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SHADOW MINISTER FOR CONSUMER AFFAIRS
SHADOW MINISTER ASSISTING FOR RESOURCES
SHADOW MINISTER ASSISTING FOR SMALL BUSINESS
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**LABOR PLEDGES FREE LEGAL ADVICE FOR SMALL
BUSINESSES AND FARMERS BATTLING BANKS**

In an Australian first, a Shorten Labor Government will establish a free legal advice service for small business and farmers who are victims of bank misconduct.

Small businesses and farmers have been crying out for legal help for years. They have faced scandal after scandal at the hands of banks and financial service providers.

When farmers and small businesses are driven into financial difficulty because of bank misconduct, they can't afford to pay for private legal representation. Too often they're forced to go to Court unrepresented.

Under Labor, Australian farmers and small businesspeople will no longer have to fight the banks on their own.

This groundbreaking new service will be funded through Labor's Banking Fairness Fund. Labor will provide \$10 million per year in ongoing funding from the Banking Fairness Fund, totalling \$40 million over four years.

The service will offer free telephone legal advice to small businesses and farmers across Australia who are in a dispute with a financial service provider. In addition, the service will have funding and capacity to run ongoing cases in Court and through the Australian Financial Complaints Authority.

The Hayne Royal Commission exposed the extent of financial services misconduct and the horrific impact it has on small businesspeople, farmers and their families. Family homes and farms have been ripped out from underneath people, and lives have been shattered.

Labor has met with countless bank victims across Australia who have been dragged through court cases lasting years, sometimes decades.

Only Labor can be trusted to clean up the banks and stand up to the top end of town. Scott Morrison and the Liberals voted against the Banking Royal Commission 26 times, and they want to give the big banks a \$17 billion tax handout.

Labor called for a Banking Royal Commission, Labor fought for a Banking Royal Commission, and Labor will ensure that victims of bank misconduct have the support they need to fight for their rights.

This election is a choice between Labor's plan for better services, schools and hospitals, or bigger tax loopholes for the top end of town under the Liberals.

After six years of Liberal cuts and chaos, our united Labor team is ready.

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Labor's Banking Fairness Fund (2019) with comments

(Original policy in black, *comments in red*)

A Shorten Labor Government will establish a Banking Fairness Fund which requires the big banks to contribute to ongoing, stable funding for community services and support for bank victims.

The Banking Royal Commission highlighted the important role that financial counsellors and lawyers play in assisting victims of banking misconduct but funding for these organisations is currently too low and too insecure to enable them to meet the influx of demand.

There is a case for bank funding of community services such as financial advice, but not legal representation via a levy. To fund community services directly fragments expertise and any funding. Banks have deep pockets and have the financial capacity to match and raise any funding, funding should be proportional to action taken by a bank. (For details see attached 'Financial Service Law Force')

LABOR'S PLAN:

A Shorten Labor Government will create a \$160 million per year Banking Fairness Fund which will provide important community services that support victims of bank misconduct.

Labor will require the nine biggest banks in Australia, those listed on the ASX 100, to contribute proportionally by market capitalisation to a pool of funding of \$160 million per year to support community services, including organisations which provide important assistance to victims of banking misconduct.

This investment by Labor will assist these important community services with a \$640 million investment over four years.

Labor will double the number of financial counsellors across Australia, allowing financial counsellors to assist an additional 125,000 Australians every year. Financial counsellors provide invaluable assistance, free of charge, to Australians who find themselves in disputes with their banks and other financial service providers.

Labor will also boost the number of community lawyers across Australia providing specialist financial rights advice from 40 to 240, allowing an additional 150,000 Australians to access free legal advice every year. The 200 extra financial rights lawyers will assist victims of bank and financial service provider misconduct by providing legal advice and running complex cases in court and through the Australian Financial Complaints Authority (AFCA).

By all means boost the number of community lawyers across Australia however there needs to be a central Federal Financial Service Law Force that concentrates and develops expertise, supports the community lawyers and funds community lawyers proportionate to need. (For details see attached 'Financial Service Law Force')

*The Bank centric AFCA should play no part in the legal process as over the past three years they have proved to be part of the problem. For example, in March this year Justice Kelly Rees in *Notesco Pty Ltd v AFCA 2022*, overturned an AFCA ruling due to "absence of impartiality and independence"*

Labor will hold the big banks to account and make sure they contribute to supporting victims of bank misconduct. In stark contrast, the Liberals have spent years trying to give the big banks a \$17 billion tax cut.

Labor has a comprehensive plan to restore fairness to financial services.

In true Liberal form, it only took them 36 days to backflip on a recommendation from the Royal Commission recommendation which they had previously committed to implement. The Liberals have cosied up to the Big Banks.

It's simple: the Liberals cannot be trusted to implement the recommendations of the Royal Commission.

Labor's Banking Fairness Fund will make the banks pay their fair share to support the victims of banking misconduct.

Labor's Ground-breaking Bank Victim Compensation Package

A Shorten Labor Government will overhaul compensation for victims of banking misconduct, ensuring they get a fair chance to pursue compensation.

Labor will boost compensation caps at the Australian Financial Complaints Authority (AFCA), establish an independent retrospective compensation scheme to give past victims of financial services misconduct a chance to pursue justice, and establish a compensation scheme of last resort in financial services.

The stories of bank victims highlight the horrific effect that bank misconduct has had on their lives and they deserve fair compensation.

The current AFCA compensation caps are inadequate. Too many consumers miss out on fair compensation.

LABOR'S PLAN:

Fairer compensation caps

A Shorten Labor Government will quadruple the compensation caps at AFCA for consumers from \$500,000 to \$2 million, double the compensation cap for small businesses to \$2 million, and double the cap for farmers to \$4 million.

For the first time, Labor will ensure that victims can get fair compensation for the effect of misconduct on their lives by removing the \$5,000 AFCA sub-cap on non-financial loss. When Australians have their lives turned upside down by bank misconduct, they should be able to pursue fair compensation through AFCA.

A retrospective compensation scheme

Labor will establish a retrospective compensation scheme so that past victims of bank misconduct can have one last chance to pursue justice. This scheme will be independent of AFCA and victims of misconduct dating back to 1 January 2008 will be able to apply to have their case heard.

Under Labor, victims will also be able to access compensation with higher AFCA compensation caps through the retrospective compensation scheme.

A prospective compensation scheme of last resort

Labor will establish a prospective compensation scheme of last resort within AFCA. This scheme will be funded by industry and will be used to pay compensation awarded by AFCA where a financial service provider goes bust. Currently, if a victim wins at AFCA but the financial service provider doesn't pay, they are left with nowhere to go. This is not fair. Labor's compensation scheme of last resort will ensure that these victims get the compensation they deserve.

Labor will ensure that banks and financial service providers are held to account and pay fair compensation to victims of their misconduct.

Three years on, there is an urgent requirement for a proper Ramsey Review style public Tribunal were aggrieved legacy bank victims can have their matters revisited.

It is of critical importance that these individuals and enterprises have appropriate legal representation, firstly to establish a prima facie case and secondly to enable the 'real issues' are presented to the tribunal in a concise and impartial manner.

An ideal body to carry out this preliminary work would be the Financial Service Law Force described below. This would enable the team to develop skills and collect intelligence that would make it more effective in current and future cases. Information and intelligence collected could be passed on to regulatory bodies such as ASIC and APRA improving their effectiveness.

The Bank centric AFCA should play no part in the compensation scheme of last resort as over the past three years they have proved to be part of the problem. For example, in March this year Justice Kelly Rees in Notesco Pty Ltd v AFCA 2022, overturned an AFCA ruling due to "absence of impartiality and independence". AFCA will only be functional and fit for purpose, if its membership is opened up to the demand side of the financial sector and if it is subject to routine merits review and proper legal scrutiny.

Labor's Plan for Implementing the Banking Royal Commission Recommendations

Labor will act quickly, fairly and strongly to implement the recommendations of the Banking Royal Commission.

Labor has released a comprehensive plan to implement the recommendations of the Hayne Royal Commission.

After voting 26 times against a Banking Royal Commission, the Liberals cannot be trusted to implement its recommendations. In fact, 36 days after releasing their lacklustre response, the Liberals backflipped and reneged on their commitment to introduce a key recommendation: the ending of trailing commissions to mortgage brokers.

Labor called for a Royal Commission, Labor fought for a Royal Commission, and Labor will work day and night to ensure Australians are protected from banking misconduct.

LABOR'S PLAN:

Labor will fully implement 75 of the 76 recommendations, and will implement the final recommendation, Recommendation 1.3 – Mortgage Broker Remuneration, in a manner that achieves the objectives but without harming competition in the retail mortgage market.

Labor knows strong action needs to be taken on these reforms and to better protect Australians from banking misconduct.

A Shorten Labor Government will establish a ground-breaking compensation package to enable victims to get fair compensation and create a Banking Fairness Fund to support community services that assist victims of bank misconduct.

Do it, but more needs to be done.

Financial Services Law Force

Equality of Arms - The Principle

[The Australian Attorney General states the following](#) in the paragraph 'Equality':

"...What constitutes a fair hearing will require recognition of the interests of the accused, the victim and the community (in a criminal trial) and of all parties (in a civil proceeding). In any event, the procedures followed in a hearing should respect the principle of 'equality of arms', which requires that all parties to a proceeding must have a reasonable opportunity of presenting their case under conditions that do not disadvantage them as against other parties to the proceedings. The UN Human Rights Committee has found a violation of article 14(1) in a case in which a right of appeal was open to the prosecution but not to the accused..."

The Practice

This is a limited initiative and only applies to **Financial Service Provider (FSP)** consumers and **Small and medium-sized enterprises (SME)** that are subject to a legal instrument of an FSP or identity acting on, or for an FSP initiated instrument, **it is not and will never be a fix all solution.**

At the point of initiating any legal instrument the FSP will be required to make a non-refundable contribution equivalent to the plaintiff's total internal and external legal budget/costs. Any escalation would require further matching contributions from the FSP. The financial service will only be able to recoup their cost from the consumers or SME following an outcome in their favour.

It is proposed the FSP contribution will fund a **public permanent independent specialist Financial Services Law Force** which will, by utilising, working with and funding the contemporary legal aid and community legal centres offer all FSP consumers and SMEs timely, proportional, and equitable legal representation.

Q&A

If a consumer wants to take an FSP to court will the FSP be required to pay the costs? – No, this initiative only applies when a FSP takes any legal action against an FSP consumer or SME.

Will this replace Internal and External Dispute Resolution (IDR &EDR)? – No, but because there is **Equality of Arms** in the courts it is expected to give added incentive to resolve disputes therefore increasing their effectiveness.

Is it fair to make the FSP pay the cost of consumers they take to court? – It is the FSP and only the FSP that take the consumer to court, FSPs could choose to act more reasonably or use other means to resolve disputes. Unlike indiscriminate levies this initiative only cost FSPs that uses the courts, and is proportionate to that action.

Won't this increase costs for FSPs? – Potentially, however if the FSP makes better use of IDR and EDR, make more frugal choices when choosing counsel, combined with greater efficiency in the court process, potentially costs could reduce. Notwithstanding it will be fairer for the consumer, consequently there is expected to be a significant decrease in legacy cases and a saving of considerable cost that those legacy cases represent going forward.

Will this initiative impact on ASIC and APRA? - Systemic issues will be identified in a timely manner; this intelligence can be shared with the appropriate regulator potentially improving their effectiveness and reducing their costs.

How will this initiative impact on the contemporary legal aid and community legal aid centre systems? - All legal aid and community legal aid centre organisations will be able to assist any and all FSP consumer and SME facing legal action in a timely, proportional and equitable manner, knowing that not only funding will be available, but also expert knowledge, support and personnel.

How will the cell be managed? - The cell should have an oversight board that includes federal government, consumer, legal aid and community legal centre group representation, but no FSP, EDR, AFCA or private legal sector representation so as to avoid white anting and inappropriate external influence. A separate public federal bar association for public legal practitioners should be considered to ensure further autonomy.