

SUBMISSION ON EXTERNAL DISPUTE RESOLUTION FRAMEWORK

12 OCTOBER 2016

By Niall Coburn

The Government has released an issues paper in relation to the Review of the financial system external dispute resolution and complaints framework (**Ramsay Review**) concerning the three industry complaint processes. This will be one of the most important reviews ever undertaken to assess whether consumers have appropriate redress and compensation avenues against financial institutions and firms when things go wrong.

Hard questions

It will give the Government an opportunity to consider what options it has. In particular, should the current framework stay in place or whether a “one stop shop” is necessary to assess consumers seeking to resolve disputes within the financial system and whether any examples or alternatives can be considered from international jurisdictions. The panel may also consider small business lending practices where the Government, on 31 August 2016, announced that it had directed the Australian Small Business and Family Enterprise Ombudsman to undertake an inquiry into the impairment of customer loans and the deficiencies in regulation relating to banks’ lending to small businesses.

Some of the issues that the panel will have to consider will be important for consumers. Some of these questions can be outlined as follows:

- Do the current external dispute resolution schemes arrangements possess sufficient powers to settle disputes? Are any additional powers or remedies required?
- How are the existing external dispute resolution schemes and complaint arrangements held to account and can they be improved?
- How transparent are the funding arrangements?
- To what extent are there gaps and overlaps under the current arrangements and how can these be addressed?
- Do multiple resolution schemes lead to better outcomes for consumers and how can small business be added to this framework?
- How many consumers, under the current schemes, have been left uncompensated after being awarded a determination and what amount of money are they still owed?

- Would another structure be more efficient or in the interest of consumers than the ones we have now?
- Should there be some sort of compensation scheme for investors where managed investments schemes or firms go into liquidation?

Industry schemes versus a more judicial structure

There is no doubt that FOS, out of the three schemes, has been the busiest, accounting for around 80 percent of the banking, investment and insurance disputes in Australia. According to FOS's annual report for 2015/16, it dealt with 34,095 disputes. Out of these disputes, it closed 32,871. This certainly appears, on the face of it, to be an effective process as FOS closed 43 percent of disputes received within 30 days, 77 percent within 60 days and 85 percent within 90 days.

One of the questions flowing from the Ramsay Review would be whether there should be an appeal process for complainants who are not satisfied. There is also a difference between minor disputes and complex issues where evidence needs to be called or where representations were made to customers beyond the contractual information provided to them.

It is not clear how effective the current schemes are and how happy consumers have been with the processes but they seemed to have worked well. Both FOS and CIO have wide ranging powers and can award compensation for financial or non-financial loss, forgiveness or variation of debt, interest on payments and release on security. Any determinations are binding on the financial firm but not the complainant. Accordingly, a complainant can then choose to seek recourse through the court system which is much more expensive and may not be appropriate for small amounts given the cost of litigation.

Conclusion

Consumers need a one-stop financial services tribunal that will deal with banking, insurance, superannuation and managed investment schemes and obtain final resolution.

In a recent review by the Parliamentary Committee interviewing CEOs, it was clear that the banks have thousands of complaints which appear not to have been dealt with in an efficient and timely manner leaving many issues unresolved. What ordinary Australians want is if they have a dispute, that they can go into an informal environment and argue their case, with or without the assistance of lawyers and that their case will be heard in a judicial capacity.

At the moment, the only approach besides the Ombudsman's schemes, is that ordinary Australians, who are not in a financial position, have to take the matter to Court and incur substantial costs and risk losing their homes. It is fair to say that the banks often play "hard ball" in this environment and many Australians cannot afford the price of justice. What is needed is a Tribunal such as the AAT that can hear matters in a formal or informal setting and can competently and judicially act in the interest of all parties within a reasonable timeframe.