



14 January 2020

The Manager
Retirement Income Policy Division
Treasury
Langton Cres
Parkes ACT 2600

By email: superannuation@treasury.gov.au

Re: Consumer Advocacy Body for Superannuation – expression of interest

Choosing a superannuation fund is one of the most important financial decisions a person will make. However, the superannuation system is failing countless Australians. People across Australia continue to be defaulted into underperforming funds, leaving them with hundreds of thousands of dollars less in retirement savings.¹ Millions of duplicate accounts in the system and poorly targeted insurance products are also unnecessarily eroding people's hard-earned savings.

As consumer advocate organisations, we welcome the proposal to establish a permanent consumer advocacy body for superannuation. Given the size, complexity and compulsory nature of the superannuation market, it is fitting that an adequately funded and independent advocate exists to give a voice to consumers. **We recommend that Super Consumers Australia be this independent voice for consumers in the superannuation system.**

It is clear from the Banking Royal Commission and the Productivity Commission's inquiry into superannuation that the existing superannuation system has not effectively protected the interests of superannuation fund members. Too often the system works in the interests of the superannuation industry, not its members.

¹ Productivity Commission 2018, Superannuation: Assessing Efficiency and Competitiveness

Giving consumers a voice in policy and regulatory decision making is a powerful way of ensuring the system works in the interests of members. Consumer advocacy organisations play an important role in holding industry and regulators accountable and ultimately making sure markets function properly and deliver good outcomes.

Our organisations endorse the submission made by Super Consumers Australia and support its efforts to be the voice of consumers in the superannuation sector. We agree with Super Consumers Australia's assessment that an endowment funding model best meets the needs of the organisation.

In early 2012, the consumer advocacy organisation CHOICE convened an establishment committee for a Superannuation Consumers' Centre. The organisation received funding in 2018, hired its first staff and relaunched itself in 2019 as Super Consumers Australia.

During its short existence, Super Consumers Australia has played an important part in superannuation debates, including the passage of legislation to auto-consolidate accounts, cap fees and improve insurance design.² It has also produced valuable information to help people with their superannuation, including providing clear information and assistance on fund performance, how to manage changes to insurance in superannuation and guidance on ethical investing.³

This submission will outline the high level principles that the prospective superannuation advocacy body should have in order to effectively represent the interests of superannuation consumers.

Functions and outcomes

Advocacy, assistance and education are three important functions in each of our consumer advocacy organisations. These three functions should form the foundation of any new superannuation consumer advocate.

The imbalance in resourcing between consumer advocates and the industry lobby in superannuation is unprecedented. This has led to skewed policy debates that heavily favour industry and strong opposition to even the most consumer friendly of reforms, such as fund auto-consolidation. With the four major industry lobby groups funded on average at 10 million dollars each per year, it is important that a consumer advocate be appropriately funded to level the playing field in these debates.

² Treasury Laws Amendment (Protecting Your Superannuation Package) 2019; Treasury Laws Amendment (Putting Members' Interests First) 2019

³ CHOICE, 2019:

'Why an underperforming super fund could cost you hundreds of thousands of dollars'

'Ethical super part one: what is ethical super?'

'Three changes to your superannuation you need to know about'

Given the technical nature of superannuation, the organisation needs a strong policy, data analytics and research basis for its work. However, to be effective, this must be complemented by an assistance function, so that the organisation has a strong grounding in the lived consumer experience.

Many of our organisations combine case work and advocacy functions, and know the importance of maintaining both. As integrated practices, we can assist people with their legal and financial counselling needs and, should they wish, support them to share their story to contribute to broader systemic change. This can be done in many ways including de-identified case studies, complaints to regulators, through the media, appearing before Parliamentary Inquiries and Royal Commissions, or by meeting with their local MP or the responsible decision-makers to share their lived experience. Our assistance functions have been integral in identifying systemic issues and using real world examples to make the case for sensible reform that works.

During the Financial Services Royal Commission many of the case studies highlighting systemic problems were brought forward by our organisations. For example:

- Lynda Edwards from Financial Counselling Australia was the first witness at the Commission's hearings in Darwin focusing on issues affecting Aboriginal and Torres Strait Islander people. The final report of the Royal Commission addressed many of the issues raised by Lynda, and expanded on in submissions by Financial Counselling Australia, CHOICE, Consumer Action Law Centre, Financial Rights Legal Centre and others including exploitative funeral insurance products, and access to basic bank accounts.
- Consumer Action assisted three witnesses during the Financial Services Royal Commission whose evidence helped to highlight systematic misconduct and shape the Commission's final recommendations.⁴ Irene's evidence regarding the sale of CommInsure Credit Plus (**CCP**) insurance (see case study one) was critical in demonstrating systemic misconduct by the Commonwealth Bank and the need for a deferred sales model for add on insurance, which became recommendation 4.3 of the Royal Commission. Tracey, an Aboriginal and Torres Strait Islander women shared her story of harm after being sold a funeral expenses policy by the Aboriginal Community Benefit Fund (**ACBF**) resulting in recommendation 4.2 of the Royal Commission, removing the exemption for funeral expenses policies.
- During the Financial Services Royal Commission, CCLSWA arranged for some of its clients to meet with Members of Parliament who were interested in assisting victims of banking misconduct. In one case, Leanne (name changed) was at risk of losing her home because of a debt incurred by her violent ex-husband. Her local Member of

⁴ Consumer Action Law Centre, Our Impact: 2017-18, page 6, available at: https://consumeraction.org.au/wp-content/uploads/Reports/181108_1718-Impact-Report_Final.pdf.

Parliament was able to bring Leanne's story directly to the CEO of one of the big 4 banks. The result was that Leanne was freed of any liability and had a life changing amount of \$70,000 paid to her by the bank. Without CCLSWA bringing Leanne's story to the MP, the case may not have been resolved.

Case study one – Irene's story

Irene is a single mother of two children aged seven and two. Irene left high school in Year 10, then worked a number of jobs between leaving school and having children. At the moment, Irene is a full-time mum and receives income support from Centrelink. Irene first made contact with Consumer Action in 2018 via the National Debt Helpline as she was caught in a spiral of debt. Irene has experienced family violence and economic abuse, which contributed to her unmanageable debt. Irene's story was highlighted as an example of what happens with unmanageable debt and she was selected as a witness in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

In March, Irene gave evidence before the Royal Commission about being sold Commlnsure Credit Plus (CCP) insurance when she applied for a credit card with the Commonwealth Bank of Australia (CBA) in October 2014. Irene was sold insurance despite telling CBA that she was unemployed and receiving Centrelink at the time. She tried to cancel her CCP insurance several times in 2015 but she was persuaded not to by CBA staff.

In Irene's words, "I just felt pressured...I felt like I couldn't cancel it". Irene's evidence highlighted CBA's systemic misconduct in relation to the sale of consumer credit insurance and CBA gave evidence that it missold insurance to 64,000 CBA customers who were students, Centrelink recipients or were unemployed. In January 2018, after the Royal Commission was announced, CBA commenced a remediation scheme to compensate CBA customers who were mis-sold CCP insurance. Consumer Action has since assisted Irene to obtain a full refund of the CCP premiums from CBA in addition to other compensation. After Irene gave evidence before the Royal Commission, she was referred to Consumer Action's recently established Financial Counselling integrated practice which has assisted Irene by seeking debt waivers and hardship for her personal loans, overdrafts and credit cards. The Financial Counselling and Legal teams are now working together to assist Irene resolve her disputes with multiple payday lenders and pawnbrokers.

Irene also joined the Consumer Action team in a Day of Action in Canberra on 25 June 2018 to campaign for responsible lending reform following the Royal Commission hearings on consumer lending. Irene spoke to multiple parliamentarians and participated in a media doorstep at Parliament house.

From Consumer Action Law Centre 2017-18 Impact Report⁵

⁵ Consumer Action Law Centre, Our Impact: 2017-18, page 6, available at: https://consumeraction.org.au/wp-content/uploads/Reports/181108_1718-Impact-Report_Final.pdf.

Education is also an important function for an effective consumer advocate. Strong laws that are well enforced will always be paramount to protect members, but at times, education is required to fill the gaps. For example, legislation in superannuation can be effective in creating appropriate defaults that meet the needs of most people, but there will always be some for whom these defaults will not be ideal (for example, insurance in superannuation). Education has an important role to play in helping people make decisions about their needs, and connecting them with appropriate products via comparison services.

However, education will not be a panacea that will reform deep structural problems within the superannuation system. In order to achieve this, a superannuation advocacy body must also represent consumers in advocating for structural law reforms.

Ongoing costs

We share Super Consumers Australia's view that the funding model must adhere to three key principles:

- adequacy,
- sustainability, and
- independence.

In terms of **adequacy**, our organisations face regular funding constraints when compared to industry lobby groups. Across many critical financial services policy debates there is often only one, and in some cases, no dedicated consumer advocate or advocacy organisation. It is not uncommon for a public consultation on an important reform to only have a single consumer advocate in a room of industry advocates, or for industry to be able to dedicate significant and ongoing resources to lobbying, while consumer groups can only respond in a limited fashion. We have seen this lead to imbalance in policy debates, with the industry's efficacy in advocating for carve-outs often sowing the seeds of the next financial scandal. This denies government, regulators and industry the benefit of understanding the consumer experience. There are numerous examples including unfair contract terms in insurance and the carve-out that allowed predatory funeral expenses policies to remain exempt from consumer protection laws. Ensuring parity between the funding of the consumer advocate and at least one of the industry lobby groups in superannuation will help address the current imbalance.

A consumer advocate needs a **sustainable** source of funding if it is to attract staff and build expertise. As superannuation continues to grow in importance as part of our retirement income system, it is vital that a consumer advocate be there to continue to drive it towards consumer focussed outcomes. Short term funding arrangements could limit its policy remit and see it only focus on goals that can be achieved over a short period of time. Recent policy debates in superannuation have played out across years (for example, product dashboards and default allocation reform), so it is important that an advocate be there for the long-term.

The funding model needs to ensure the consumer advocate is **independent**. The organisation should be accountable to its funding source and founding principles, but it needs to remain independent and consumer focussed if it is to do its job effectively. Making it reliant on industry or short term funding reviews could limit the organisation's ability to give impartial and bold advice to government and industry.

We agree with Super Consumers Australia's assessment that an endowment funding model best meets the needs of the organisation and the above funding principles.

Our organisations have provided feedback to Super Consumers Australia on its indicative funding and structure. We have also assisted in developing costings for its proposed budgets.

Governance and accountability

Many of our organisations receive some degree of external funding in order to operate. We have developed governance and accountability methods to reflect this funding structure.

To ensure accountability, our organisations report at least annually on how we are delivering on our projects. This includes appropriate metrics of performance to demonstrate our efficacy, such as statistics on service provision for the purpose of service management, planning, monitoring and evaluation. We are aware Super Consumers Australia already reports against metrics and delivers a narrative report of its outputs to ASIC. This is an important accountability measure which should be maintained.

It is also important that the consumer advocate be accountable to consumers. The best way to achieve this is by ensuring it draws on the experience of existing consumer organisations. It can do this by creating a role for consumer organisations in its governance structure, for example on its board director nominations committee. This will ensure board directors with appropriate consumer experience are appointed to the board.

The organisation should also ensure that it draws on the expertise of consumer organisations and individual consumers with lived experience in developing its policy work. We are aware Super Consumers Australia will achieve this through a policy reference committee. Most of our organisations either sit on, or have made recommendations for, participants on this committee. We see this as an important accountability mechanism, which will ensure Super Consumers' advocacy work combines deep policy expertise with the real world experience of consumers.

Conclusion

This is a particularly important moment in time for the evolution of superannuation. The sector is in the midst of responding to the Productivity Commission and Royal Commission recommendations as well as the Retirement Income Review. The creation of a Superannuation

Consumer Advocate will be vital to ensuring there is a balanced policy debate and that superannuation delivers the best outcomes for people.

Please contact Policy and Campaigns Adviser Patrick Veyret at CHOICE on 02 9577 3398 or at pveyret@choice.com.au if you have any questions about this letter.

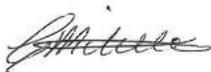
Kind Regards,



Alix Pearce | Director of Policy and Campaigns
Consumer Action Law Centre



Karen Cox | Chief Executive Officer
Financial Rights Legal Centre



Gemma Mitchell | Managing Solicitor
CCLWSA



Fiona Guthrie | Chief Executive Officer
Financial Counselling Australia



Alan Kirkland | Chief Executive Officer
CHOICE



Jon O'Malley | Acting Chief Executive Officer
Indigenous Consumer Assistance Network



Gerard Brody | Chairperson
Consumers' Federation of Australia