7 October 2016

EDR Review Secretariat
Financial System Division / Markets Group
The Treasury
Lanton Crescent
PARKES ACT 2600

Dear EDR Review Secretariat,

Thank you for the opportunity to submit a response in relation to the Australian Government's Issues Paper dated 9 September 2016, setting out considerations regarding the review of the financial system external dispute resolution framework.

Pioneer Credit Ltd (Pioneer) confirm that we support the important role EDR schemes play in the operation of retail financial services in Australia. Relatedly, we strongly oppose the prospect of merging the existing EDR schemes. We believe a single-EDR system would generate significant detriment to industry whilst potentially reducing the effectiveness of the EDR-system for consumers. We will set out our reasons for our view in the proceeding submission.

Pioneer Credit Ltd - Introduction & Organisation Background

Pioneer, through its subsidiaries, is an Australian credit licensee. Members of the Pioneer group participate in multiple market segments, but at this time, primarily specialise in acquiring and servicing retail debt portfolios.

Pioneer was founded in 2009, and today is one of three publicly listed companies participating in the Australian debt acquisition industry. Three subsidiaries within Pioneer hold current external dispute resolution (EDR) memberships in Australia – each of these memberships are with the Credit & Investments Ombudsman (CIO).

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Pioneer has also recently become a member of Financial Services Complaints Ltd, an EDR in New Zealand, so that we are able to conduct debt acquisition activities in that jurisdiction in the future.

Pioneer is a member of peak industry body the Australian Collectors and Debt Buyers Association (ACDBA) which intends on making a submission in relation to this review, on behalf of its full membership. Whilst we expect Pioneer's views will largely be reflected in the broader ACDBA submission, we believe we can offer some additional insights from our individual perspective. As such please find here Pioneer's response to a selection of the questions set out in the Issues Paper.

Please note we have not provided a response to every section posed in the Issues Paper, but rather those particular sections which we see as most applicable for our input.

Principles guiding the review

We agree with the definition of users set out in the issues paper; that being the primary users of the scheme are consumers who make complaints and financial service providers.

Additionally we concur that efficiency, equity, complexity, transparency, accountability, comparability of outcomes and regulatory costs are each sound principles to guide the review.

Notwithstanding that, there are additional principles which we submit should also guide the review. Additional principles which we believe are relevant are:

- Industry suitability: the industries operating in Australia's financial sector are highly diverse – as such, a broad spectrum of specialist, industry-specific skillsets within EDR schemes are a requirement for it to operate effectively for all users;
- Impartiality: given the broad powers which EDR schemes possess, it is critical they approach dispute resolution in a fair and unbiased manner having regard to the reasonable expectations of all users of the schemes.

We are not aware of other government inquiries that should be taken into account in this review.

We have not developed a prescriptive & formulaic methodology to determine whether a scheme effectively meets the needs of users, however we believe the qualities and criteria set out below are each of particular importance:

- Demonstrable impartiality & fairness in considering the viewpoints of users;
- Adequate resourcing, both generally, and in particular around subject matter expertise applicable to the industries serviced;
- Willingness to be accessible for open, transparent dialogue with all users through the course of considering a complaint, and in particular willingness to provide guidance to users on the outcome/s which are likely to be realistically achievable at appropriate intervals;
- Fee structure that is commercially feasible for members, relative to the typical financial quantum at stake in individual complaints;
- Ability to achieve timely outcomes for users, without undermining any of the above criteria.

Internal dispute resolution

Accessibility

From Pioneer's perspective, consumers have a high degree of access to IDR processes. This is first and foremost due to the fact that our IDR process is triggered simply by a customer making a complaint, whether that be verbally or in writing. A customer does not need to have any specific knowledge of our IDR processes to trigger same, and we do not believe there are any specific barriers to a customer lodging a complaint.

Details about Pioneer's IDR process are included:

- On our company website; and
- In our credit guide, provided to all new customers to our business.

Pioneer's customer facing staff are each provided with training and assessment during induction, on the appropriate details to provide regarding IDR process and EDR scheme details, where a complaint is raised verbally by a given customer.

Escalation from IDR to EDR

Under Pioneer's IDR process, all customers who do not accept a resolution proposed at IDR level are advised explicitly in writing how to lodge a complaint with our EDR scheme.

In our view it is also easy for customers to escalate a complaint from IDR to EDR. Whilst (historically) approximately 95% of our complaints resolve at IDR, it is still common for an IDR complaint to escalate to EDR, though it is worth pointing out that Pioneer has never had

an adverse final outcome determined against it through EDR, evidencing the strong degree to which the organisation is resolution focussed very early in any dispute process.

Regulatory oversight of EDR and complaints arrangements

We do not propose any increase or modification of regulatory oversight for the EDR schemes.

Existing EDR Schemes and complaints arrangements

Accessibility

From Pioneer's perspective, consumers have sufficient ease of access to EDR schemes and current complaints arrangements.

We make this comment on the basis that Australian credit licensees are required under the National Credit Code to include their EDR details on various correspondence sent to customers. In Pioneer's case, its EDR details are included:

- On our company website;
- In our credit guide, provided to all new customers to our business
- In any notices sent under the National Credit Code (e.g. Default Notice sent under Section 88, Direct Debit Notice under Section 87);
- In correspondence to customers in relation to a hardship variation;
- In correspondence to customers in relation to internal dispute resolution.

Given the statutory nature of most of these requirements, we believe the above summary would be reflected in the business processes of the vast majority of industry participants.

Additionally Pioneer's customer facing staff are each provided with training and assessment during induction, on the appropriate details to provide regarding IDR process and EDR scheme details, where a complaint is raised verbally by a given customer. Each of the EDR schemes also list each of their members on their respective websites.

In our view EDR details are highly accessible to any consumer who is seeking information on how to make a complaint.

Criteria Used & Consistency of Outcomes

External Dispute Resolution Schemes in Australia are bound to act under membership contracts and individual scheme Rules and/or Terms of Reference.

Notwithstanding, both CIO's Rules and FOS' Terms of Reference give each scheme substantial scope to exercise wide discretion in their case management and decision making. While a degree of consistency in outcomes achieved between similar complaints should be expected; given the wide discretion that EDR schemes have been granted, we do not see it as realistic to expect that each scheme will always reach the same outcome on similar complaints, particularly in the case of more complex complaints where there are numerous factors to consider.

It has been established by the courts that, FOS in particular, is obliged to consider legal principles but is not bound to correctly decide questions of law.

By way of example ,we have set out below an excerpt (bold added for emphasis) from the judgment of A Ferguson in *Financial Ombudsman Services Limited v Pioneer Credit Acquisition Services Pty Ltd [2014] VSC 172 (16 April 2014)*

"…Is there an implied term that FOS must correctly decide questions of law?

….

30 It is clear from the terms of the Membership Contract that I have referred to above that FOS is only required to have regard to applicable legal principles. It is also clear that that is only one of the matters to be taken into account. Therefore, it cannot be that FOS is required to apply legal principles to the exclusion of all else, ***nor that it will be in breach of the Membership Contract should it fail to apply the law strictly****. Moreover, it cannot be that such a contractual obligation could be imposed on FOS at the level of Findings by case managers. The whole scheme operated by FOS proceeded on the basis that there would be a system of review after Findings were made by case managers and that both the Disputant and the member would be entitled to make further submissions to FOS before the Recommendation and Determination stages of the process.* ***It is implicit in that structure that case managers may get things wrong*** *and, after further information is provided by the parties, the Ombudsman may make a Recommendation and later Determination that differs from the original Findings…."*

On the basis that FOS (or any other EDR scheme) is not required to correctly decide questions of law, it can be problematic that FOS' determinations are ultimately binding on a member but not on a consumer.

Additionally EDR powers at the level of individual cases are not subject to intervention from ASIC.

This is noted by in the Australian Government's Issue Paper for this consultation which states:
"…23. ASIC's oversight role is limited to high level policy settings — ASIC approves the jurisdiction (terms of reference or rules) within which the approved schemes operate and ensures that they meet their obligations as an approved complaints scheme. However, the schemes are independent and responsible for their own internal processes and management of disputes. ASIC does not intervene in the decision-making process of the scheme…."

One Body

Pioneer's Position

For the reasons stated in the previous section, and additional reasons which we will confirm in this section, Pioneer strongly supports maintaining the current system of multiple EDR schemes operating in the Australian financial system. As such we oppose any merging of CIO, FOS and Superannuation Complaints Tribunal (SCT).

Choice for Industry

Given the broad and wide ranging powers which EDR schemes have been mandated with respect to participants in retail financial services we submit that it is critical to fairness of the system that scheme members retain some level of choice as to the scheme that is best suited to the specifics of their individual businesses. The types of businesses operating in retail financial services are highly diverse; an EDR scheme's ability to meet the needs of all its users is enhanced where it has specialist expertise and understanding of the financial services and products which are in dispute.

By way of background, while Pioneer participates in mainstream segments of the financial sector such as lending and mortgage brokering, at this time, we participate most prominently in debt acquisition and servicing which is a relatively niche, specialist industry.

Pioneer, like most all other major debt acquisition businesses in Australia, has chosen the CIO as its EDR scheme. In our view CIO has a strong understanding of the debt acquisition industry, and engages in a constructive manner of dispute resolution for this type of business.

In a similar vein, SCT is an Ombudsman scheme with specific expertise in the areas of regulated superannuation funds, annuities and retirement savings accounts. We believe it is unlikely that a larger, more generic EDR scheme could meet the needs of businesses and consumers in these industries as well as the current SCT.

We are concerned that the prospect of merging EDR schemes threatens positive cultural and operational attributes of the current EDR system; if CIO was to merge with FOS and the SCT to create a single 'mega-EDR scheme', we would anticipate that the positive operational processes and culture of the smaller schemes would be diminished.

We are also concerned that a single merged scheme would have little impetus to strike a fair balance between the needs of its members and other scheme users, given that, under the applicable licensing regimes, EDR scheme members would have no alternative but to be a member of the scheme lest they cease participation in the retail financial system entirely.

Though the Terms of Reference of EDRs are approved by a government body (ASIC); the schemes themselves are private, non-governmental entities which provide a member-funded service to Australian consumers and scheme members. We fully support the premise that industry should help foster fairness and accountability in the operation of the Australian retail financial sector, through (amongst other things) funding appropriately-resourced EDR schemes. That notwithstanding, we believe it would be inappropriate for industry to be legally required to fund a private entity service provider, but be denied the normal recourse of choosing a private entity service provider that is suited to their business.

Benchmarking & Positive Competition

Competition within markets is widely accepted as a fundamental driver of innovation, efficiency and pricing. In Australia and elsewhere, governmental bodies have long looked to protect markets from the manifest adverse implications which flow from organisations gaining a monopoly or duopoly within a specific market segment. On this basis we fail to see why the Australian government would seek to institute a monopoly in the provision of EDR services.

CIO, which itself has expressed strong opposition to the merger of EDR-schemes, has published the following comments on its website related to benchmarking and competition:

"…5. Having two EDR schemes allow each scheme to benchmark its performance against the other. This produces better outcomes for FSPs and consumers alike because the

schemes are forced to adopt best practice and improve their service offering. This cannot be achieved under a single EDR scheme model.

6. Without this competitive tension, turnaround times, service levels, innovation and continuous improvement would suffer, and there would be less incentive to keep costs in check and run the scheme efficiently.

7. A single merged EDR scheme would be prone to be monopolistic in its behaviour – dictating terms, rather than being responsive to stakeholder concerns about performance.

8. A mega statutory scheme is not the answer because a large bureaucracy would have less specialisation, be substantially less flexible or capable of responding quickly to changes in the market. This will affect turnaround times, service levels and innovation…"

Pioneer strongly agrees with CIO's concerns expressed in the above excerpt. Reducing the benchmarking opportunity currently available to EDR schemes, and eliminating healthy competitive tension between schemes, represents substantial risk to all scheme users.

Conversely maintaining and encouraging healthy competition between the schemes would inevitably foster better run EDR schemes across the board; which in turn would drive stronger consumer protection and appropriate options for industry.

Cost Structure

All EDR schemes in Australian retail financial services are member-funded with no cost to consumer users.

That notwithstanding, the Issues Paper published in relation to this review notes the substantially different cost models adopted by FOS and CIO. For FOS, case dispute fees comprise around 75% of funding, whilst in CIO's case membership fees comprise around 70% of funding. SCT's costing model is different again, with government levies funding the service.

For a given company, small business or sole trader which requires EDR membership, the better suited cost model will not be 'one size fits all'. The better suited costs structure for EDR services is influenced by a range of factors including the member entity size, scale and business model. We do not see it as appropriate for a prospective EDR member to have no choice in selecting the EDR cost structure more suitable to its business.

Gaps and overlaps in existing EDR schemes and complaints arrangements

Importantly, we do not believe that allowing industry participants a choice in EDR scheme disadvantages consumer users of EDR in any material fashion.

We are cognisant that a small minority of consumers occasionally lodge their complaint with the wrong EDR, which means it may take 1-2 business days for that complaint to be transferred to the correct EDR.

While this is unlikely to cause any significant consumer detriment, the issue could be adequately addressed by multiple alternatives that do not require the massive structural change which would accompany the merging of three EDR schemes. One of these alternatives could be a triage service as flagged by the Issues Paper.

Triage service

Per our comments in the previous section, we believe a Triage service which assists consumers lodge their complaint with the correct EDR, would be a sensible and effective way to improve the seamlessness of the experience for consumers. It could also assuage any confusion that some consumers may experience from the existence of multiple EDR schemes.

At present, where an EDR complaint is lodged, and the organisation being complained about belongs to a different EDR scheme, the scheme which received the complaint will notify the consumer and refer the complaint to the correct scheme.

Whilst we see this system as effective and adequate; the establishment of a triage service could potentially refine the process further, without wholesale upheaval of an EDR system that, for the most part, already works effectively.

Additional forum for dispute resolution

We do not perceive a current requirement for an additional forum for dispute resolution.

Developments in overseas jurisdictions and other sectors

We are not aware of any overseas developments which are of particular relevance to this review.

Conclusion

We hope the views expressed in this submission are useful to the review of the financial system EDR framework.

As noted throughout this submission, we believe there are a range of compelling reasons to support the maintenance of multiple EDR schemes in retail financial services. We fail to see any convincing case as to why EDR schemes should be subject to a merger, and are concerned at the substantial consumer and industry detriment which could flow from such a move.

Should any further information be required in relation to this submission, please do not hesitate to contact the writer on 08 9323 5006 or rbrown@pioneercredit.com.au.

Yours sincerely,

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