

Association of Independently Owned Financial Professionals

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14 June 2017

Manager
Financial Services Unit
The Treasury
Langton Crescent
PARKES ACT 2600

By email: EDR@treasury.gov.au

Dear Sir/Madam,

TREASURY LAWS AMENDMENT (External Dispute Resolution) BILL 2017 ('the Bill')

The Association of Independently Owned Financial Professional ('AIOFP') welcomes the opportunity to provide feedback on the Bill and provide 2 critical suggestions to enhance consumer protection and create a fairer environment for all stakeholders.

AIOFP is the peak body for independent and independently owned financial professionals and is not aligned to any major institution or advisory group. Our 3500 adviser members are committed to providing quality, cost-effective professional financial advice.

Our members are the source of competition for the large institutions and their aligned advisory groups, their ongoing viability provides choice for consumers.

Please note that the views and facts presented in this paper are based on working in an identical regime over the past 13 years, they are not imaginary or suspected outcomes. FICS which later became FOS has operated in this somewhat controversial manner since 2003/4.

NO PROCEDURAL FAIRNESS AND NATURAL JUSTICE - A key concern is that the proposed Australian Financial Complaints Authority ('AFCA') will have too much discretion and flexibility in reaching decisions. For all disputes, other than those involving superannuation, AFCA will be free to depart from the law and apply subjective concepts like fairness, good practice and codes of practice which may be unrelated to the activities of our members. Even when AFCA seeks to apply the law it need not be concerned to do so correctly because there will be no right of appeal to a court. In this uncertain environment it will be impossible for our members to design and implement compliance systems.

It is also a major concern to the PROFESSIONAL INDEMNITY Underwriters who have significantly increased the cost of PI cover over recent times due to the uncommercial actions of FOS. The industry will have no choice but to pass the cost back onto consumers.

These concerns are not without foundation, the previously mentioned FICS/FOS experience over the past 13 years has clearly demonstrated the realities of this environment. The proposed monopolistic essentially private Ombudsman with the capacity to impose \$500,000 binding judgements on our members is a significant threat to the cost and viability of operating an advice practice.



FAIRNESS SUGGESTION NUMBER 1 - To address the need for certainty under the law we recommend that provisions which apply to superannuation complaints within the Bill are extended to apply to all disputes. Proposed section 1057(3) requiring that all decisions must not be contrary to the law and proposed sections 1056 and 1061(1) providing for appeal to the Federal Court on questions of law should be extended to all disputes.

We cannot see any reason why these important 'rule-of-law' provisions should be limited to superannuation. The proposed increased compensation caps exceed most amounts involved in superannuation and third parties regularly have an interest in disputes, regardless of whether the dispute involves superannuation or not.

Another key concern is that AFCA will not be accountable to members for controlling costs and applying appropriate standards of governance. Like most monopolies, in the absence of externally imposed controls, AFCA will tend to be inefficient with the potential for excessive spending on Executive and staff remuneration and other costs not directly referable to the day-to-day resolution of complaints.

We are also concerned that the interests of smaller members, like those AIOFP represents, will not be taken into account. Historically, the industry directors of ombudsman schemes have almost exclusively come from backgrounds with the major institutions.

To address the risk of monopolistic behaviour and ignorance of the needs of smaller members we recommend that governance controls for AFCA are written into the Bill. The Bill should be amended to provide for:

Industry directors to be elected from each industry segment/group, with one such director elected by members of AIOFP.

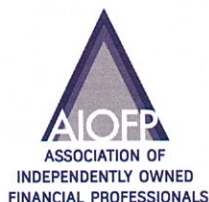
A maximum term for directors of 6 years.

Detailed financial reporting requirements including individual director and executive remuneration disclosure and itemisation of expenditures, with particular identification of marketing and other costs not directly connected with dispute resolution.

Annual member voting on financial and remuneration disclosures, with a 75% voting successive adverse voting strikes.

AIOFP believes that the amendments to the Bill recommended in this submission will be critical to the success of AFCA. Without predictable decisions and accountability to all industry participants there will be no confidence in the government's new "one-stop-shop" for financial services dispute resolution.

FAIRNESS SUGGESTION 2 – The most devastating outcome for consumers over the past 11 years has been the failure of financial products NOT poor advice, there is a significant difference. Attached is a list of 165 funds representing \$37.3 billion of consumers savings that have been either lost, impaired or frozen. You will notice that ALL of these products are created, owned and managed by Financial Institutions, not Advisers.



It should be totally understood that Advisers are also consumers of these products [just like other consumers] and rely upon Institutions, Regulators, Trustees, Custodians and Research Houses to manage, approve and rate these products.

A simple analogy is a person going into a chemist, seeks advice on a product, buys it and has a severe health problem due to a flaw in the product....do they commence action against the chemist for advice or the manufacturer of the flawed product?

Back in 2003 both Institutions and Advisers were the foundation shareholders of FICS/FOS BUT Institutions cleverly avoided being accountable for their actions whereas Advisers are subject to the binding decisions.

Considering the greatest losses for consumers are failed products a great outcome for consumers and Advisers would be to have Institutions being held accountable for any mismanagement or incompetence of their products in the AFCA. Consumers and Advisers will not have to pursue them in the courts and they would quickly settle if confronted with a loss of their AFSL.

SUMMARY - The transition from minimal consumer recourse pre 2003 to the post FICS/FOS dominance is a typical market outcome that needs to be re balanced. FICS/FOS have too much discretionary power that is gradually destroying the industry and the costs are being passed back to consumers anyway wherever possible.

Product failure is the most devastating event for consumers where their life savings are under real threat. Advisers do not create, manage or approve products, that is the sole responsibility of the Institutions and other stakeholders. Institutions need to be held accountable for their actions in the new AFCA entity where a panel of their peers needs to be established to decide whether incompetence is the cause of the problem. Adverse financial market conditions should be excluded, just mismanagement by the institution or adviser should be assessed.

Please do not hesitate to contact me at pjohnston@aiofp.net.au or 0418 857 621 if you wish to discuss any aspect of this submission.

Yours sincerely,



Peter Johnston
Executive Director
Association of Independently Owned Financial Professionals



Source – ASIC website and general market information

List of Failed and Frozen Financial Products from January 2006 to April 2013

Managed Fund/Investment	Value (\$m) rounded to nearest million	Failed/Frozen Date
1 Aberdeen Cash Plus Fund	45.58	13/01/2010
2 Absolute Capital Group	400.00	28/11/2007
3 AMP Capital (AXA) Australian Income	76.84	1/10/2008
4 AMP Capital Australian Small Companies Fund - Wholesale	8.71	20/08/2010
5 AMP Capital Core Property Fund - Class A	19.00	9/03/2009
6 AMP Capital Enhanced High Yield Fund	67.20	10/10/2008
7 AMP Capital Enhanced Yield A	308.97	10/10/2008
8 AMP Capital Enhanced Yield H	13.27	10/10/2008
9 AMP Capital Investors Enhanced Index International Share Fund	4.78	30/09/2009
10 AMP Capital Investors Small Companies Fund Class A Units	31.49	30/07/2010
11 AMP Future Directions Total Returns Fund	0.38	2/12/2009
12 AMP Multifund Balanced Growth Fund	175.03	1/10/2008
13 APN Direct Property	26.93	1/10/2008
14 APN Diversified Property Fund	21.12	13/10/2008
15 APN International Property for Income Fund	3.13	24/10/2008
16 APN Property for Income Fund	571.89	24/10/2008
17 APN Property for Income Fund No.2	243.88	24/10/2008
18 Aspen Diversified Property	114.92	1/10/2008
19 Astarra Balanced Fund	72.19	5/11/2009
20 Astarra Conservative Fund	31.04	5/11/2009
21 Astarra Growth Fund	12.12	5/11/2009
22 Astarra Strategic Fund	118.00	5/11/2009
23 Aust Unity - High Yield Mortgage Trust	144.90	1/10/2008
24 Australian Capital Reserve	350.00	1/05/2007
25 Australian Unity Diversified Property	155.85	1/10/2008
26 Australian Unity Mortgage Income Trust	625.42	12/11/2009
27 Australian Unity Office Property	142.72	1/10/2008
28 Australian Unity Wholesale High Yield Mortgage Fund	279.85	23/10/2008
29 Australian Unity Wholesale Mortgage Income Trust	925.58	12/11/2009
30 AXA Australian Monthly Income	207.34	1/10/2008
31 AXA Australian Property	53.73	1/10/2008
32 AXA Gen-Australian Monthly Income	40.16	1/10/2008
33 AXA Wholesale Australian Income Fund	208.72	31/12/2008
34 AXA Wholesale Australian Monthly Income Fund	1,298.16	23/10/2008
35 AXA Wholesale Australian Property Fund	728.50	19/08/2008
36 Balmain (MMT) Mortgage Trust Retail	11.00	1/10/2008
37 Balmain (MMT) Mortgage Trust WS	8.24	1/10/2008
38 Balmain (MWMT) Mortgage Trust IDPS	38.22	1/10/2008
39 Balmain (prev Mirvac) AQUA High Income Fund	101.23	31/07/2008
40 Balmain AQUA Income Trust	28.46	1/10/2008
41 Banksia Financial Services	650.00	25/10/2012
42 Basis Aust-Rim Diversified Fund	213.00	31/05/2007
43 Basis Yield Alpha Fund	78.00	1/06/2007
44 Becton Diversified Property Fund	61.96	1/11/2008

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45 Blackrock Australian Quant Strategies Fund (Class D) Units	210.50	18/10/2010
46 BlackRock Combined Property Income Fund	24.26	25/08/2008
47 BlackRock Direct Property C	13.15	1/10/2008
48 BlackRock Direct Property E	35.39	1/10/2008
49 BlackRock Direct Property W	13.32	1/10/2008
50 BlackRock Direct Real Estate A	4.97	1/10/2008
51 Blackrock Scientific Australian Equity PST	611.91	15/12/2010
52 BNP Paribas Asset Management Emerging Markets Equity Fund	2.97	1/09/2010
53 BT Global Return Fund	1,200.00	19/12/2008
54 BT Wholesale Australian Small Companies Fund	508.62	13/11/2009
55 BT Wholesale Technology Fund	2.00	22/02/2010
56 Centro Direct Property Fund	1,323.04	14/12/2007
57 CFS Bricks and Mortar Fund	75.28	27/10/2008
58 CFS FC Inv-CFS Income	53.47	1/10/2008
61 CFS Mortgage Income Fund-Income	792.67	1/10/2008
62 CFS Mortgage Income Fund-Income NEF	132.29	1/10/2008
63 CFS Wholesale Guaranteed Mortgage Fund	13.00	27/10/2008
64 CFS Wholesale Mortgage Income Fund	852.00	27/10/2008
65 CFS WS Long Short Share Strategies Fund	10.18	23/05/2008
66 Challenger Wholesale Global Property Securities Fund	21.77	18/10/2010
67 Challenger Wholesale High Yield Fund	34.48	16/10/2008
68 Challenger Wholesale Hybrid Property Fund	136.40	21/08/2008
69 Challenger WS MTM Diversified Growth	0.89	8/12/2008
70 Charter Hall Direct Property Fund	165.99	1/10/2008
71 Charter Hall Direct Property Wholesale	115.96	1/10/2008
72 Colonial First State PST - Australian Share Option	7.03	16/11/2009
73 Colonial First State PST - Property Securities Option	30.01	16/11/2009
74 Cromwell Property Fund IDPS Option	472.00	14/01/2009
75 Custom Choice WS Australian Share Portfolio	0.50	11/12/2008
76 Denison (Viento) Diversified Property	35.91	1/10/2008
77 Domaine Diversified Property Fund	43.66	5/06/2008
78 DWS RREEF Global Equity Opportunities Fund	277.90	10/12/2008
79 DWS Strategic Value Fund	98.90	23/12/2008
80 DWS Strategic Value Fund (Enhanced Liquidity)	0.10	20/04/2010
81 EQT Wholesale High Income Fund	84.39	4/08/2008
82 Equititrust	194.00	1/11/2011
83 Fincorp	200.00	1/03/2007
84 Forest Enterprises Australia	393.00	1/05/2010
85 Goldman Sachs JB Were Emerging Leaders Wholesale Fund	155.80	23/04/2010
86 Goldman Sachs JB Were Global Health & Biotechnology WS Fund	8.60	23/04/2010
87 Goldman Sachs JB Were Multi Strategy Fund	1.24	14/11/2008
88 Goldman Sachs JBWere Property Securities Wholesale Fund	27.20	2/06/2010
89 Great Southern Agribusiness HFA Diversified Investments Fund, HFA High Octane Fund,	4,000.00	16/05/2009
90 HFA High Octane Fund Series 2	1,100.00	22/12/2008
91 Howard Wholesale Mortgage Fund	2,352.66	21/10/2008
92 Huon Australian Share Fund	9.93	10/11/2010
93 Invesco Wholesale Asian Share PST Fund	3.39	8/12/2008
94 Invesco Wholesale Australian Fixed Interest Fund	1.81	27/05/2009
95 Lazard Global Equity (ex Australia) Fund	1.02	30/11/2009

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96 Legg Mason Australian Credit Trust	7.12	27/01/2010
97 Legg Mason Wholesale Defensive Trust	45.89	15/06/2009
98 Lift Capital	100.00	1/06/2008
99 LM Australian Income CP AUD 1 Year	0.74	1/10/2008
100 LM Australian Income Fund	27.86	20/03/2013
101 LM Australian Structured Products Fund	8.22	20/03/2013
102 LM Cash Performance Fund	0.73	20/03/2013
103 LM Currency Protected Australian Income Fund	76.86	20/03/2013
104 LM Managed Performance Fund	376.74	20/03/2013
105 LM WS First Mortgage Income Fund Flexi Account	608.94	4/08/2008
106 Macquarie Direct Property Fund	156.40	25/08/2008
107 Macquarie Diversified Private Equity - 2002	6.64	29/09/2009
108 Macquarie Global Private Equities Securities Fund	4.54	27/04/2010
109 Macquarie Life Master Aust Enhanced Equities	45.78	25/11/2009
110 Macquarie Life Master Balanced Investment Fund	65.42	25/11/2009
111 Macquarie Life Master Capital Stable Fund	58.77	25/11/2009
112 Macquarie Life Master Cash Fund	86.87	25/11/2009
113 Macquarie Life Master Fixed Interest Fund	131.79	25/11/2009
114 Macquarie Life Master Property Securities Fund	106.49	25/11/2009
115 Mariner Wholesale Mortgage Trust	15.57	27/10/2008
116 MLC Australian Share Fund (MT)	208.43	2/02/2010
117 MLC Balanced Fund (Moderate)	731.29	2/02/2010
118 MLC Capital Stable Fund (Conservative)	298.44	2/02/2010
119 MLC Capital Stable Fund (MT)	1.87	2/02/2010
120 MLC Corporate Global Share Fund	0.84	2/02/2010
121 MLC Growth Fund (Growth)	757.92	2/02/2010
122 MLC Growth Fund (MT)	13.56	2/02/2010
123 MLC Property Securities Fund (MT)	142.28	2/02/2010
124 MMC Small Companies Fund	53.88	30/06/2009
125 Multiplex Development and Opportunity	66.87	1/10/2008
126 Multiplex Diversified Property Fund	65.30	17/11/2008
127 Multiplex Property Income Fund	39.68	29/09/2008
128 OnePath (ING) Corporate Super Balanced Fund	415.28	10/03/2010
129 OnePath (ING) Monthly Income Trust	91.59	24/10/2008
130 OnePath (ING) Wholesale Super Australian Shares	6.47	10/03/2010
131 OnePath (ING) Wholesale Super Capital Stable	540.37	10/03/2010
132 OnePath (ING) Wholesale Super Managed Growth	10.71	10/03/2010
133 OnePath OA IP-OP Mortgage Tr No. 2	34.77	1/10/2008
134 Opes Prime	1,000.00	27/03/2008
135 Ord Minnett Global Dynamic Fund	14.10	30/08/2010
136 Palandri Agribusiness	160.00	1/02/2008
137 Perpetual Fidelity America Fund	57.18	22/05/2009
138 Perpetual Income Series Monthly Income	221.29	1/10/2008
139 Perpetual WFI-Perpetual Mortgage	8.34	1/10/2008
140 Perpetual Wholesale Monthly Income Fund	369.43	23/10/2008
141 Phoenix Technology Corporation Nexus Holdings (Walter Filler)	8.00	1/01/2000
142 Recap Enhanced Income Fund	18.84	24/12/2008
143 Rubicon Holdings Australia	245.38	1/10/2008
144 Schroder Geared Global Active Value Fund (Hedged)	128.56	31/07/2009
145 Select Gottex Enhanced Market Neutral Fund	27.79	13/11/2008
146 Select Gottex Market Neutral Fund	61.30	13/11/2008
147 SG Hiscock Hybrid Property	15.52	1/10/2008

**List of Failed and Frozen Financial Products
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148 SSgA Aust Listed Property Index Trust	7.90	30/04/2009
149 SSgA Global Fixed Income Trust	1.10	30/04/2009
150 Storm Financial	3,000.00	15/01/2009
151 Tankstream Property Investment Fund	9.52	27/08/2008
152 Timbercorp Agribusiness	200.00	23/04/2009
153 Trilogy (City Pacific) First Mortgage Fund	520.00	1/10/2008
154 Trilogy Healthcare REIT	6.70	30/06/2012
155 UBS Australian Equity Income Fund	4.67	25/05/2010
156 UBS Credit Enhanced Cash Fund	18.47	19/03/2009
157 UBS Global Infrastructure Fund	0.18	2/03/2009
158 UBS Protected Cash Fund	0.53	14/04/2010
159 United Funds Management Australian Shares PST	5.26	16/11/2009
160 United Funds Management Capital Growth PST	8.14	16/11/2009
161 United Funds Management International Shares PST	30.23	16/11/2009
162 Wellington Premium Income Fund	755.88	29/01/2008
163 Westpoint Group	388.00	15/01/2006
164 Wickham Securities	27.00	1/03/2013
	37,301.30	