



# Inquiry into consumer protection in the banking, insurance and financial sector

Financial Ombudsman Service Australia Submission

March 2017



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## Executive summary

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The Financial Ombudsman Service (FOS) Australia<sup>1</sup> is an ASIC-approved independent external dispute resolution (EDR) scheme that covers disputes across the financial sector.<sup>2</sup>

We welcome the opportunity to contribute to the Senate Inquiry into consumer protection in the banking, insurance and financial sector (Inquiry). This brief submission<sup>3</sup> addresses a number of the matters within the Inquiry's Terms of Reference based on our dispute experience.

A range of Parliamentary Inquiries, the Financial System Inquiry (FSI) and reports by the Productivity Commission have confirmed the importance of financial consumers being able to access quick, effective non-court based redress as a key element in supporting both access to justice and trust and confidence in the financial system.<sup>4</sup>

The current review of the EDR and complaints framework (Ramsay Review)<sup>5</sup> is examining in detail the effectiveness of existing dispute arrangements and a range of proposals for reform. FOS is supportive of this review and we have made a number of submissions setting out our views. The Ramsay Review is due to complete its final report on its major findings by the end of March 2017.

Although FOS handles thousands of disputes every year<sup>6</sup>, we are acutely aware that there is an individual story behind every one of these disputes. In many cases, it is a story of not just financial loss but also the human toll of stress, anxiety and ill health which has flow on effects beyond the consumers involved in disputes to the community more generally. To deliver our dispute resolution services in a way people can trust, we seek to understand all sides of a dispute and resolve it fairly and impartially.<sup>7</sup>

### **Regulatory framework to protect consumers of financial services**

FOS has supported reforms to improve consumer protection in financial services. Section 2 provides information about our views on reforms in these areas:

- improvement of EDR arrangements
- new product design and distribution obligations and intervention powers for ASIC

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<sup>1</sup> Information about FOS is set out in full on our website at [www.fos.org.au](http://www.fos.org.au). Appendix 1 summarises key points.

<sup>2</sup> FOS is approved by ASIC under its [Regulatory Guide 139 Approval and Oversight of External Dispute Resolution Schemes](#).

<sup>3</sup> This submission has been prepared by the office of the Chief Ombudsman and does not necessarily represent the views of the board of FOS. It draws on experience of FOS and its predecessors in the resolution of disputes about financial services.

<sup>4</sup> See, for example, the [Productivity Commission's report Access to Justice Arrangements](#), December 2014 and the [FSI's final report](#), December 2014.

<sup>5</sup> The Treasury website provides information about the [Ramsay Review](#).

<sup>6</sup> In the financial year to 30 June 2016, FOS received 34,095 disputes. For more dispute statistics, see our [Annual Reviews](#).

<sup>7</sup> The [case studies](#) in our annual reviews help to explain the impact of financial services disputes.

- lifting professional standards of financial advisers
- regulation of debt management firms
- review of the Code of Banking Practice
- life insurance reforms including the new code of practice and
- the regulation of managed investment schemes.

### **Redress and compensation for victims of misconduct**

Section 3 discusses two measures for redress and compensation:

- regulatory guidance for remediation programs - to ensure systemic problems are addressed proactively and, where necessary, consumers receive remediation through timely, fair and transparent processes and
- the proposal to establish a compensation scheme of last resort – to solve the problem of unpaid compensation.

### **Community financial counselling, legal aid and specialist community legal services**

Section 4 highlights the need to develop a sustainable funding model for community financial counselling, legal aid and specialist community legal services.

If FOS can provide further input or assistance, please contact us.

## 1 Overview

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FOS strongly supports reform initiatives to address the underlying causes of consumer problems in the financial sector, to help reduce the number of disputes arising.

The FSI made clear in its final report that the key to building consumer trust and confidence is the fair treatment of consumers by financial services providers, and that this should apply throughout the life cycle of a product – not just at the point of sale. We agree with this analysis and consider that reforms should ensure consumers are treated fairly in all facets of product design, sales and marketing, service, conduct, claims handling, complaints and remediation.

The Ramsay Review is being conducted at present to ensure the EDR and complaints framework effectively meets the needs of users of the financial system. FOS has provided detailed submissions to the Ramsay Review.<sup>8</sup>

We consider the industry ombudsman model is fair, simple to use, open, accessible and adaptable and provides value for money.

The Ramsay Review's interim report was released on 6 December 2016 and its final report is due to be provided to the Government by 31 March 2017. It is due to make an additional report on redress and compensation matters by 30 June 2017.

FOS welcomed the proposals in the interim report. Implementing these proposals as an integrated package of measures will greatly enhance fairness, openness, simplicity and adaptability in EDR.

The FOS response to the Ramsay Review's interim report provided detailed analysis that shows current claims limits and compensation caps for consumers and small business are outdated and need to be significantly increased.

## 2 Regulatory framework to protect consumers of financial services

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FOS has supported reforms to improve consumer protection in financial services. Several of these reforms are being pursued or implemented at present. Examples are noted briefly below.

- Improvement of EDR arrangements

In submissions to consultations and inquiries such as the FSI, FOS has recommended enhancements to current arrangements for EDR.<sup>9</sup> The Ramsay Review is now considering these recommendations.

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<sup>8</sup> See our submissions to the Ramsay Review in [October 2016](#) and [February 2017](#).

<sup>9</sup> See, for example, our [second](#) and [third](#) submissions to the FSI.

- New product design and distribution obligations and intervention powers for ASIC

The second submission by FOS to the FSI advocated the introduction of new obligations and powers<sup>10</sup> of the type in fact recommended in the FSI's Recommendations 21 and 22. The Treasury is currently conducting a consultation on measures to implement these recommendations.<sup>11</sup>

- Lifting professional standards of financial advisers

FOS has consistently supported initiatives to lift professional standards of financial advisers. For example, we contributed to reforms in this area by making a submission in January 2016 about an exposure draft of legislation.<sup>12</sup> Revised legislation - The Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 - was passed on 9 February 2017.

- Regulation of debt management firms

In public statements and submissions<sup>13</sup>, FOS has raised concerns about debt management firms.

The Ramsay Review has considered issues presented by debt management firms. Its [interim report](#) includes as a draft recommendation that debt management firms should be required to be a member of an industry ombudsman scheme.

As stated in the FOS response to the Ramsay Review's interim report, we support this draft recommendation because no mechanism currently exists for a consumer who has a complaint with an unlicensed debt management firm to seek access to EDR.<sup>14</sup>

- Review of Code of Banking Practice

We provided our views to the independent review of the Code of Banking Practice conducted recently.<sup>15</sup> The [report](#) on the review, which makes 99 recommendations, was released on 20 February 2017.

- Life insurance reforms including new code of practice

We contributed our views on steps to improve consumer protection in relation to life insurance. A major focus of our work has been to ensure that all life insurance is covered by a code of practice that protects consumers effectively.

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<sup>10</sup> See pages 13-15 of our [second submission to the FSI](#).

<sup>11</sup> Details of the consultation are available on the [Treasury website](#).

<sup>12</sup> See our [submission](#) on the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015 made in January 2016.

<sup>13</sup> See [communiqué](#) released by expert group including FOS, other ombudsmen, consumer organisations, industry associations and academics in February 2016 and our [submission to the Victorian Access to Justice Review](#) in March 2016.

<sup>14</sup> See page 40 of our [response to the interim report of the Ramsay Review](#).

<sup>15</sup> See our [submission to Code of Banking Practice – Independent Review](#) in September 2016.

Our recent public submissions relating to life insurance provide further detail.<sup>16</sup>

- Regulation of managed investment schemes

A report released by the Corporations and Markets Advisory Committee (CAMAC) in July 2012 proposed changes to the managed investments regime<sup>17</sup>. FOS supported these proposals<sup>18</sup> and the FSI supported a Government review of the proposals<sup>19</sup>.

The Government's response to the FSI announced that, beyond 2016, it would consult on and develop legislation to improve regulation of managed investment schemes, drawing on the report by CAMAC.

### 3 Redress and compensation for victims of misconduct

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#### 3.1 Redress through remediation programs

From time to time, financial services providers need to establish remediation programs to compensate consumers who suffer loss due to misconduct or other compliance failure. In submissions to the FSI, FOS highlighted the need for a regulatory framework to ensure remediation programs provide a consistent, transparent and efficient approach to similar matters across consumers and financial services providers.

Since we made our submissions to the FSI, ASIC has developed guidance for remediation programs, taking into account input provided by FOS and other stakeholders. The guidance is set out in ASIC's Regulatory Guide 256, issued on 15 September 2016, and applies to remediation initiated on or after that date.<sup>20</sup>

FOS considers that the new guidance will strengthen consumer protection by setting appropriate standards for remediation. As the guidance has only been in place since September 2016, it may be too early to make any detailed assessment of its impact.

#### 3.2 Establishing a compensation scheme

FOS has consistently advocated the establishment of a compensation scheme of last resort. Our public submissions to the FSI, the Ramsay Review and other recent inquiries<sup>21</sup> explain the nature and scale of the problem of unpaid FOS determinations and present detailed proposals to address the problem by establishing a scheme. The submissions have included case studies to indicate the impact that uncompensated losses have had on consumers.<sup>22</sup>

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<sup>16</sup> See our submissions made in [April](#), [September](#) and [November 2016](#).

<sup>17</sup> See CAMAC's report [Managed Investment Schemes](#), July 2012.

<sup>18</sup> See page 11 of our [second submission to the FSI](#).

<sup>19</sup> See Recommendation 42 in the FSI's [final report](#), December 2014.

<sup>20</sup> See ASIC's [Regulatory Guide 256](#) *Client review and remediation conducted by advice licensees*.

<sup>21</sup> See, for example, pages 52-53 of our [first submission to the Ramsay Review](#).

<sup>22</sup> See, for example, the case studies in Appendix 1 to our [second submission to the FSI](#).

The original Terms of Reference for the Ramsay Review extended to the making of observations, but not recommendations, on the establishment of a compensation scheme of last resort. The Ramsay Review observed in its interim report that ‘there is considerable merit in introducing an industry-funded compensation scheme of last resort’<sup>23</sup>.

On 3 February 2017, the Terms of Reference were amended by the Minister to include:

- the making of recommendations (rather than observations) on the merits and potential design of a compensation scheme of last resort and
- consideration of the merits and issues involved in providing access to redress for past disputes.

The Ramsay Review is due to report on the additional matters by 30 June 2017. We anticipate that the review will release an issues paper on these matters and we will make a submission in response to the paper.

#### **4 Community financial counselling, legal aid and specialist community legal services**

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Community financial counselling, legal aid and specialist community legal services play a very valuable role in the financial sector. They raise the standard of practical financial literacy, help consumers avoid financial problems and, where problems do arise, help consumers pursue and resolve disputes.

FOS strongly supports the important role community financial counselling, legal aid and specialist community legal services play in helping vulnerable consumers and providing a vital referral point to dispute resolution mechanisms such as FOS. We consider that without these services, many vulnerable and disadvantaged consumers could not take complaints about financial services to their financial services providers or escalate complaints to EDR schemes.

We have called for the development of a sustainable funding model for community financial counselling, legal aid and specialist community legal services<sup>24</sup>. Financial Counselling Australia has recently highlighted the continuing concerns about funding problems for financial counsellors and has set out some proposed solutions.<sup>25</sup> We continue to consider this is a key gap in the current reforms and support efforts to address the problem on a sustainable basis.

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<sup>23</sup> See page 168 of the [interim report of the Ramsay Review](#) December 2016.

<sup>24</sup> See, for example, our [first](#) and [third](#) submissions to the FSI and our [media release](#) on 21 January 2016.

<sup>25</sup> See [media release](#) on 29 January 2017.



## Appendix 1 - About FOS

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FOS is an ASIC-approved independent EDR scheme that covers disputes across the financial sector. Our service is free to consumers and is funded through a combination of levies and case fees paid by our members, which are financial services providers.

The operations of FOS are governed by Terms of Reference that form a contract with our members. The Terms of Reference are available on our website.

FOS and its predecessor schemes have over 25 years of experience in providing dispute resolution services in the financial services sector. We provide services to resolve disputes between member financial services providers and consumers, including certain small businesses, about financial services such as:

- banking
- credit
- loans
- general insurance
- life insurance
- financial planning
- investments
- stock broking
- managed funds and
- pooled superannuation trusts.

As well as its functions in relation to dispute resolution, FOS has responsibilities to identify and resolve systemic issues and obligations to make certain reports to ASIC.

FOS also provides secretariat services to committees that monitor financial services providers' compliance with these industry codes of practice:

- the Code of Banking Practice
- the Customer Owned Banking Code of Practice
- the General Insurance Code of Practice and
- the Insurance Brokers Code of Practice.

FOS is governed by a board with an independent chair and:

- four 'industry directors' appointed based on their expertise in and knowledge of the financial services industry, independence and capacity and willingness to consult with the industry and

- four 'consumer directors' appointed based on their expertise in consumer affairs, knowledge of issues pertaining to the industry, independence and capacity and willingness to consult with consumer organisations.

To very briefly note the main activities of FOS, we provide these statistics, which relate to the year from 1 July 2015 to 30 June 2016:



More information can be found on our [website](#) and in our [Annual Review 2015-16](#).