

27 January 2017

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

Dear Sir/Madam,

**COBA Submission to the Interim Report: Review of the financial system external dispute resolution and complaints framework**

The Customer Owned Banking Association (COBA) welcomes the opportunity to comment on the External Dispute Resolution (EDR) Review Panel's Interim Report *Review of the financial system external dispute resolution and complaints framework* (the Report).

COBA opposes the Panel's draft recommendation that there should be a single industry ombudsman scheme for financial, credit and investment disputes (other than superannuation disputes) to replace the Financial Ombudsman Service (FOS) and the Credit & Investments Ombudsman (CIO).

We maintain that:

- the existing schemes are operating well and there are benefits arising from having two schemes
- there is insufficient evidence in the Report to justify the case for amalgamating FOS and CIO
- a triage service would address many of the issues raised in the Report, but at a lower cost for industry
- the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) is better suited to deal with specialised small business disputes.

COBA supports other elements of the Report including:

- the Panel's observations about the advantages of ombudsman schemes over a tribunal
- requiring debt management firms to be a member of an industry ombudsman scheme.

***The existing schemes (FOS and CIO) are operating well and there are benefits to two schemes***

The Panel's Interim Report acknowledges that "industry ombudsman schemes remain a cornerstone and are generally working well" and that "aspects of the present system are working well, particularly the industry ombudsmen schemes". The Report notes that the schemes:

- are free for consumers
- provide value for money for financial firms
- generally provide speedy dispute resolution
- focus on providing a fair outcome for consumers
- are flexible and innovative
- play an important role in improving industry behaviour
- undertake considerable outreach to improve accessibility, particularly for vulnerable consumers.

As we outlined in our first submission, COBA believes that the benefits from two EDR schemes include:

- to allow for differences in funding models
- helps to strike the right balance between providing adequate protection for consumers and reducing regulatory compliance costs
- allows for differences in focus and culture to reflect the breadth and diversity of the FSP community
- capacity to benchmark service levels, efficiency and costs against a 'competitor'
- incentives to innovate and improve performance
- choice for FSPs in meeting their statutory obligation to provide customers with EDR.

While the Panel's report acknowledges some of these benefits, the Panel discounts them on the basis that they accrue to industry rather than consumers. The Panel does not make the case that these benefits are detrimental to consumers. COBA's view is that just because these benefits accrue to industry, the Panel should not dismiss them unless they are causing consumer detriment.

***There is insufficient evidence to justify the case for amalgamating CIO and FOS***

The Report claims that there are "unnecessary duplicative costs and an inefficient allocation of resource for the industry" in the maintenance of two EDR schemes, and argues that one of the benefits of a single scheme would be lower costs for industry. However, the Report fails to provide sufficient evidence to justify these claims and ignores the costs that would be incurred by CIO members in changing membership.

These costs would include changing websites, changing all printed material that refers to their EDR schemes (e.g. notification documents, initial disclosure documents, default notice documents), and training staff to take into account the procedures of a different scheme.

Because CIO members are typically smaller financial institutions (including around 15% of COBA's membership) these institutions will be disproportionately affected by the costs of the loss of their EDR scheme.

***A triage service would address many of the problems with current schemes but at lower cost for industry***

The Panel identifies 'consumer confusion' as one of the issues with the current two industry EDR scheme model. However, the Panel report notes that there are cross-

referral procedures and MOUs between industry schemes to ensure that consumers who come to the wrong scheme are redirected to the right scheme.

Our original proposal of a 'triage' service to overlay the existing schemes would address any consumer confusion that exists. COBA also believes that small changes could address the difficulties consumers have in progressing disputes involving multiple schemes. It is not necessary to amalgamate two schemes that are "generally working well" to solve the issues of potential consumer confusion.

### ***The ASBFEO is a better place to deal with specialised small business disputes***

COBA is concerned with the Panel's draft recommendation 3 that the new amalgamated industry ombudsman scheme increase monetary limits and compensation caps. As we argued in our submission to FOS's consultation on its small business jurisdiction, any changes to expand FOS's small business jurisdiction moves away from the original intention of EDR as a mechanism for those without the means to pursue their claim through the courts.

Sole-traders and small operators (with less than 20 employees) should have access to EDR. The businesses have limited resources and knowledge to challenge a dispute with their financial institution through the court system. Increasing monetary limits would mean that larger businesses would have access to EDR. For example, a business with a \$10 million credit facility or a business with a \$2 million dispute is likely to be sophisticated. Given loan to value ratios, a business with a \$10 million credit facility is likely to have at least \$15 million in gross assets. A business of this size is likely to have the resources to make take legal action through the court system. COBA questions whether it is proportionate or appropriate for businesses of this size and sophistication to have access to external dispute resolution.

COBA's view is that the ASBFEO is better placed to deal with small business disputes because they tend to be complex, requiring highly specialised skills.

### ***There are obvious advantages of an ombudsman scheme over a tribunal***

The House of Representatives Economics Committee Review of the Four Major Banks (November 2016) recommended that the government establish a new 'Banking and Financial Sector Tribunal' to replace the Financial Ombudsman Service, the Credit & Investments Ombudsman and the Superannuation Complaints Tribunal.

As mentioned in our earlier submission, COBA shares the concerns expressed by consumer representatives in their 24 August 2016 letter to the Prime Minister on dispute resolution in banking services where they warned that a new tribunal:

- may potentially drag out or delay dispute resolution, particularly if it is added to existing bodies or is not funded appropriately; and
- may operate legalistically, as is the case with other Australian tribunals, creating barriers to access that many consumers may not be able to overcome.

COBA agrees with the Panel's observations, outlined in Chapter 2, 4 and 5 of the Interim Report, which outline the benefits of ombudsman scheme resolving disputes rather than a tribunal.

### ***Debt management firms should be required to be a member of an industry ombudsman scheme***

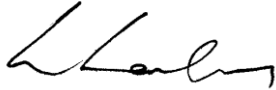
COBA supports the Panel's draft recommendation 11 to require debt management firms to be a member of an industry ombudsman scheme. Debt management firm typically target vulnerable consumers and charge for services that those consumers could otherwise get for free from financial counsellors. Consumers who currently have a dispute with these firms have little avenue for redress currently.

## **About COBA**

COBA is the industry association for Australia's customer-owned banking institutions – mutual banks, credit unions, and building societies. Collectively, the sector we represent has \$103 billion in assets and more than 4 million customers.

Thank you for the opportunity to contribute to this review. Please do not hesitate to contact Sally MacKenzie at [smackenzie@coba.asn.au](mailto:smackenzie@coba.asn.au) or (02) 8035 8450 if you wish to discuss any aspect of this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L Lawler', written in a cursive style.

**LUKE LAWLER**  
**Head of Public Affairs**