



AUSTRALIAN COLLECTORS &  
DEBT BUYERS ASSOCIATION

14 June 2017

Manager  
Financial Services Unit  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [EDR@treasury.gov.au](mailto:EDR@treasury.gov.au)

Dear Sir/Madam,

**Consultation Paper: Improving dispute resolution in the financial system  
Treasury Laws Amendment (External Dispute Resolution) Bill 2017 ('the Bill')**

With reference to the Consultation Paper issued by The Treasury on 17 May 2017, the Australian Collectors & Debt Buyers Association (ACDBA) welcomes the opportunity to provide feedback on the Bill and associated materials.

ACDBA is the peak body for the collections and debt buying industry in Australia and is not aligned to any major institution or advisory group. Our 17 members<sup>1</sup> are truly independent and are committed to providing quality, cost-effective and impartial financial services.

A key concern for ACDBA 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.

Small businesses (or businesses from smaller industries etc), like those comprising our membership, need certainty in order to operate and compete with large institutions. Our members must have the ability to build compliance systems with regard to the certainty of the law alone, without having to try to second-guess the subjective perspectives of a monopoly private ombudsman capable of imposing compensation awards of \$0.5 million. Our members do not have the resources to keep abreast of continually shifting standards. In its proposed form AFCA will add costs and will limit our members' ability to compete to provide a better service to Australians.

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<sup>1</sup> Refer Annexure A for list of members of Australian Collectors & Debt Buyers Association

To address the need for certainty under the law we recommend that provisions which apply to superannuation complaints within the Bill be 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, given 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.

Another key concern is that AFCA will not be accountable to members for controlling its costs and applying appropriate standards of governance. As a monopoly, the risk for industry members is that AFCA will spend excessive and unreasonable amounts on office facilities, board and executive remuneration and potentially on items not directly or necessarily connected to its principal purpose of resolving disputes.

We are also concerned that the interests of smaller members, like those ACDBA represents, will not be taken into account by AFCA. Historically, the industry directors of the Financial Ombudsman Service (FOS) have almost exclusively come from backgrounds with the major institutions and it would be regrettable for the same situation to apply with AFCA.

The existing EDR Schemes, both FOS and the Credit & Investments Ombudsman (CIO) are subject to accountability imposed by the ability of member financial firms to move to an alternative scheme when and if decision-making proves too unpredictable. In stark contrast, as a single monopoly scheme, AFCA will not be subject to any such accountability for certain and predictable decision-making and instead would enjoy wholly unfettered decision-making discretion.

To address the risk of such potentially monopolistic behaviour and ignorance of the needs of smaller members, we recommend that appropriate and reasonable governance controls for AFCA should be written into the Bill.

Specifically, the Bill should be amended to provide for:

- Decisions in respect to all complaints, not just superannuation complaints to be in conformance with the law
- Decisions, in respect to all complaints, not just superannuation complaints to be capable of appeal to the courts on questions of law
- Industry directors to be elected to AFCA from each industry segment/group, with one such director elected by members of ACDBA
- A maximum term for directors for AFCA of 6 years
- Detailed financial reporting requirements for AFCA 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 majority requirement, and provision for a motion to spill the board if there are two successive adverse voting strikes

ACDBA believes that the amendments to the Bill recommended in this submission are reasonable and important governance and disclosure controls critical for the success of AFCA and to ensure that AFCA is accountable to all financial services industry participants. 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.

Please do not hesitate to contact the writer at [akh@acdba.com](mailto:akh@acdba.com) or by calling (02) 4925 2099 to discuss any aspect of this submission.

Yours sincerely

**AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION**

Alan Harries  
CEO

## ANNEXURE A

### Listing of Members of Australian Debt Buyers & Collectors Association

- ACM Group Ltd
- Australian Receivables Ltd
- Axess Australia Pty Ltd
- Baycorp (Aust) Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd
- Charter Mercantile Pty Ltd
- Collection House Limited (ASX: CLH)
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Credit Four Pty Ltd
- Dun & Bradstreet (Australia) Pty Ltd
- National Credit Management Limited
- Panthera Finance Pty Ltd
- Pioneer Credit Limited (ASX: PNC)
- Shield Mercantile Pty Ltd