



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

RESPONSE TO INTERIM REPORT

Review of the financial system external dispute resolution and complaints framework

January 2017

27 January 2016

EDR Review Secretariat
Financial System Division
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The Treasury
Langton Crescent
PARKES ACT 2600

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Response to the Interim Report of the Review of the financial system external dispute resolution and complaints framework

The Australian Collectors & Debt Buyers Association (ACDBA) submits its response to the Review's Interim Report (Interim Report):

ACDBA represents the interests of member companies who collect, buy and/or sell debt in Australia and as explained in our earlier Submission its members were optimistic of the opportunity afforded by the Review to deliver outcomes to all users of the EDR Schemes for an equal footing based upon respect and mutual obligations, inclusive of:

- Fairness and equity for all users based upon:
 - transparent, consistent and equitable outcomes for dispute resolution
 - EDR schemes being used for their primary purpose of dispute resolution and not to delay or usurp legitimate and lawful collection activities
 - EDR schemes having the capacity and expertise relevant to the industry sectors they serve
- The introduction of more rigour around the limits of the EDR schemes and the higher authority of the Courts
- EDR scheme funding models being fair, equitable and transparent
- EDR cost recovery from frivolous complainants

The Interim Report suggests optimism for such outcomes may have been misplaced.

A simple review of the footnotes quoted throughout the Interim Report gives testimony to an over-reliance on submissions and observations made by consumer groups, the EDR Schemes and regulators but scant and only token reference to the submissions made by industry groups and industry Financial Service Providers (FSP) members who bear the financial impost of the EDR framework, many of which were quite detailed, considered and made sensible and equitable suggestions for how the EDR framework might be improved for all stakeholders.

The Review Panel admits "*it is difficult to measure consumer confusion*".¹ Despite such admission and lack of empirical support for there being any significant consumer confusion as to which EDR Scheme to lodge a complaint with, the Panel uses the issue of "consumer confusion" as a reason in support of creating a monopoly single industry EDR Scheme.

¹ Interim Report, paragraph 5.9

The Interim Report notes² the two industry EDR Schemes, FOS and CIO “in the event the consumer lodges a dispute with the wrong scheme...have processes in place to transfer or refer misdirected phone calls to each other and, under the Memorandum of Understanding (MOU) between FOS and CIO transfer complaint files to each other”.

We respectfully submit, the lack of any credible evidence of material confusion from consumers together with the Interim Report’s acknowledgement that effective processes are maintained by FOS and CIO to immediately address any misdirected calls or complaints from consumers comprehensively addresses and removes the need to include consumer confusion as an issue requiring consideration.

Furthermore, the identity of the relevant EDR Scheme to which an FSP belongs and to whom consumers may lodge a complaint with is clear and obvious - this is because each FSP is obliged to clearly communicate and make obvious to which EDR scheme it belongs in all written communications to its consumers and on its website. The Interim Report does not detail evidence of any systemic failure by FSPs to meet and fully discharge these obligations.

Additionally, the websites of FOS and CIO both have a public accessible look-up facility to help consumers identify which EDR scheme an FSP belongs to, as highlighted below:

In the case of FOS, its website www.fos.org.au includes:

Find a financial services provider

We provide a dispute resolution service for consumers and financial services providers. For us to be able to consider disputes, the financial services provider needs to be a member of our service. This search tool will help you find out if your financial services provider is a FOS member.

[Visitors then can use any one or more of the three following search options to quickly display the search result:

Name

Member Number

ABN/ACN]

Clear, simple and very effective advice appears immediately below the search options, as follows:

Can’t find your financial services provider?

If you can’t find the financial services provider you’re looking for in our database, this may mean that they are not a member of FOS. We cannot help with disputes about financial services providers that are not FOS members.

You can contact the [HYPERLINK] Credit and Investments Ombudsman Limited to check if your financial services provider is a member of their service.

Similarly, CIO’s website www.cio.org.au has an equivalent search facility and advice if no result is returned with a hyperlink to try a similar search at FOS.

In light of the above, we submit there is no plausible basis to conclude reasonable consumer confusion exists as to which EDR scheme to lodge a complaint with.

² Interim Report, paragraph 5.9

ACDBA is dismayed by the Review Panel's **Recommendation 1: A new Ombudsman industry scheme for financial, credit and investment disputes** calling for the creation of a monopoly single industry EDR Scheme to replace FOS and CIO.

This recommendation suggests to ACDBA that submissions by FSPs and their industry associations were in the main simply dismissed by the Review Panel whereas the submission by the Joint Consumer Group seemingly has been afforded far greater weight than the empirical evidence included in such submission warrants.

For instance, can any valid conclusion be reached by reliance upon a survey result that *“74% of surveyed financial counsellors support the merger of CIO into FOS”*³?

The Joint Consumer Group submission suggests there are around 800 financial counsellors in Australia but only 197 financial counsellors completed the quoted survey and more pertinently, of these only financial counsellors who had lodged at least one complaint with FOS or CIO in the last 12 months (a total of 122 counsellors) were permitted to answer the question *“There is a proposal to merge the CIO into FOS so that there is just one external dispute resolution scheme in financial services. Is this a good idea?”*⁴

The Joint Consumer Group Submission details⁵ that the majority of survey respondents supported a merger *“with a strong theme that it would reduce confusion and improve accessibility”*.

Unfortunately in our opinion, the survey failed to get to the real issue of why confusion existed and precisely who was confused: the consumers or the financial counsellors? As noted earlier FSPs are obliged to include in written communication to consumers the identity of the EDR Scheme they belong to and also to publish that information on their websites – is it really a case of confusion or simply laziness in reviewing the communication and/or looking at the FSP's or EDR Schemes' websites?

Further will the creation of a monopoly industry scheme actually eradicate reported consumer confusion? This is a genuine question based on the experience of the administrative office of ACDBA which regularly receives telephone enquiries from consumers who have an adverse credit report

In our experience, the issue of consumer confusion is not about which EDR Scheme to complain to but surprisingly about which FSP provided the credit.

In the 7.5 years ACDBA has operated despite taking regular telephone enquiries from consumers expressing some dissatisfaction about collection activities or about the discovery of the existence of an adverse credit report, there has not been a single call from any consumer expressing confusion as to which EDR scheme should be contacted in relation to a complaint with a specific member FSP.

The context of the EDR Review being commissioned was in the wake of major banking and insurance scandals which had diminished consumer confidence and given rise to significant consumer disquiet with those mainstream financial services. There had been calls for the Federal Government to hold a Royal Commission and a variety of parliamentary inquiries had looked at the behaviour and poor performance of the banking and insurance industries. Despite this context, the Interim Report fails to explain how its recommended monopoly single industry EDR Scheme will be any better equipped than the status quo EDR schemes to deal with such banking and insurance concerns.

³ Joint Consumer Group submission dated 10 October 2016 at page 6

⁴ Joint Consumer Group submission dated 10 October 2016 at page 7

⁵ Joint Consumer Group submission dated 10 October 2016 at page 63

The essential question arising from Recommendation 1 and not adequately detailed by the Review Panel is to what extent the likely negative effects of the proposed monopoly single scheme have been properly evaluated and the theoretical benefits of the Panel's favoured monopoly contrasted to the proven benefits of the existing multiple industry schemes, which enjoy overwhelming support and approval by FSPs and their industry associations.

Given the wider understanding of monopolistic behaviour generally, there can be no reasonable assurance that service and performance for all stakeholders will improve where there is only one player in the EDR scheme market.

Why would a monopoly single EDR scheme be expected to deliver a better outcome?

The Review Panel⁶ details anticipated benefits to flow from the establishment of a monopoly single EDR Scheme compared to what it summarises as issues with the status quo multiple EDR Schemes in terms of Efficiency, Equity, Complexity, Transparency, Accountability, Comparability of Outcomes and Regulatory Costs.

Many of the issues flagged are trivial and do not support the argument that there are problems with the existing multiple EDR scheme framework. Therefore, in our opinion a convincing case in favour of the creation of a monopoly single EDR Scheme has not been made by the Review Panel in its Interim Report. We conclude that the Interim Report's findings reflect insufficient evidence and an unjustified conclusion that on any reasonable and equitable basis, the abandonment of the status quo multiple EDR Schemes in favour of the establishment of an untested monopoly single EDR Scheme is warranted.

ACDBA fears reducing the EDR process and framework to a monopoly will almost certainly in the longer term be a poor decision.

In relation to **Recommendation 6: Ensuring schemes are accountable to their users**, ACDBA acknowledges and supports the rationale supporting the proposed ASIC guidance requirements but makes the salient point the Review Panel with its Recommendation 1 actually disempowers the users by removing the most powerful inducement to ensure a scheme is accountable to its users: a monopoly replacing the multiple industry schemes means members will be deprived of their ultimate power to vote with their feet in the event of a scheme failing its users by being able to join the other scheme.

Realistically both Recommendation 6 and **Recommendation 7: Increased ASIC oversight of industry Ombudsman Schemes** could equally be applied to the situation of retaining the multiple industry schemes whereas removing the market control (disbanding the existence of multiple industry schemes) would effectively diminish the likely outcome of both recommendations.

In hindsight the deliberations and recommendations of the Review Panel may have been enhanced by the inclusion of a panel member with extensive hands on experience working with an FSP regularly dealing with an EDR scheme, rather than all panel members being somewhat removed from the practical realities of EDR schemes and instead being more concerned about theoretical rather than effective operational considerations for the Review of the financial system external dispute resolution and complaints framework.

ACDBA does not support the creation of a monopoly industry EDR scheme and instead believes retention of the existing multiple industry EDR schemes will deliver fairer, more timely and efficient outcomes to all users of EDR Schemes.

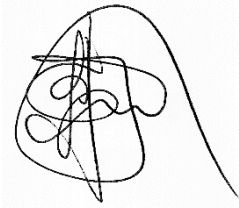
⁶ Interim Report, page 145

**ACDBA Response to Interim Report
Review of the financial system external dispute resolution and complaints framework**

Enquiries in respect to this response can be directed to the writer on 02 4925 2099 or by emailing akh@acdba.com.

Yours sincerely,

AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

A handwritten signature in black ink, appearing to be 'Alan Harries', written over a light grey rectangular background.

Alan Harries
CEO