

Mortgage Broker Legal Fund

The final report of the **Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry** ('the Banking Royal Commission') was delivered on 4 February 2019. This report included several recommendations that have the potential to impact on how mortgage brokers operate.

A key recommendation in the Banking Royal Commission's final report is that trailing commissions paid to mortgage brokers be banned. The government's position on this continues to change and remains unclear.

There is real uncertainty surrounding the future for mortgage brokers. This has motivated a concerned group of mortgage brokers to collectively pursue an additional level of affordable representation. This collective group is seeking to establish a sector-specific entity that will facilitate the collection of, and deal with, financial contributions from mortgage brokers Australia wide, to fund future legal representation and to seek to establish a compensation scheme.

The collective group has approached the national law firm Holding Redlich, and ANU Lecturer and Researcher Tracey Mylecharane, seeking assistance and advice as to the establishment and administration of such an entity. It is anticipated that the entity will be referred to as the **Mortgage Broker Legal Fund**.

An additional objective of the Mortgage Broker Legal Fund is to be able to represent mortgage brokers, and to establish a scheme to fund any future legal costs incurred by mortgage brokers because of the actions of banks, intermediaries or ASIC.

Future changes to mortgage broker remuneration are unknown. The Fund will help give more of a voice to mortgage brokers and will help better protect their interests in the future.

Time is of the essence.

Genuine expressions of interest from reputable and concerned mortgage brokers are being sought. Registering your expression of interest will help us enact the process to undertake the next step to formalise the entity with confidence.

Why:

Mortgage brokers in Australia have been subject to some of the world's most stringent governance and regulation. In recent times, regulation and compliance changes have become the biggest cost and risks associated to the Mortgage Broker business model. Most mortgage brokers are small businesses with fewer resources to manage compliance risk, however this has not stopped large multinational lenders and government regulation, shifting more risk exposure to the mortgage broker. Managing risks requires substantial financial resources and makes up a large part of a mortgage brokers business expense.

All this exposure is compounded when intermediaries or policy makers can arbitrarily change or cease remuneration limiting a mortgage broker's financial capacity to fund a legal dispute.

Remuneration risk can apply to individual mortgage brokers and their respective business or as we have recently seen, may apply industry wide. Disputes are more likely to arise when regulatory changes occur, therefore it has become more apparent that individual mortgage brokers and their respective businesses need an industry specific legal avenue to manage such disputes. Whilst the

mortgage broker industry has valuable representative bodies such as the MFAA & FBAA, these associations are largely lobbying bodies that represent the collective industry and provide best practise guide to support customers and brokers with a uniform best practice policy.

It has become more apparent that mortgage brokers both individually and as a collective need the support of a legal fund to provide the necessary legal dispute resources allowing them to defend and protect current & future remuneration.

Our initial efforts will focus on legal options regarding the potential loss of future trail commission. Differing positions from both mainstream political parties to abolish trail commissions has impacted the mortgage broker business and its re-sale value. Mortgage brokers have worked tirelessly to build value in their respective businesses and policy change removing future trail commission has an immediate business value impact.

The Mortgage Broker Legal Fund intends to understand and challenge any proposed policy changed which relate to commission based remuneration, existing trail commission entitlements, and any other area that will impact mortgage brokers.

Who:

The Mortgage Broker Legal Fund, will, as the name suggests, support both participating individual mortgage brokers and participating members collectively. It will not differentiate mortgage brokers according to aggregation, ACL or CRN and can support and pursue redress for all participating members.

What:

The Mortgage Broker Legal Fund will provide a process for funding fair and reasonable legal representation on a range of matters, including remuneration disputes (both individually or collectively), regulatory/policy disputes and intermediary disputes. It will also work to understand and pursue available remedies against policy makers, intermediaries, individuals or organisations who may have taken steps that financially or otherwise adversely impact mortgage brokers.