is over and along with it the legislative gaps which led to the exploitation of countless thousands of students and job seekers.

These new consumer protections, alongside stronger enforcement and more accountable reporting requirements, will ensure that VET providers and their sales agents will no longer have the same opportunity to enrol vulnerable Australians to useless or inappropriate VET courses which left them with individual debts in the tens of thousands of dollars.

While this is great news, those Australians who were misled or deceived into taking on huge VET FEE-HELP debts are still carrying these legacy debts. This is not small change. In December 2016, the Australian National Audit Office released a report into the Administration of the VET FEE-HELP (**VFH**) scheme. It found that:

“As at 30 June 2016, the Australian Government Actuary estimated that \$1.2 billion in loans issued inappropriately by VFH providers in 2014 and 2015 would not be recovered. The Actuary also estimated that a further \$1.0 billion in VFH loans would not be repaid, largely

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<sup>11</sup> Banking and Financial Services Ombudsman Limited, Review of the Banking and Financial Services Ombudsman Scheme, June 2004, <[https://www.fos.org.au/custom/files/docs/background\\_paper\\_bfso\\_independent\\_review.pdf](https://www.fos.org.au/custom/files/docs/background_paper_bfso_independent_review.pdf)>

relating to loan recipients not expected to meet the income repayment threshold for new debts raised in 2015-16".<sup>12</sup>

The reason that so many affected consumers will not meet the income repayment threshold is because of the characteristics of the Australians that were targeted by education brokers driven by sales commissions, and VET providers driven by sales, as opposed to education or employment outcomes. This included desperate job-seekers<sup>13</sup>, people with disabilities or low literacy<sup>14</sup>, disadvantaged Aboriginal communities<sup>15</sup>, and newly arrived migrants or those with low English skills<sup>16</sup>.

These people were let down by a poorly conceived and administered policy, and should not be burdened by a debt they should never have had and will never be able to pay. As the Auditor-General's report stated;

"The VFH scheme was not effectively designed or administered. Poor design and a lack of monitoring and control led to costs blowing out even though participation forecasts were not achieved and insufficient protection was provided to vulnerable students from some unscrupulous private training organisations"<sup>17</sup>

Just as the sector is getting a fresh start with VET Student Loans, so should the victims of the VFH scandal.

### **How it is delivered**

Consumer Action has recommended remediation for legacy VFH debts to a series of Government and Parliamentary inquiries. There are a range of opportunities for the Government to identify those Australians enrolled improperly or unlawfully, a practice that the VET Student Loans legislation calls "unacceptable conduct".

While Consumer Action accepts that "unacceptable conduct" can only be used as an argument by students signed up to a debt after 1 January 2016, consumers enrolled prior to that date need a fair process to seek remission from their VFH debt.

In her Second Reading speech for the VET Student Loans Bill 2016, the Assistant Minister for Vocational Education and Skills, Hon Karen Andrews MP said:

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<sup>12</sup> Australian National Audit Office, *Administration of the VET FEE-HELP scheme*, 20 December 2016, <<https://www.anao.gov.au/work/performance-audit/administration-vet-fee-help-scheme>>

<sup>13</sup> The Age, *Andrew Demetriou's Acquire Learning takes job seekers and turns them into cash*, 14 October 2015, <<http://www.theage.com.au/victoria/andrew-demetriou-acquire-learning-takes-job-seekers-and-turns-them-into-cash-20151014-gk92d7.html>>

<sup>14</sup> Sydney Morning Herald, *Vocational education crisis: AIPE college paid \$1 million a graduate*, 9 December 2015, <<http://www.smh.com.au/national/education/vocational-education-crisis-aipe-college-paid-1-million-a-graduate-20151204-glg1ls.html>>

<sup>15</sup> Sydney Morning Herald, *Dodgy vocational colleges using laptop lure despite government crackdown*, 22 November 2015, <<http://www.smh.com.au/national/dodgy-vocational-colleges-using-laptop-lure-despite-government-crackdown-20151120-gl47bq.html>>

<sup>16</sup> The Age, *Woman on hunger strike over training college's practices*, 26 January 2016, <<http://www.theage.com.au/victoria/woman-on-hunger-strike-over-training-colleges-practices-20160126-gmee2s.html>>

<sup>17</sup> Australian National Audit Office, *Administration of the VET FEE-HELP scheme*, 20 December 2016, <<https://www.anao.gov.au/work/performance-audit/administration-vet-fee-help-scheme>>

“Over the coming months the department will be contacting all existing students to advise them of the required arrangements by which they can opt in to be ‘grandfathered’.”<sup>18</sup>

This contact provides the Department of Education and Training with the perfect opportunity to interrogate whether the incomplete course was enrolled appropriately and lawfully, or whether “unacceptable conduct” led to the student’s enrolment.

This definition of “unacceptable conduct” aligns very closely to the terms of the Australian Consumer Law (**ACL**). These terms, including “misleading and deceptive conduct” and “unconscionable conduct”, are those the Australian Competition and Consumer Commission (**ACCC**) used in legal actions against at least five VFH licenced providers<sup>19</sup> and one VET broker<sup>20</sup> regarding the VFH enrolment practices of these traders. As such, if “unacceptable conduct” has been identified as linked to the enrolment, the Department can take legal action under the ACL, or refer the matter to a consumer regulator such as the ACCC for enforcement action.

The other opportunity is with the establishment of the VET Student Loans external dispute resolution (**EDR**) scheme scheduled to commence operation on 1 July 2017 and legislated by the Government as part of the VET Student Loans reforms<sup>21</sup>. This body, which will have appropriate investigative powers and expertise, could coordinate and make determinations on the remediation of legacy VFH debts using “unacceptable conduct” as a guide. These investigations could include compelling the offending providers to refund the Commonwealth for the sum of the VFH loan.

However, it is clear that where the Commonwealth cannot recover the money paid to the provider, if a consumer was enrolled due to “unacceptable conduct” the debt should be waived, regardless of when the enrolment took place.

### **The investment**

To write-off these debts is a significant cost to the Commonwealth, but to not do so is simply putting off the inevitable. As the National Audit Office reported, these are debts that “would not be repaid”.

While the National Audit Office considers this figure to be \$2.2 billion, we do not suggest forgiving all these debts, only those debts that were incurred as a result of “unacceptable conduct” by the VET provider or sales’ agent or broker.

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<sup>18</sup> Ms Andrews, Second Reading speech: VET Student Loans Bill 2016, 13 October 2016, accessible in [Parlinfo Search](#)

<sup>19</sup> Australian Competition and Consumer Commission, *Careers Australia undertakes to repay Commonwealth for VET FEE-HELP diploma courses*, media release, 16 May 2016 <<https://www.accc.gov.au/media-release/careers-australia-undertakes-to-repay-commonwealth-for-vet-fee-help-diploma-courses>>

<sup>20</sup> Australian Competition and Consumer Commission, *ACCC takes action against education services broker Acquire Learning*, media release, 17 December 2015 <<https://www.accc.gov.au/media-release/accc-takes-action-against-education-services-broker-acquire-learning>>

<sup>21</sup> Senator Simon Birmingham, *Stronger vocational education system delivered*, media release, 1 December 2016, <<http://www.senatorbirmingham.com.au/Latest-News/ID/3297/Stronger-vocational-education-system-delivered>>

Some of these debts can and should be recovered from the provider who financially benefited from the “unacceptable conduct”. This would lessen the loss to the Commonwealth, which would be considered to be substantial and in excess of \$1 billion.

### **3. Financial Counselling**

#### **The opportunity**

Financial counsellors assist people in financial difficulty. They provide information, support, and advocacy to help those in need deal with their immediate financial situation and minimise the risk of future financial problems. The majority of financial counsellors work in community organisations, and their services are free, confidential and independent.

Consumer Action provides email and telephone financial counselling to Victorians experiencing financial difficulty. We are recognised as the first point of telephone contact in Victoria for anyone with financial counselling issues. Where the problems cannot be tackled by phone or email, we will refer clients to financial counsellors in their local community for face to face assistance.

The most common cause of financial difficulty is a change of circumstances in a person’s life. This can include unemployment, illness or relationship breakdown. Many of our clients are also on very low incomes, such as NewStart allowance, and are unable to make ends meet. Failure of a small business, and poor financial advice, can also be a pathway to financial difficulty.

Financial Counselling Australia (**FCA**), the sector peak body, estimates there are 2.5 million Australians living in households under high financial stress.<sup>22</sup> To go some way to meeting this demand, there needs to be at least one financial counsellor available for every 2,000 people in financial difficulty. This therefore requires a national workforce of 1,250 FTEs, at a cost of approximately \$100,000 per worker per annum, with all associated on costs. At a total estimate of \$125 million per annum, it would seem fair that the Commonwealth fund 50%, or \$62 million, with State/Territory Governments making up the balance. However, current funding from the Commonwealth falls far short of this at \$20.6 million.<sup>23</sup>

Funding cuts for financial counselling services across Australia were announced in December 2014 and took effect from 1 July 2015. Funding cuts for services where income management is in place—Northern Territory, Shepparton (Vic), Bankstown (NSW), Playford, APY Lands and Ceduna (SA), Logan (Qld), outback WA and parts of Perth—took effect from 1 January 2016.

#### **How it is delivered**

We support the FCA recommendations that an industry levy be used to fund the financial counselling sector. This is the funding mechanism used in the UK, where a levy is applied to financial service providers, and is administered by the Financial Conduct Authority. Ideally a levy should also extend to utility providers, debt collection companies and telecommunication

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<sup>22</sup> Australian Social Inclusion Board, *Social Inclusion in Australia How Australia is Faring*, 2010.

<sup>23</sup> FCA estimates that funding for general financial counselling services is \$11.9 million, specialist gambling services is \$6.2 million and the National Debt Helpline is \$2.5 million.

companies. These sectors all refer their customers to financial counsellors and benefit from their services when their customers get back on track, but at the moment do not contribute to funding.

We strongly recommend providing modest funding for FCA. Their role includes supporting the essential front line service of financial counselling, coordination of the National Debt Helpline and associated website, and working with industry to improve responses to financial hardship.

### The investment

Total additional investment of \$202 million over four years.

Investment (\$ million) – forward estimates

ITEM	2017-18	2018-19	2019-20	2020-21
<i>Existing allocation</i>	\$20.6	\$20.6	\$20.6	\$20.6
<i>Additional investment*</i>	\$49	\$50	\$51	\$52

*\*includes \$2m per annum support for FCA; total combined funded by industry levy (not included in table)*

## 4. Access to justice

### The opportunity

Legal assistance providers provide legal assistance services for low income and disadvantaged people in our community. The recipients of this assistance typically face a number of barriers to access the civil justice system, and if left unresolved, can deepen and complicate existing problems. The Productivity Commission, in its Access to Justice Inquiry Report (2014), recognised this, and found that there was a role for government in assisting the most vulnerable to uphold their legal rights and resolve legal disputes.<sup>24</sup>

Consumer Action provides free legal advice to thousands of low income and vulnerable Victorians each year. We are a specialist consumer law centre and financial counselling service, and work with generalist centres and financial counsellors in Victoria to help those who need it access justice through the courts and dispute resolution forums. We also undertake advocacy in pursuit of legislative and regulatory reform.

The Productivity Commission has acknowledged there is a need for additional funding for the sector, on the basis that not providing legal assistance can be a false economy as the costs of unresolved problems are often covered to other areas of government spending such as health care, housing and child protection. There are therefore net public benefits from legal assistance expenditure.

Former Chief Justice Gleeson commented in a speech delivered at the Australian Legal Convention in 1999: *“The expense which governments incur in funding legal aid is obvious and measurable. What is not so obvious, and not so easily measurable, but what is real and substantial, is the cost of the delay, disruption and inefficiency, which results from absence or*

<sup>24</sup> Productivity Commission (2014) *Access to Justice Arrangements: Inquiry Report*



denial of legal representation. Much of that cost is also borne, directly or indirectly, by governments. Providing legal aid is costly. So is not providing legal aid.”<sup>25</sup>

### How it is delivered

The funding mechanism for community legal centres and legal aid commissions is through the National Partnerships Agreement on Legal Services. Government can enable the sector to respond to demand by reversing funding cuts to CLCs, providing an immediate injection of additional funding, and commencing a process to establish a sustainable long term funding arrangement to the legal assistance sector. The funding proposed below is based on figures recommended by the Productivity Commission, and would be allocated to legal aid commissions and community legal centres, with an estimated 3.5% increase per annum, by amendment to the existing National Partnership Agreement.

### The investment

Total additional investment of \$83.03 million over three years (to end current National Partnership Agreement).

Investment (\$ million) – forward estimates

ITEM	2017-18	2018-19	2019-20	2020-21
Existing allocation <sup>26</sup> (CLCs only)	\$34.47	\$35.66	\$36.90	--
Restored funding	\$12.1	\$11.6	\$11.13	--
Additional investment <sup>27</sup>	\$14.4	\$14.4	\$14.4	--

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Yours sincerely

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<sup>25</sup> Gleeson, M (1999) “*The State of the Judicature*” speech delivered at the Australian Legal Convention, 10 October 1999

<sup>26</sup> National Partnership Agreement on Legal Services 1 July 2015 – 30 June 2020

<sup>27</sup> Based on Productivity Commission recommended additional investment plus 2% CPI per annum