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EDR Review Secretariat
The Treasury
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By email: EDRreview@treasury.gov.au

**MFAA submission on the Review into Dispute Resolution and Complaints Framework -
Supplementary Issues Paper (compensation scheme of last resort)**

Thank you for the invitation to make a submission on the Review into Dispute Resolution and Complaints Framework - Supplementary Issues Paper.

Background

The Mortgage & Finance Association of Australia (MFAA) represents over 13,000 members and is the leading industry association for finance brokers in Australia.

We have taken particular note of the FOS figures in the Ombudsman's April 2017 circular that are noted in the issues paper. Specifically, the figures show that the credit sector makes up approximately 40% of total disputes received by FOS, but unpaid disputes by 'credit providers' make up only 11% of unpaid determinations.¹ Further, it is not clear from these figures whether this 11% is limited specifically to credit providers² (i.e. lenders) or whether it also includes finance brokers.

Further, we understand from CIO figures that generally finance brokers make up only 5.9% of total complaints received by this EDR scheme.³

What these statistics show is that the credit industry generally makes payments to consumers when required and that non-payment of determinations is not a large problem within the credit industry. This is further supported by data quoted below.

Submission

The MFAA welcomes a scheme that would see consumers who have had an EDR scheme determination in their favour receive appropriate compensation. For our members, any such compensation is generally paid from their Professional Indemnity (PI) insurance or, in the case of smaller claims, by the broker.

¹ Treasury, *Review of the financial system external dispute resolution framework - Supplementary Issues Paper*, May 2017, p32.

² FOS, Circular, Issue 29, April 2017, <<https://www.fos.org.au/fos-circular-29-home/fos-news/unpaid-determinations-update.jsp>>.

³ See for example, CIO, Consumer News, March 2017, <<http://email.cosl.com.au/t/ViewEmail/y/7905ABABD94B3725>>.

Differences between the credit industry and financial services industry

As you can see from the above, in the credit industry, the impact on consumers of unpaid determinations is substantially less than in the financial services industry. Further, the financial services and credit services industries are each very different from one another and provide unique services to the public:

1. Most credit industry claims will involve a prudentially regulated credit provider, that is a lender (even where the claim also involves a credit assistance provider, i.e. a broker) due to the two-stage credit assistance and responsible lending process. This is vastly different from the financial advice industry where the financial product provider is not required to provide a second layer of advice or conduct an additional review of the customer's requirements prior to acceptance.
2. A glaring difference between financial services and credit intermediaries (i.e. finance brokers), is that finance brokers rarely have access to customer funds so customer losses in this area are minimal. In contrast, this access occurs in financial services.
3. Finance brokers generally act to assist a customer to access lender finance for investment in real property, the value of which remains relatively stable, whereas financial services advisers tend to deal in products with higher levels of risk.

As such, the financial advice and credit service industries should not be grouped together for the purposes of this proposal. While some entities may cross over both sectors, we consider that this is not a good enough reason to disadvantage businesses that only operate in the credit industry. Further, the Ombudsman's figures do not demonstrate that there is significant consumer harm that requires redress in the credit sector.

In order that funding can be affordable and sustainable, any proposed scheme should be contributed to by the various industry sectors proportionately and based upon the historical record of unpaid determinations for the relevant sector in the previous year, which should be adjusted annually. The scheme therefore should not unfairly impact finance brokers by cross-subsidising those operators in financial services where the majority of unpaid determinations have historically occurred.

Unpaid determinations relating to finance brokers

The MFAA has been provided data from the office of the Credit & Investments Ombudsman relating to unpaid determinations for credit industry participants who are not credit providers, in other words, finance brokers, who are members of the CIO scheme. That data shows that since 2014 (inclusive), the total unpaid determinations by finance brokers (and small amount lenders) who are CIO members is as follows:

FSP type	Total amount of unpaid determinations
Broker	*\$391,056
Small amount lender	\$8,806

*The MFAA has been advised that of this amount, \$326,252 was attributable to a single finance broker in relation to two unpaid CIO Determinations where the broker had reportedly provided the consumers with unlicensed financial product advice in relation to investments.

Excluding the two determinations involving this broker above, this means that the remaining unpaid determinations by all finance broker members of CIO (where the great majority of brokers hold membership) over a period of more than three years of CIO determinations amounts to only \$65,000. This is a very strong demonstration of the relatively miniscule amount of unpaid determinations attributable to the activities of finance brokers. It also supports the willingness of brokers to meet their obligations to make payments when so determined.

Cost to business

As you would be aware, with the new ASIC supervisory cost recovery levy being imposed on credit industry participants, the costs for our members of running their businesses are increasing. Most of our members are small businesses that work with consumers to address their credit needs. Significantly increased industry costs, particularly if the credit industry will be required to subsidise deficiencies in the financial services industry, may lead to worse consumer outcomes with small businesses no longer able to afford to offer the same level of service to consumers. This may have the effect of a reduction in competition across the credit sector.

Redress for past disputes

Insurers are well known to have heightened concern where uncertainty exists and redress for an unknown quantum of potential unpaid EDR determinations is likely to result in needlessly increased PI insurance premiums. We also suggest that with respect to redress for past disputes, due to that uncertainty regarding possible claims and the potential for additional PI costs through raised premiums, redress for past disputes not be permitted unless there are significant circumstances relating to consumer hardship that make such redress necessary.

Conclusion

We anticipate that the MFAA will be called upon, if further consultation is to be initiated before any further development or implementation occurs, to enable involvement in deliberations and provide a voice on behalf of the 17,000 finance brokers operating in Australia.

Thank you for the opportunity to respond to this issues paper.



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