

## IPA - Deakin SME Research Centre

The Institute of Public Accountants (IPA) is one of the three legally recognised professional accounting bodies in Australia. The IPA has been in operation for over 90 years and has grown rapidly in recent years to represent more than 35,000 members and students in Australia and in more than 80 countries. The IPA has offices around Australia and in London, Beijing, Shanghai, Guangzhou and Kuala Lumpur. It also has a range of partnerships with other global accounting bodies. The IPA is a full member of the International Federation of Accountants and has almost 4,000 individual accounting practices in its network, generating in excess of \$2.1 billion in accounting services fees annually. The IPA's unique proposition is that it is for **small business**; providing personal, practical and valued services to its members and their clients/employers. More than 75 per cent of IPA members work directly in or with small business every day. The IPA has a proud record of innovation and was recognised in 2012 by **BRW** as one of Australia's top 20 most innovative companies.

In 2013, the IPA partnered with Deakin University to form the IPA Deakin SME Research Partnership, a first in Australia. This partnership has grown and evolved into the IPA assisting Deakin University in establishing the IPA-Deakin SME Research Centre in 2016. The goal of the Centre is to bring together practitioner insights with cutting edge SME academic research, to provide informed comment for substantive policy development.

The IPA-Deakin SME Research Centre comprises:

Chair Andrew Conway FIPA  
**(Chief Executive of the IPA and Professor of Accounting *honoris causa* Shanghai University of Finance and Economics)**

Mr Tony Greco FIPA  
**(IPA General Manager Technical Policy)**

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**(IPA Executive General Manager, Advocacy & Technical)**

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**This submission was prepared by the IPA-Deakin SME Research Centre.**

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25<sup>th</sup> January 2017

EDR Review Secretariat  
The Treasury  
Langton Crescent  
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Dear Sir/Madam

Review of the financial system external dispute resolution and complaints framework

The IPA-Deakin SME Research Centre is pleased to submit the following opinions on the Interim Report into the Review of External Dispute Resolution Schemes. The Research Centre is a joint initiative of the Institute of Public Accountants and Deakin University. It exists to increase the awareness of government and the community more generally on issues related to small business by contributing to policy debates.

At the outset, we wish to note that we agree with the underlying premise that the regulatory structure ought to be simplified and a streamlined complaints regime implemented. The issues being considered by the two schemes, for which a new industry ombudsman scheme would be a replacement, are similar in nature and such disputes should be overseen by one external dispute resolution scheme.

A further refinement of the process for future consideration should be the creation of a single body that provides coverage of the entirety of the financial services sector and not treat superannuation as requiring a separate scheme. We note that the review panel itself has considered this and articulated a firm policy position that a single dispute resolution regime should exist for the financial services sector in the future. We ask that the review panel reflect further on the merit of incorporating a superannuation dispute resolution process at the outset rather than leaving the ultimate goal for some time in the future.

The consultation process undertaken by the review panel has in our view been thorough and we commend the extent to which face to face round tables, meetings and visits to the individual external dispute resolution (EDR) bodies have been used to gather perspectives and evidence for the committee's work.

Observations on recommendations of specific interest to the Research Centre appear below. We would be pleased to comment on any other matters on request.

### *A new industry ombudsman scheme for financial, credit and investment disputes*

A core recommendation of the Interim Report is for the Financial Ombudsman Service (FOS) and the Credit and Investment Ombudsman (CIO) to be merged into one. The report notes that the existing schemes are the result of continuous improvement processes in dispute resolution given that the FOS in particular was the result of merging a number of schemes together. A further consolidation of these bodies is a continuation of the trend to try and focus on the function of dispute resolution rather than the individual product types that have been sold to consumers.

While the rationale for not proceeding with a single body that also incorporates superannuation is understood, we encourage the review panel to further consider whether it is possible to bring forward a single comprehensive scheme. We note that the superannuation industry would face a period of adjustment irrespective of whether it has its own scheme or it is brought into the comprehensive approach.

This recommendation for the creation of one body would also be consistent with the Federal Government's approach to merging or getting rid of various bodies as recommended in the National Commission of Audit commissioned following the election of the Abbott Government in 2013. The Phase Two Report from the National Commission of Audit's<sup>1</sup> report published in March 2014 stated that 696 non-principal bodies needed to be rationalised with 482 of those bodies being singled out for abolition, amalgamation, transformation or assessment. The approach being taken in relation to merging the two schemes fits the policy approach recommended by the National Commission of Audit.

### *Consumer monetary limits and compensation caps*

The review panel recommendation that the monetary limits and compensation caps be lifted and that they be subject to indexation is supported. Indexation will ensure that the amounts reflect both price movements and other activities in the market place. It also removes the need for administrators to undertake a consultation process on issues of the appropriate threshold of monetary limits and compensation caps.

Senior management of the merged scheme will need to ensure that constituents are appropriately informed of the changes in rates when they occur so that there is no confusion in the marketplace.

### *Small business monetary limits and compensation caps*

There are more than 2 million small businesses in Australia (ABS, 2016)<sup>2</sup> and many of these businesses will require access to finance to grow their enterprises over time. It is important that the external dispute resolution schemes recognise that small businesses will enter, at times, into financial arrangements that are worth more in dollar terms than those arrangements or products purchased by individuals who are clients of the financial service providers. Accordingly, it is critical

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<sup>1</sup> National Commission of Audit (2014). Towards responsible government - the report of the National Commission of Audit: Phase Two. Commonwealth of Australia, Canberra, ACT.

<sup>2</sup> Australian Bureau of Statistics (ABS) (2016). Counts of Australian Businesses, including Entries and Exits, Jun 2011 to Jun 2015, Catalogue Number 8165.0 (released 16 February 2016). Commonwealth of Australia, Canberra, ACT.

that monetary limits and compensation caps are increased so that small businesses have a better chance at recovering a larger portion of the money that may have been lost as a result of the poor service or advice provided by a financial services adviser of their choosing.

With respect to the small business jurisdiction, it is clear from the current FOS and the CIO guidelines that a small business owner cannot deal with a claim that is worth more than \$500,000 and that any credit facility cannot exceed \$2 million. The compensation limit for a small business is \$309,000. However, this places a small business person in a position where they automatically face a loss if their claim is for an amount that is equal to or more than \$310,000. The compensation limit should be increased so that it more closely resembles the amount that is in dispute.

#### *A new industry ombudsman scheme for superannuation disputes*

Nothing has come to our attention that would cause us to object to this recommendation. We note that the review panel has highlighted the reasons for not advocating one body to cover financial, insurance, credit and superannuation disputes at the current time. It is encouraging that the review panel has recommended that there be one organisation dealing with complaints resolution for the entire sector. This is also a logical outcome given the general policy direction related to rationalising various bodies that was articulated in the National Commission of Audit. The review panel may wish to reflect further on whether superannuation complaints resolution should form a part of the comprehensive regime earlier.

#### *A superannuation code of practice*

It is noted that there are several codes of practice currently in place in the finance sector. Examples of these are The Code of Banking Practice, General Insurance Code of Practice and the Insurance Brokers Code of Practice. It is anomalous, therefore, for the superannuation sector to continue to be without a Code of Practice that functions as a benchmark for industry participants.

Such a Code of Practice for the superannuation sector would ensure that details of complaints lodged with each superannuation entity would be collected and eventually published and as such this recommendation is supported.

#### *Ensuring schemes are accountable to their users*

Nothing has come to our attention that would cause us to object to the proposed accountability measures set down by the review panel when they are considered in the context of the other monitoring recommendations.

#### *Increased ASIC oversight of industry ombudsman schemes*

Increased ASIC oversight is desirable but the review panel should ensure that the final report recommends an appropriate resourcing of any increased responsibilities. While there is a trend towards user pays in this sector, when it comes to dispute resolution schemes, any increased oversight by the commission must be funded not by those being overseen but by consolidated revenue. Regulatory oversight is done in the public interest by the corporate regulator and it should not be placed in a position where it is perceived to be compromised. There should be a clear

separation between those regulated and the regulator, which should also involve the manner in which funding for these functions is provided to ASIC.

### *Use of panels*

Nothing has come to our attention that would cause us to object to the recommendation that relates to clarifying the circumstances in which panels should be used. The current situation with respect to FOS appears to result in a lack of clarity for those outside the administration of the dispute resolution service on the issue of when panels should or could be used. Better communication on how a panel might be used to help resolve a dispute between a financial services provider and a client is in any case desirable. It would also aid in ensuring that the processes of the EDR have built within itself a procedural fairness that would result in all parties having a common understanding of how the mechanism of a panel can be used.

### *Internal dispute resolution*

The approach recommended by the panel on matters related to the reporting of Internal Dispute Resolution schemes are consistent with the requirements of professional or commercial organisations in other areas. It is noted that the reporting of the resolution of complaints through internal processes is similar to the method of accountability that applies to the recognised tax or BAS or tax (financial) adviser associations that are monitored by the Tax Practitioners Board (TPB). The IPA – one of the partners of the Research Centre – is such a body.

Bodies that are recognised by the TPB (Commonwealth of Australia, 2009)<sup>3</sup> must ensure that they have:

- Internal rules and procedures for regulating their membership,
- A complaints procedure the public is able to use when they have an issue with a member of the organisation. The TPB requires complaints procedures to be publicised on a web site,
- An investigations and disciplinary process that should also be publicised on a web site, and,
- An annual reporting of the number of disciplinary matters heard by the relevant recognised association.

Entities should report data relating to total complaints, the products and dollar amounts, the time taken to resolve those disputes and what resolution was agreed upon by the parties. This should be reported by the financial firms in a manner that is transparent to the regulators and also to the community at large. The entities are themselves accountable to an ultimate authority for their behaviour to customers from a regulatory perspective.

ASIC should replicate the procedure it has had with audit firms (Australian Securities & Investments Commission, 2014, 2015)<sup>45</sup> in relation to audit quality through its Audit Inspection Program and

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<sup>3</sup> Commonwealth of Australia (2009). Tax Agent Services Regulations 2009. Commonwealth of Australia, Canberra, ACT.

publish a general report detailing the state of compliance by financial firms with IDR requirements. Financial firms should not be identified in the published report itself. That would be consistent with the approach it takes with its review of the quality of audit conducts by audit practices. Identifying firms should only take place in circumstances where an organisation has either agreed to an enforceable undertaking or is going through other enforcement action such as a court case.

#### *Schemes to monitor IDR*

The implementation of a uniform method of monitoring complaints that first lodged with a dispute resolution scheme rather than with the financial firm that is the target of the complaint is supported. It is, however, more desirable for the consumer to deal with the relevant financial firm directly so that financial firms themselves have the chance of resolving a complaint before it gets to the external mediation process.

Individuals making complaints about financial firms should be encouraged by the EDR administrators to ensure they first approach the financial firm involved in their issue. This must be reinforced as a matter of process by the EDR schemes because they should, in an ideal world, only be used as a matter of last resort by the customer.

If you would like to discuss any of our comments, please don't hesitate to contact me at either [vicki.stylianou@publicaccountants.org.au](mailto:vicki.stylianou@publicaccountants.org.au) or on 0419 942 733.

Yours faithfully



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<sup>4</sup> Australian Securities & Investments Commission (2015). Report 461: Audit inspection program report for 2012-13. Commonwealth of Australia, Sydney, New South Wales.

<sup>5</sup> Australian Securities & Investments Commission (2014). Report 397: Audit inspection program report for 2012-13. Commonwealth of Australia, Sydney, New South Wales.