



24 August 2016

By post and email: malcolm.turnbull.mp@aph.gov.au

Hon. Malcolm Turnbull MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

Dispute resolution in banking services

We write in relation to media reports that the Federal Government is considering the establishment of a banking or financial services tribunal.

Our organisations have supported and represented thousands of consumers in disputes with banks and financial services providers over many years. One of the greatest advances in consumer protection in the past 20 years is the establishment of mandatory External Dispute Resolution (**EDR**) schemes in many industry sectors. EDR in financial services has provided access to justice for hundreds of thousands of consumers that would have been unable to resolve disputes if they had to rely on existing courts and tribunals.

On 8 August 2016, the Minister for Financial Services & Regulation announced the terms of reference of a review of external dispute resolution and complaints schemes for the financial services sector. Our organisations strongly welcome this review. The panel that has been appointed have expertise in financial services and dispute resolution, including from the perspective of consumers. The terms of reference is broad; importantly the review is required to consider different models in providing effective avenues to resolve disputes. It will also take into account best practice developments in dispute resolution arrangements in overseas jurisdictions and other sectors. We consider this review an important opportunity to ensure dispute resolution in the finance sector is enhanced in the years to come by building on the largely successful operation of (in particular) the Financial Ombudsman Service to date.

There are of course areas in which the EDR schemes in the financial system could be enhanced. We will be arguing for increases in financial jurisdiction and resolution of the long standing problem of 'last resort' compensation—a small but too high number of complainants fail to obtain the compensation awarded to them when smaller market participants become insolvent or abscond and are not covered by adequate insurance. We also note that the Financial Ombudsman Service has announced a proposal to expand its jurisdiction, to have better coverage of small business matters, which we also support.ⁱ

Consumer advocates strongly support the existing Benchmarks for Industry-Based Customer Dispute Resolution, re-released by the Coalition Government in March 2015.ⁱⁱ These benchmarks are

incorporated into existing financial services regulationⁱⁱⁱ as well as the approach taken by the Australian Securities and Investments Committee (**ASIC**) in approving EDR schemes.^{iv} The benchmarks are:

- Accessibility;
- Independence;
- Fairness;
- Accountability;
- Efficiency; and
- Effectiveness.

We will propose to the Review of EDR in Financial Services that these benchmarks have operated successfully and should underpin any future or revised model for dispute resolution.

We are concerned about media reports that Government is considering the creation of a new tribunal. It is not clear from these how such a body would meet the benchmarks described above.

While there is limited detail about the proposal, a new tribunal may in fact deliver worse outcomes for consumers. For example, a new tribunal:

- may potentially drag out or delay dispute resolution, particularly if it is added to existing bodies or is not funded appropriately;
- may operate legalistically, as is the case with many other Australian tribunals, creating barriers to access that many consumers may not be able to overcome;
- may create further or multiple bodies in financial sector dispute resolution, exacerbating consumer confusion; and
- may not address the issues underlying customer dissatisfaction with the banking sector in so far as the inadequacies relate to the applicable law as opposed to the decision-making forum.

Importantly for consumers and for conduct in the financial sector, it is unclear how a tribunal will consider *fairness* in dispute resolutions. A key benefit of EDR schemes is that they consider, in complaints-handling and making determinations, not only the law, but also good industry practice, and what is fair and reasonable in all the circumstances. This, together with an ability to look at systemic issues rather than merely individual complaints, has contributed to substantial improvements in the finance sector, including rightfully compensating consumers where there has been misconduct.

We urge you to use the current review of EDR in the financial sector as the avenue to inform further policy decisions. There are certainly some enhancements to existing arrangements that are warranted. But predetermining that a new Tribunal is the answer is unlikely to provide the best policy outcome. Promising now the establishment of a new tribunal now would appear to put the cart before the horse.

We would welcome the opportunity to discuss this matter with you further.

Yours sincerely



Gerard Brody
CEO, Consumer Action Law Centre
Chair, Consumers' Federation of Australia



Karen Cox
Coordinator, Financial Rights Legal Centre



Fiona Guthrie
CEO, Financial Counselling Australia

copy: Hon. Scott Morrison MP, Treasurer
Hon. Kelly O'Dwyer MP, Minister Financial Services & Regulation
Hon. Bill Shorten MP, Leader of Opposition
Hon. Chris Bowen MP, Shadow Treasurer
Senator Katy Gallagher, Shadow Minister for Small Business and Financial Services
Mr Adam Bandt MP, Treasury Spokesperson for Australian Greens
Senator Peter Whish-Wilson, Consumer Affairs Spokesperson for Australian Greens
Senator Nick Xenophon

ⁱ Financial Ombudsman Service, Consultation on small business jurisdiction, available at:

<http://fos.org.au/small-business/consultation/>

ⁱⁱ Treasury, Benchmarks for Industry-based Customer Dispute Resolution, March 2015, available at:

<http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/benchmarks-ind-cust-dispute-reso>

ⁱⁱⁱ Reg 7.6.02(3) and 7.9.77(3) Corporations Regulations; reg 10(4)(c) National Credit Regulations.

^{iv} ASIC, Regulatory Guide 139: Approval and oversight of external complaints resolution schemes, available at:

<http://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-139-approval-and-oversight-of-external-complaints-resolution-schemes/>