



10 October 2016

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

Review of the financial system EDR framework

The Australian Financial Markets Association (AFMA) is a member-driven and policy-focused industry body that represents participants in Australia's financial markets and providers of wholesale banking services. AFMA's membership reflects the spectrum of industry participants including banks, stockbrokers, dealers, market makers, market infrastructure providers and treasury corporations.

AFMA welcomes the opportunity to comment on the *Review of the financial system external dispute resolution (EDR) framework Issues Paper*.

This submission is provided on a confidential basis.

1. Alignment of the EDR framework and the Corporations Act

AFMA members note that financial service providers (FSPs) are not obliged to have an external dispute resolution system in place for wholesale clients, which is consistent with Section 912A of the Corporations Act and ASIC Regulatory Guide 165, both of which explicitly relate to retail clients. However, as noted in the Issues Paper (p. 11), 'ASIC's RG 139 encourages [approved EDR] schemes to go beyond these minimum [jurisdiction] requirements.'

AFMA members understand that the Financial Ombudsman Service (FOS) currently deems wholesale clients are not automatically excluded from accessing its EDR services. While FOS was established to deal with complaints by consumers, there is no prohibition on FOS dealing with complaints from wholesale clients, although FOS does have the discretion to refuse to deal with a complaint from a wholesale client.

AFMA supports access to external dispute resolution for clients who may otherwise be limited in their capacity to obtain appropriate outcomes efficiently and at a reasonable cost. However FOS' definition of financial services and its Terms of Reference should be amended to clarify that it will not accept complaints from wholesale clients. EDR schemes were established as access-to-justice mechanisms to assist consumers who otherwise may suffer an imbalance of power or be less equipped to negotiate an outcome. Consistent with the principles underlying Part 7.6 of the Corporations Act, wholesale clients do not need this kind of protection.

2. Triage service

In relation to **question 35 'Would a triage service improve user outcomes?'** in the Issues Paper, AFMA members recognise that some FSPs are members of multiple dispute resolution schemes and their clients might benefit from a "one-stop shop" as the entry point for lodging a claim. However, it is AFMA members' view that a triage service interposed between their clients and FOS would not simplify access to the dispute resolution process where the FSP is only a member of the FOS scheme.

3. Timeframes

With reference to **question 14, 'What are the most positive features of the existing arrangements? What are the biggest problems with the existing arrangements?'** in the Issues Paper, AFMA members note that, generally speaking, the FOS case managers with whom they have interacted have been professional and responsive.

Members agree that there should be a framework for the timely resolution of complaints. However, the timeframes given to FSPs in order to provide a response to FOS are often too short. FSPs are generally given 21 days to provide an initial response, and subsequent responses are usually due within 14 days. These timeframes are not sufficient and have shortened in recent years.

The current timeframes often do not provide adequate time to investigate new issues that arise, source requisite information and obtain signoff and approval from multiple internal stakeholders including management, legal and compliance.

AFMA notes that while FOS imposes strict response timeframes upon FSPs, it does not consistently comply with its own standard and complex summary timeframes. Members have found that for complex matters, a dispute is often left dormant and sits with FOS for a number of months. This unnecessarily draws out the matter and makes it difficult for FSPs to respond, as there can be long time periods between each stage and the relevant FSP staff have to re-familiarise themselves with the matter each time.

4. FOS resources

With reference to **question 25, 'Are the current funding and staffing levels adequate? Is additional funding or expertise required? If so, how much?'** in the Issues Paper, anecdotally, AFMA members have queried FOS regarding recent delays and periods of dormancy in matters and have been informed by FOS that they are short staffed.

However, because the magnitude of staffing shortages is not explicitly discussed between FOS and FSPs, AFMA is unable to comment more specifically on funding or expertise gaps.

Please contact me on 02 9776 7997 or tlyons@afma.com.au if you have any queries about this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tracey Lyons'.

Tracey Lyons
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