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Royal Commission into Victoria's Mental Health System
PO Box 12079
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Dear Commissioners

ROYAL COMMISSION INTO VICTORIA'S MENTAL HEALTH SYSTEM

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide a submission to this Royal Commission.

Consumer Action's financial counsellors and lawyers speak regularly to individuals experiencing mental health issues. These individuals are commonly trying to deal with a range of consumer problems including excessive debt, essential service disconnection, multiple payday loans and rejected insurance claims. There is a clear link between poverty, mental illness and debt and it is evident that mental health issues can exacerbate consumer and debt problems and be a factor that contributes to why these issues arise in the first place.¹

Ten per cent of individuals who contacted Consumer Action's National Debt Helpline for financial counselling in 2017-18 self-identified as dealing with mental health issues. We consider there is likely to be many more people that did not identify this during the call. There has also been extensive research that has confirmed the links between financial vulnerability and mental health. Based on what our front-line services are reporting, and the wealth of research confirming the link between financial vulnerability and mental health, we believe it is essential that the Commission considers the underlying consumer issues that exacerbate financial vulnerability.

¹ Good Shepherd, *Mental illness and debt: information for financial counsellors* (September 2010) Available at: https://www.goodshep.org.au/media/1288/mental_illness_debt_information_for_financial_counsellors_sep_2010.pdf



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It will also be critical to consider how people experiencing mental health issues can access appropriate support services and how increased funding of financial counselling services will assist. We also recommend that attention be given to automated processes established by businesses which affect individuals' access to appropriate assistance or referrals and fail to respond to the life experience of people with mental health issues. These should be designed with the vulnerability of their customer base in mind.

About Consumer Action

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 marketplace for all Australians.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1. Significantly boost funding for financial counselling services as an important gateway to mental health services and also as an adjunct to those services to better address underlying financial and debt issues.

RECOMMENDATION 2. Expand or replicate innovative partnerships between legal and mental health services, particularly to help address underlying legal problems for people experiencing mental ill-health.

RECOMMENDATION 3. Consider the establishment of a specialist research and advocacy body to help address the link between financial difficulty and mental health problems.

RECOMMENDATION 4. Help essential service firms, including banks, lenders and utility suppliers, better understand the challenges that customers with mental health problems face, through the development of universal design or mental health standards.

Response to Questions

Question 1. *What are the drivers behind some communities in Victoria experiencing poorer mental health outcomes and what needs to be done to address this?*

One of the drivers of poorer mental health outcomes is financial difficulty.² Financial difficulties can lead to poor mental health and vice versa, which can lead to a vicious cycle where one exacerbates the other. For example, a life event that has the effect of worsening a person's financial situation may lead them to experience poorer mental health outcomes. This could then result in them being unable to afford their bills, then feeling even more anxious when debt collection processes are initiated.

Consumer Action frequently encounters individuals experiencing mental health issues in conjunction with problems in the following consumer areas.

Debt

Over-indebtedness is an area with significant longer-term impacts on individuals as it affects their capacity to provide for housing, health, education and retirement.³ Debt can have a harmful effect on relationships with family and friends, increasing isolation and aggravating mental health issues.⁴ Worries about debt can also affect those in employment by affecting their attendance or concentration on tasks.⁵ Studies have found that people with unmet loan payments had suicidal ideation and suffered from depression more often than those without such financial problems.⁶

Debt problems can also result in physical health symptoms such as insomnia, low energy and headaches.⁷ Debts from payday lending and other predatory short term loans may be linked with adverse physical health outcomes including higher blood pressure.⁸ There is evidence that those experiencing debt are often treated poorly by payday lenders and debt collectors through use of intimidating, abusive or inappropriate language

² Mental Health First Aid, *Helping Someone with Mental Health Problems and Financial Difficulties: Guidelines for Mental Health Professionals*. Available at: <https://mhfa.com.au/sites/default/files/MHFA-financial-difficulties-mental-health-professional.pdf>

³ Ali, McRae and Ramsay, 'Consumer Credit Reform and Behavioural Economics: Regulation Australia's Credit Card Industry', *Australian Business Law Review*, Volume 40, Issue 2, 2012.

⁴ Step Change, *Statistics Yearbook Personal Debt*, 2014 p 24, available at: <https://www.stepchange.org/Portals/o/documents/media/reports/statisticsyearbooks/StepChangeDebtCharityStatisticsYearbook2014.pdf>.

⁵ Step Change, *Life on the Edge*, 2014, p 3, available at: <https://www.stepchange.org/Portals/o/StepChangeLifeontheEdgereport.pdf>.

⁶ Turunen and Hiilamo, *Health effects of indebtedness: a systematic review*, BMC Public Health, 2014, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4060868/#B31>

⁷ Step Change, *Statistics Yearbook Personal Debt*, 2014 p 24, available at: <https://www.stepchange.org/Portals/o/documents/media/reports/statisticsyearbooks/StepChangeDebtCharityStatisticsYearbook2014.pdf>.

⁸ E. Sweet, C. W. Kuzawa and T. W. McDade, *Short-term lending: Payday loans as risk factors for anxiety, inflammation and poor health*, SSM - Population Health, Volume 5, August 2018, Pages 114-121. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6005810/>

when such institutions make contact with clients.⁹ This can aggravate the situation for persons experiencing mental illness.

Debt can also be the result of irresponsible lending practices where lenders fail to properly assess the suitability or affordability of a loan. Consumer Action assisted a number of witnesses that gave evidence at the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Banking Royal Commission) on how irresponsible lending by financial institutions caused them severe financial hardship which had flow-on effects which impacted their wellbeing.¹⁰

A 2016 Federal Treasury consultation paper¹¹ noted that credit cards pose a “substantial burden on financial wellbeing” to a subset of consumers incurring “high credit card interest rate charges”, because of “inappropriate selection and provision of credit cards as well as certain patterns of credit card use.” High and unmanageable credit card debt can have a “significant impact on other indicators of wellbeing” (these other indicators include physical and mental health, and family wellbeing).

All of these ill-effects of debt align with Consumer Action’s casework experiences and data collected through the National Debt Helpline. The effects of debt on mental health are well established therefore business practices that result in financial difficulty and thus poorer mental health outcomes should be investigated in this Royal Commission.

Uncompensated losses

Uncompensated monetary loss can have significant impacts on mental health. Following the Global Financial Crisis, research commissioned by ASIC found that that failure to fully compensate investors who lost money due to the conduct of their managed investment scheme or financial planner can cause the investor severe emotional and financial distress.¹² Those surveyed also reported that there were strains on marriage and other personal relationships as a result of financial problems, causing isolation and poor mental health, some found it impossible to work because of stress.¹³

Many of those affected fear the cost of initiating legal action, leading Treasury to recommend the establishment of a compensation scheme of last resort in financial services to address these losses.¹⁴ This was a recommendation that was also proposed by the Banking Royal Commission, and the Federal

⁹ Step Change, *Statistics Yearbook Personal Debt*, 2014 p 34, available at:

<https://www.stepchange.org/Portals/0/documents/media/reports/statisticsyearbooks/StepChangeDebtCharityStatisticsYearbook2014.pdf>.

¹⁰ See: <https://policy.consumeraction.org.au/category/topics/royal-commission-2018-topics/>.

¹¹ The Australian Government the Treasury, *Credit cards: improving consumer outcomes and enhancing competition*, 2016, available at:

<https://treasury.gov.au/consultation/credit-cards-improving-consumer-outcomes-and-enhancing-competition/>.

¹² ASIC Report 240: Compensation for retail investors: The social impact of monetary loss, May 2011, p 10, available at: <https://download.asic.gov.au/media/1343636/rep240-published-May-2011.pdf>.

¹³ Ibid. p 45

¹⁴ The Treasury, *Review of the financial system external dispute resolution and complaints framework: Supplementary Final Report*, September 2017, Recommendation 1, available at: <https://treasury.gov.au/publication/supplementary-final-report/>.

Government has committed to implement this recommendation, although it is yet to be established. Additionally, the new legacy complaints scheme overseen by the Australian Financial Conduct Authority (AFCA) will go some way towards compensating these losses that occurred as a result of the misconduct of financial firms that date to conduct on and after 1 January 2008.¹⁵

Energy, water and other essential services

Essential services can include telecommunications, housing, gas, water and electricity. International studies have also shown that people with mental health problems are more likely to struggle with a range of essential service issues—such as an issue with their energy supply, a mobile phone contract or paying rent as they have difficulties advocating for themselves.¹⁶

Consumer Action's work in the essential services space has also shown that there is a correlation between callers with energy debts and mental health issues. Our data from the National Debt Helpline showed that 18.3% of callers with energy debts who were referred to face-to-face financial counselling reported experiencing mental health issues.¹⁷

One outcome of energy debts can be disconnection, particularly where those experiencing poor mental health fail to engage with their energy retailers by making regular payments on their bills, or advocating to be put on a payment plan, resulting in disconnections in many cases.¹⁸ Participants in our *Heat or Eat* project experienced feelings of shame, humiliation, fear and anxiety, and disconnection events compounded existing mental health issues and had serious impacts on participants' wellbeing.¹⁹

Access to essential services such as clean water to drink, energy to heat, cook and keep the lights on is essential for everyday Victorians to maintain good health, social participation and wellbeing. Businesses offering essential services should not be profiting to the detriment of their customers' health and wellbeing.

¹⁵ Australian Financial Complaints Authority, *AFCA welcomes ASIC approval for legacy complaints* (June 2019)

Available at: <https://www.afca.org.au/news/media-releases/afca-welcomes-asic-approval-for-legacy-complaints/>

¹⁶ RMIT University, *Disconnections Case Studies: Understanding the householder experience* (April 2015) Available at:

https://consumeraction.org.au/wp-content/uploads/2015/08/DisconnectionCaseStudies_Report_CentreForUrbanResearch.pdf See also, Money and Mental Health Policy Institute, *Fair Access to essential services for vulnerable consumers*. Available at: <https://www.moneyandmentalhealth.org/essential-services-vulnerable-consumers/>

¹⁷ We have reviewed 1750 calls from 2 days each month from July 2017 to December 2018. 139 of those calls clearly mention energy in the notes. Of those calls 13 have Mental Health Issues flagged by the caller or FC as a contributing factor to financial disadvantage. Vulnerability fields are generally only coded where the client is being referred out for face to face financial counselling.

¹⁸ Consumer Action Law Centre, *Heat or Eat* (August 2015) p 16. Available at: <https://consumeraction.org.au/wp-content/uploads/2015/08/Heat-or-Eat-Consumer-Action-Law-Centre.pdf>.

¹⁹ Ibid. p 39.

Insurance

Consumer Action has conducted analysis on the intersection between insurance and mental health. Our 'Denied' report detailed concerns with how insurance companies design, price and offer their policies and assess claims for people with past or current mental health conditions.²⁰ Studies have suggested that people with mental health problems could not make insurance claims because they struggled with the process, found the thought of making a claim overwhelming or did not feel able to speak to customer service staff.²¹

During the claims process, many insurers apply broad mental health exclusions which have no basis in evidence and fall below community standards and expectations.²² These practices of unreasonably denying cover are unfair and discriminatory and affect a large portion of the population.²³ Anti-discrimination law can be a limited avenue for redress, and people can face considerable hurdles in pursuing a claim.²⁴

When investigating the insurance claim, the conduct of insurers can exacerbate mental health conditions.²⁵ A case study from the Banking Royal Commission demonstrated that the way insurers (and their service suppliers) undertake surveillance lacked empathy and respect, and could exacerbate a claimant's mental illness.²⁶ Claimants were also asked questions about past relationships and medical conditions, and denied the use of a support person. These conditions have led many to withdraw their insurance claims as the process was too invasive.²⁷

Some insurers also carry out surveillance to gather information about mental health conditions which are by nature 'hidden.' This is inappropriate and ineffective. Insurers should instead be gathering information through interviews with third parties. Insurers should be prohibited from surveillance of claimants with mental health conditions. The law offers little protection as the regulation offers irregular protection due to failure to keep up with technological progress.²⁸

²⁰ Consumer Action Law Centre, *Denied: Levelling the playing field to make insurance fair*, February 2018, pp 12-15, available at: <https://policy.consumeraction.org.au/2018/02/13/denied-levelling-the-playing-field-to-make-insurance-fair/>.

²¹ Citizens Advice, *4 hidden costs of mental health problems* (June 2019) Available at: <https://wearecitizensadvice.org.uk/4-hidden-costs-of-mental-health-problems-6e26edc42724>.

²² *Ingram v QBE Insurance (Australia) Limited* [2015] VCAT 1936 (18 December 2015); Financial Ombudsman Service, *Determination 428120*, 31 March 2017.

²³ Public Interest Advocacy Centre, *Submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Banking Royal Commission)*, April 2018, available at: <https://www.piac.asn.au/2018/04/26/submission-to-the-royal-commission-into-misconduct-in-the-banking-superannuation-and-financial-services-industry/>.

²⁴ See *Denied*, above n 20, 13.

²⁵ Financial Rights Legal Centre, *Guilty until proven innocent: Insurance investigations in Australia*, March 2016, 50, available at: <https://financialrights.org.au/wp-content/uploads/2016/03/Guilty-until-proven-innocent.pdf>

²⁶ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of public hearing*, Commissioner Hayne, 64,84-5; see also <https://www.news.com.au/finance/business/banking/life-insurance-company-spent-years-fighting-womans-claim/news-story/e66993b83f5070815409c9a08fd2b024>.

²⁷ Financial Rights Legal Centre, *Guilty until proven innocent*, above n 25, 51.

²⁸ *Ibid.* p 66.

A further concern we have is with how insurance is offered for sale. Insurers regularly sell consumer credit insurance (CCI) and guaranteed asset protection (GAP) insurance (collectively known as 'add on insurance') through 'third-party distributors' such as car dealerships.²⁹ This insurance is often unsuitable for clients experiencing mental illness as they are ineligible to claim on it due to pre-existing mental health conditions and mental health exclusions by insurers (as detailed above during the claims process). The denial of these claims can impact people's housing security, mental health, families and work.³⁰

As a result, these insurance products are often worthless. [REDACTED] an insurance company admitted at the Banking Royal Commission hearings that a 'significant number' of its add-on insurance products 'were of questionable or little value to the consumer'.³¹ Insurers have agreed to pay over \$122 million in remediation to more than 257,000 customers who were mis-sold add-on insurance in motor dealerships.³² We anticipate that the total cost of mis-sold junk add-on insurance will exceed \$1 billion. Insurance companies should not be allowed to profit from providing a product that is of little use and exploit those experiencing mental illness.

Question 2. *What makes it hard for people to experience good mental health and what can be done to improve this? This may include how people find, access and experience mental health treatment and support and how services link with each other.*

Debt and financial difficulty compound mental health challenges, as highlighted above, financial difficulty and poor mental health outcomes are closely linked.³³ Addressing the problem of access to services to combat financial difficulty will go some way towards improving mental health outcomes.

Financial counselling services enable and assist people experiencing financial difficulty and also mental illness through referral to appropriate services. Financial counsellors can negotiate with creditors, assist people to understand their rights and access legal help, develop budgets and understand which debts are priorities.³⁴ They are able to work in a way that acknowledges that debt impacts broadly on a person's life and cannot be addressed in isolation.

In December 2018, Financial Counselling Australia published a report, *The unmet need for financial counselling*.³⁵ This report showed that for every five people who seek financial counselling, three people

²⁹ Consumer Action Law Centre, *Junk Merchants: How Australians are being sold rubbish, and what we can do about it*, December 2015, available at: <https://consumeraction.org.au/junk-merchants-report-how-australians-are-being-sold-rubbish-insurance-and-what-we-can-do-about-it/>.

³⁰ See *Denied*, above n 20, 18.

³¹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of public hearing*, 19 September 2018, [REDACTED].

³² Productivity Commission, *Competition in the Australian Financial System*, Inquiry Report No 89 (2018), 425.

³³ Mental Health First Aid, *Helping Someone with Mental Health Problems and Financial Difficulties: Guidelines for Mental Health Professionals*. Available at: <https://mhfa.com.au/sites/default/files/MHFA-financial-difficulties-mental-health-professional.pdf>

³⁴ Financial Counselling Australia, *About Financial Counselling*. Available at: <https://www.financialcounsellingaustralia.org.au/about-financial-counselling/>

³⁵ Financial Counselling Australia, *The unmet need for financial counselling: a survey*, December 2018. Available at: <https://www.financialcounsellingaustralia.org.au/docs/a-survey-the-unmet-need-for-financial-counselling/>

received a service but two are turned away. We recommend an increase in funding for financial counselling services as they are essential to connecting people experiencing mental illness to clinical services but also are an important adjunct to those services. By supporting clinical services by addressing financial and debt issues, financial counselling works to improve social and economic participation.

Another avenue to consider are partnerships between community organisations. WEstjustice and Mind Australia have partnered together to provide legal support to clients of Mind. So far, they have supported 25 individuals in addressing distressing legal problems with life changing consequences, such as homelessness, living with unsustainable levels of debt or consumer law problems.³⁶ This initiative aims to deliver results that holistically address mental health and legal problems. It is hoped that this program will be launched in other locations in the future.

RECOMMENDATION 1. Significantly boost funding for financial counselling services as an important gateway to mental health services and also as an adjunct to those services to better address underlying financial and debt issues.

RECOMMENDATION 2. Expand or replicate innovative partnerships between legal and mental health services, particularly to help address underlying legal problems for people experiencing mental ill-health.

Question 3. *Thinking about what Victoria's mental health system should ideally look like, tell us what areas and reform ideas you would like the Royal Commission to prioritise for change?*

The Royal Commission should prioritise access to justice for persons experiencing mental illness. For example, where people are mis-sold unsuitable insurance products that they don't want or need, unfairly denied an insurance claim or disconnected from an essential service, the ill-effects are multiplied if someone is experiencing mental health problems. This is due to their inability to advocate for themselves, which impacts on the effectiveness of certain justice processes and consumer protections. Many people struggle to make phone calls, open the post or navigate complex online forms. Research by the Citizens Bureau in the UK proves that it costs a person experiencing mental health problems an extra £1,100 to £1,550 each year for services due to inaccessibility and inadequate support.³⁷ This is termed as the 'mental health premium.'

To address this, we need both systemic interventions in justice and essential service processes, and the research and advocacy capacity to support change.

With respect to the latter, we encourage the Commission to consider the impact of the recently developed UK charity, the Money and Mental Health Policy Institute (MMHPI).³⁸ The MMHPI is an independent charity, committed to breaking the link between financial difficulty and mental health problems. It conducts

³⁶ Mind Australia, *Media Release: Funding for legal assistance for people with mental ill-health*, 31 October 2018, available at: https://www.mindaustralia.org.au/sites/default/files/Media_release_Justice_in_Mind_funding.pdf

³⁷ Citizens Advice, *4 Hidden Costs of Mental Health Problems* (June 2019) Available at: <https://wearecitizensadvice.org.uk/4-hidden-costs-of-mental-health-problems-6e26edc42724>

³⁸ See: <https://www.moneyandmentalhealth.org/>.

research, develops practical policy solutions and works in partnership with both those providing services and those using them to find what really works. While there are various research bodies examining mental health, to our knowledge there are none in Australia systematically researching and promoting change in the context of money, debt and mental health. Recognising that money problems are a significant determinant of mental ill-health, we consider such a body could play an important part in the mental health system.

Such a body could also play a significant role in researching and suggesting changes to debt recovery, consumer and essential service environments. In particular, it could understand and address practices that are designed for the 'mainstream' which unintentionally exacerbate mental ill-health. For example, existing consumer protections are built on the ability of the person to engage in the process, which is sometimes an unreasonable expectation without assistance. The following are examples of this:

- **Debt recovery processes including through court judgment and insolvency procedures.** People living with mental health issues can often have limited capacity to engage in debt recovery processes such as following up contacts from debt collectors or engaging in the legal process. Research suggests that many people have limited understanding of court judgment processes for even very small debts, so they tend to take no action.³⁹ There can be a variety of reasons for this, but due to the lack of capacity to engage these automated processes can lead to harsh outcomes for persons experiencing mental health illness, including bankruptcy and/or loss of assets including a home.
- **Energy disconnection processes.** People who are living with mental health issues sometimes find it difficult to engage with energy retailers, particularly if they have accrued debt. The new Payment Difficulty Framework places onus on retailers to offer assistance to people experiencing financial difficulty and prevents people from being disconnected at first instance. We are monitoring the impact of this Framework to assess the effectiveness of its measures. Energy arrears can also be sold to debt collectors resulting in the same problems we see in the debt recovery process detailed above. Consumer Action has assisted clients whose creditors have sought to make them bankrupt over small energy debts, because they did not engage with the debt recovery process.
- **Customer services processes.** MMPHI research has found that over half of people with mental health problems have serious difficulties using the phone to carry out essential personal administration (compared to 32 percent of people without mental health problems) Four in ten people with mental health problems have severe 'admin' anxiety', causing symptoms like breathlessness, sweating or shaking. A significant number said dealing with essential services providers, like banks, energy companies or internet providers when they are unwell can lead to panic attacks and even suicidal feelings

³⁹ Dr Eve Bodsworth, *Like Juggling 27 Chainsaws: Understanding the experience of default judgment debtors in Victoria*, (June 2013) Available at: <https://consumeraction.org.au/wp-content/uploads/2013/07/Like-Juggling-27-Chainsaws-June-2013-eVersion.pdf>.

We recommend that these processes be designed to reflect the Universal Design Principles.⁴⁰ Services should be designed to be accessible for those with mental health issues. The MMPHI in the UK has advanced this thinking through the creation of new mental health standards for essential service providers.⁴¹ The key proposals are:

- **Ensure that the standard service offered to customers is as accessible as possible**, for example having a range of communication channels, not only by phone but also online chat which reduces stress. Making services accessible to those experiencing the cognitive and psychological challenges associated with mental health problems will also improve the service firms offer to those who are time-poor, experiencing other life challenges, or with other illnesses and disabilities.
- **Provide specialist support for people who disclose mental health problems**, especially those with more severe conditions who sometimes struggle to manage their own affairs or who are at risk of financial difficulty.

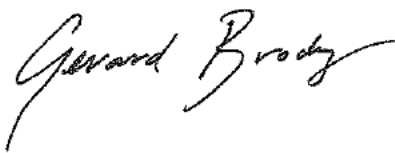
In time, improving the mental health accessibility of services should enable firms to increase customer engagement and reduce arrears and complaints.

RECOMMENDATION 3. Consider the establishment of a specialist research and advocacy body to help address the link between financial difficulty and mental health problems.

RECOMMENDATION 4. Help essential service firms, including banks, lenders and utility suppliers, better understand the challenges that customers with mental health problems face, through the development of universal design or mental health standards.

Please contact Director of Policy and Campaigns, Alix Pearce on [03] 8554 6912 or alix@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,
CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

⁴⁰ National Disability Authority, *The 7 Principles*. Available here: <http://universaldesign.ie/What-is-Universal-Design/The-7-Principles/>

⁴¹ MMHPI, *Mental Health Accessible Standards*, see <https://www.moneyandmentalhealth.org/mentalhealthaccessible/>.