



Consumer Credit Law Centre SA

Legal Advice and Services
Credit • Debt • Financial Counselling



15 October 2018

Submitted via APH website

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Members

Design and Distribution Obligations and Product Intervention Powers

We welcome the opportunity to provide a submission to the Senate Economics Legislation Committee on the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 (the Bill)*.

The following organisations have contributed to and endorsed this submission:

- Australian Shareholders Association
- CHOICE
- Care Inc Financial Counselling Service and Consumer Law Centre ACT
- Consumer Credit Law Centre SA
- Consumer Credit Legal Service WA



- Consumer Action Law Centre
- Consumers' Federation of Australia
- COTA Australia
- Financial Counselling Australia
- Financial Rights Legal Centre

Details about each contributing organisation are contained in **Appendix 1**.

We continue to strongly support the introduction of the Design and Distribution Obligations (**DADOs**) and Product Intervention Powers (**PIP**) for the reasons outlined in our previous submissions.¹ As noted by the Australian Securities and Investments Commission (**ASIC**), these reforms represent a 'fundamental shift away from relying predominantly on disclosure to drive good consumer outcomes, and are central to realising the vision of the Financial System Inquiry (**FSI**) of promoting consumer trust in the system and fair treatment of consumers.'²

While we support the reforms, we are concerned that the legislation is significantly narrower in scope than the regime that was proposed by the FSI. We consider that significant amendments are required to ensure the legislation meets the needs of Australian consumers. Ensuring the legislation is fit for purpose is more pertinent than ever in an environment of declining confidence in financial services providers and the extensive misconduct being revealed by the Royal Commission.

In preparing our most recent submission on the revised draft legislation, we returned to the original objectives of the PIP and DADO recommendations in the FSI Final Report. These objectives included reducing the number of consumers buying products that do not match their needs and promoting fair treatment of consumers. Unfortunately, the legislation currently before Parliament has been weakened in so many areas that it risks undermining the important original objectives of the regime.

We also note the recently published Interim Report from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**the Interim Report**). In this report, Commissioner Hayne commented on a number of product design and distribution concerns that won't be addressed by this Bill without amendment. For example:

¹ Joint consumer submission, *Design and Distribution Obligations and Product Intervention Power – Proposals Paper*, 15 March 2017, available at: <https://policy.consumeraction.org.au/2017/03/21/design-and-distribution-obligations-and-product-intervention-power-proposals-paper>; Joint consumer submission, *Supplementary submission: Design and Distribution Obligations and Product Intervention Power – Proposals Paper*, 24 March 2017, available at: <https://policy.consumeraction.org.au/2017/03/28/supplementary-submission-design-distribution-obligations-and-product-intervention-power-proposals-paper>; Joint consumer submission, *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018*, 8 February 2018, available at: <https://policy.consumeraction.org.au/2018/02/13/submission-design-and-distribution-obligations-and-product-intervention-powers/>; Joint consumer submission, *Revised Design and Distribution Obligations and Product Intervention Powers Bill*, 15 August 2018, available at: <https://policy.consumeraction.org.au/2018/08/16/submission-revised-dado-pip/>.

² Australian Securities and Investments Commission, *Design and distribution obligations and product intervention power: Revised exposure draft legislation*, August 2018, available at: <https://download.asic.gov.au/media/4849144/design-and-distribution-obligations-and-product-intervention-power-revised-exposure-draft-legislation-submission-by-asic.pdf>.

- In relation to marketing of credit, it was noted that:

*"The customer 'needs' are formed by reference to what the entity has to sell. And often it is the entity's representative that tells the customer what he or she 'needs'. ... The customer who seeks a home loan is sold a transaction account or is sold a credit card ... [T]he customer is treated as 'needing' what the entity has to sell."*³

This underscores that credit products should be included in the DADO regime so that there is a greater discipline on banks and their intermediaries to ensure customers obtain only products that are suitable for their needs.

- Referring to the causes of misconduct, Commissioner Hayne stated that:

"The culture and conduct of banks was driven by, and was reflected in, their remuneration practices and policies".⁴

The Interim Report asks specific questions about how to address conduct risk which is affected by remuneration practices. For example:

*"Should any bank employee dealing with a customer be rewarded (whether by commission or as part of an incentive remuneration scheme) for selling the client a product of the employer? That is, should any 'customer facing employee' be paid variable remuneration? If the answer is either 'no' or 'some should not', what follows about incentive remuneration for managers or more senior executives? If more junior employees should not be remunerated in this way, why should managers and senior executives?"*⁵

We consider that, since remuneration practices are a key cause of misconduct, regulation is required to deal with this. At the moment, there is very little if any scope for ASIC to influence commission practices. Given this, the product intervention power should be expanded so that remuneration practices can be addressed where there is a risk of consumer detriment.

We also note references in both the Interim Report⁶ and the Productivity Commission's Inquiry Report, *Competition in the Australian Financial System*,⁷ that DADOs and PIPs are slated to improve standards in the financial advice sector. However, the Bill in fact exempts personal financial advice and dealing associated with implementing financial advice from the DADO regime. This exemption opens a significant regulatory loophole and will hamper ASIC's ability to enforce the DADO regime.

³ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Interim Report – Volume 1*, September 2018, page 64.

⁴ *Ibid*, page 340.

⁵ *Ibid*, page 341.

⁶ *Ibid*, page 105.

⁷ Productivity Commission, *Competition in the Australian Financial System – Final Report*, 3 August 2018, page 283, available at: <https://www.pc.gov.au/inquiries/completed/financial-system/report>.



We therefore strongly recommend the following amendments to the legislation:

- Apply the PIP and DADOs regimes to 'financial products' as defined in the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) to ensure the widest possible coverage;
- Remove exemptions from the DADOs regime for margin loans, personal financial advice and dealing associated with implementing personal financial advice;
- Reduce the DADOs transition period to no more than 12 months from the date of Royal Assent;
- Extend the civil liability regime to ensure that consumers can claim compensation for loss or damage resulting from contraventions of the PIP and DADOs obligations; and
- Extend the period of ASIC product interventions and broaden the range of interventions permitted, particularly in relation to remuneration and training.

Further recommended amendments are contained in our two most recent submissions on the exposure draft legislation (**attached**). The majority of recommendations outlined in those submissions have not been addressed in the current legislation.

Please contact Katherine Temple on 03 9670 5088 or at katherine@consumeraction.org.au if you have any questions about this submission.

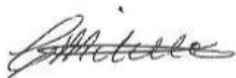
Yours Sincerely,



Gerard Brody
Chief Executive Officer
Consumer Action Law Centre



Fiona Guthrie
Chief Executive Officer
Financial Counselling Australia



Gemma Mitchell
Managing Solicitor
Consumer Credit Legal Service (WA) Inc



Karen Cox
Coordinator
Financial Rights Legal Centre





Judith Fox
Chief Executive Officer
Australian Shareholders' Association



Ian Yates AM
Chief Executive
COTA Australia



Erin Turner
Director, Campaigns & Communications
CHOICE



Prof. Gail Pearson
Consumers' Federation of Australia



David Ferrero
Managing Lawyer
Consumer Credit Law Centre SA



Carmel Franklin
Chief Executive Officer
**Care Financial Counselling Service and
Consumer Law Centre ACT**

Enc:

- Joint consumer submission, *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018*, 8 February 2018, available at: <https://policy.consumeraction.org.au/2018/02/13/submission-design-and-distribution-obligations-and-product-intervention-powers/>.
- Joint consumer submission, *Revised Design and Distribution Obligations and Product Intervention Powers Bill*, 15 August 2018, available at: <https://policy.consumeraction.org.au/2018/08/16/submission-revised-dado-pip/>.



APPENDIX 1 – ABOUT THE CONTRIBUTORS

Australian Shareholders' Association

The Australian Shareholders Association (**ASA**) is an independent, not-for-profit, member-funded organisation that has grown to be the major autonomous body representing Australian retail investors. Our advocacy promotes the interests of retail shareholders. ASA also helps its members improve their investment knowledge through its educational offerings.

Care Inc Financial Counselling Service and Consumer Law Centre ACT

Care Inc. Financial Counselling Service has been the main provider of financial counselling and related services for low to moderate income and vulnerable consumers in the ACT since 1983. Care's core service activities include the provision of information, counselling and advocacy for consumers experiencing problems with credit and debt. Care also has a Community Development and Education program, provides gambling financial counselling as part of the ACT Gambling Counselling and Support Service in partnership with lead agency Relationships Australia; operates outreach services in the region and at the Alexander Maconochie Centre and makes policy comment on issues of importance to its client group. Care also operates the ACT's first No Interest Loans Scheme, which was established in 1997, and hosts the Consumer Law Centre of the ACT.

CHOICE

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

Consumer Credit Law Centre SA

The Consumer Credit Law Centre South Australia (**CCLCSA**) was established in 2014 to provide free legal advice and financial counselling to consumers in South Australia in the areas of credit, banking and finance. The Centre also provides legal education and advocacy in the areas of credit, banking and financial services. The CCLCSA is managed by Uniting Communities who also provide an extensive range of financial counselling and community legal services as well as a large number of services to low income and disadvantaged people including mental health, drug and alcohol and disability services.



Consumer Credit Legal Service (WA) Inc

Consumer Credit Legal Service (WA) Inc. (**CCLSWA**) is a not-for-profit charitable organisation which provides legal advice and representation to consumers in WA in the areas of credit, banking and finance, and consumer law. CCLSWA also takes an active role in community legal education, law reform and policy issues affecting consumers. In the 2017 / 2018 financial year, CCLSWA provided comprehensive legal advice to 914 clients.

Consumers' Federation of Australia

The Consumers' Federation of Australia (**CFA**) is the peak body for consumer organisations in Australia. CFA represents a diverse range of consumer organisations, including most major national consumer organisations. Our organisational members and their members represent or provide services to millions of Australian consumers.

CFA advocates in the interests of Australian consumers. CFA promotes and supports members' campaigns and events, nominates and supports consumer representatives to industry and government processes, develops policy on important consumer issues and facilitates consumer participation in the development of Australian and international standards for goods and services. CFA is a full member of Consumers International, the international peak body for the world's consumer organisations.

COTA Australia

COTA Australia is the national consumer peak body for older Australians. Its members are the State and Territory COTAs (Councils on the Ageing) in each of the eight States and Territories of Australia. The State and Territory COTAs have around 30,000 individual members and more than 1,000 seniors' organisation members, which jointly represent over 500,000 older Australians.

COTA Australia's focus is on national policy issues from the perspective of older people as citizens and consumers and we seek to promote, improve and protect the circumstances and wellbeing of older people in Australia. Information about, and the views of, our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes.

Financial Counselling Australia

Financial Counselling Australia (**FCA**) is the peak body for financial counsellors in Australia. Financial counsellors assist people in financial difficulty by providing information, support and advocacy. They work in non-profit, community organisations and their services are free, independent and confidential.

Financial Rights Legal Centre

Financial Rights Legal Centre is a community-based consumer advice, advocacy and education service specialising in personal credit, debt, banking and insurance law and practice. Financial Rights operates the National Debt Helpline, which is the first port of call for NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers



about insurance claims and debts to insurance companies. We provide legal advice and representation, financial counselling, information and strategies, referral to face-to-face financial counselling services, and limited direct financial counselling.

Financial Rights took over 25,000 calls for advice or assistance during the 2016/2017 financial year.

