Better Banking

Commissions & payments review

Preliminary Submission

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## CONTENTS

- Who we are .................................................................................................................. 3
- Introduction ..................................................................................................................... 4
- Concerns .......................................................................................................................... 4
- Recommendations ......................................................................................................... 6
Who we are

The Australian Lawyers Alliance (the ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

Introduction

The ALA welcomes the opportunity to have input into the issues raised by the terms of reference of the Australian Bankers’ Association Inc.’s (ABA’s) Independent review of product sales commissions and product based payments.

This preliminary submission seeks to outline our concerns around the review’s parameters, and calls for information needed to make a substantive submission.

Concerns

1. The Terms of Reference (TOR) specifically exclude ‘[r]emuneration structures, product design issues and quality of advice regarding life insurance products’. They say ‘[t]he banking industry supports fully implementing the recommendations of the [Review of Retail Life Insurance Advice (Trowbridge Review)] and is committed to legislative reforms to support the industry’. However the reform being undertaken by the Commonwealth is the Life Insurance Reform Legislation, which does not deal with product design issues, or the inherently conflicted vertical integrated cross selling models entrenched in bank practices. More criticisms of the proposed Life Insurance Reform Legislation are contained in the attached.

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These matters should be the subject of the review. As it stands, none of the case studies or issues raised therein around culture and antiquated insurance definitions from the Adele Ferguson’s 4 Corners story aired on 7 March 2016, which catalysed calls for a Royal Commission,\(^5\) will be considered.

2. The TOR are silent on the Stakeholder Advisory Panel’s powers to compel oral evidence and the production of documents, raising questions as to its authority and capacity to sufficiently scrutinise the individuals involved including customers and bank staff/management.

3. The TOR do not provide for any review of the openness and diversity within banks’ Approved Product Lists (APLs). This is an important area of potential conflict of interest and must be examined.

4. The TOR do not provide for any review of the effectiveness of the Future of Financial Advice’s (FOFA’s) best interest duty or the ban on conflicted remuneration. This is a missed opportunity to assess these reforms and potentially remedy any flaws therein.

5. The review appears to be unable to make binding recommendations on the ABA and its members. It is unclear in such circumstances what the benefit of an unenforceable review might be.

6. The review will not be conducted in a public forum with openness and transparency, but is conducted ‘on the papers’. This denies the review legitimacy that is offered by a public inquiry and opens it up to criticisms of not fully and thoroughly examining issues of concern.

7. The review will not hear from victims, who deserve to have their stories told to inform and give context to any findings and recommendations.

8. Stakeholders cannot make meaningful submissions to the review unless and until further information is made available as to the remuneration structures in place,

\(^5\) [http://www.abc.net.au/4corners/stories/2016/03/07/4417757.htm](http://www.abc.net.au/4corners/stories/2016/03/07/4417757.htm)
including documents regarding key performance indicators, remuneration, fees, commissions or any other pecuniary or non-pecuniary benefit whether direct or indirect, received or receivable to or by any banking employees, contractors and others in customer facing roles and non-customer facing roles, such as managers and supervisors, involved in selling, offering or distributing retail banking products to retail and small business customers.

9. APLs or like documentation held by the banks are also required by stakeholders to be able to properly assess product sales commissions and product based payments and make submissions to the Review.

10. A clear explanation of precisely which financial institutions the review relates to is needed, beyond the term ‘bank’. It is not clear for example whether it would include a bank’s subsidiary, or other organisation a bank has a shareholding in.

**Recommendations**

The Australian Lawyers Alliance makes the following recommendations:

- The TOR need to be revised or additional TOR issued to respond to the above concerns. The TOR should:
  - include remuneration structures, product design issues and quality of advice regarding life insurance products;
  - clarify that the Stakeholder Advisory Panel has power to compel oral evidence and the production of documents;
  - provide for a review of the effectiveness of FOFA’s best interest duty and ban on conflicted remuneration;

  The review should further:
  - issue binding recommendations on the ABA and its members;
  - be conducted in public;
o hear from victims and use their testimony to enrich findings and recommendations;
o ensure necessary information regarding comprehensive remunerate structures in place and APLs is available to stakeholders at the earliest possible opportunity; and
o clarify exactly which financial institutions are being reviewed.