

# Code of Banking Practice Independent Review and the Code Compliance Monitoring Committee Independent Review

Legal Aid NSW Supplementary Submission  
to the Australian Bankers' Association

*August 2016*

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## About this Supplementary Submission

Legal Aid NSW provided a comprehensive submission to the Review on 18 August 2016. We make this further submission with respect to the issue of Financial inclusion (Terms of Reference to the Review, part (q)) under **Part A: Code of Banking Practice**.

### Consistent approach to long-term financial hardship

Debt is a serious ongoing social and economic problem for many Australians. It impacts most severely on the most vulnerable members of our community. Legal Aid NSW assists clients who accumulate debts they are unable to repay because of adverse circumstances which cannot be overcome in the short to medium term. These circumstances may include illness, unemployment and family breakdown. Many of these clients have little or no assets or income.

### National Bulk Debt Project

The National Bulk Debt Project (**the Project**) was a joint initiative between Legal Aid NSW, Victoria Legal Aid and West Heidelberg Community Legal Service. In 2010-2012 the Project assisted severely disadvantaged clients in long-term financial hardship by negotiating with creditors for waiver of their debts. Instead of negotiating for individual clients, lawyers negotiated with creditors on behalf of a group of clients. In these negotiations, most creditors recognised that it is commercially unrealistic to pursue debts owed by those experiencing long-term financial hardship.

Over 250 financial counsellors and community lawyers, including Legal Aid NSW lawyers, referred debts to the Project. In the first two rounds of the Project, over 1500 debts owed by the most disadvantaged clients suffering long-term financial hardship were referred, and waivers were negotiated for over \$6.4 million worth of debt.

Building on the significant success of the Project for creditors and debtors alike, Legal Aid NSW recommends that the Code be amended to adopt a consistent approach to dealing with long-term financial hardship. In doing so, the Code should clearly define financial hardship and adopt processes for waiving debts that mirror those used in the Bulk Debt Project. These processes could include reporting decisions to waive debts to relevant external dispute resolution schemes.

#### **Recommendation**

The Code be amended to adopt a consistent approach to dealing with long-term financial hardship by adopting:

- (a) a clear definition of financial hardship, and
- (b) processes for debt negotiation and waiver that mirror those used in the National Bulk Debt Project.

These processes could include reporting decisions to waive debts to relevant external dispute resolution schemes.