

**Submission by the Financial Co-operative Dispute
Resolution Scheme (FCDRS)**

**In response to the Draft Report of 12 December 2007 of the productivity
Commission on**

Australia's Consumer Policy Framework

This submission does not intend to respond to the entire document, but rather focuses on the recommendation that “Australian Governments should improve the effectiveness of alternative dispute resolution (ADR) arrangements by encouraging integration of financial ADR services”.

The Financial Co-operative Dispute Resolution Service (FCDRS) is recognised by ASIC under its Policy Statement 139 as an external dispute resolution (EDR) scheme satisfying the requirements of the *Corporations Act*.

The FCDRS is an incorporated association with 45 members, 29 credit unions, 12 building societies. The balance of the membership consists of both non approved and approved deposit taking institutions (ADI's). Its council, which serves a similar function to the boards of other PS139 schemes, has two representatives each of consumers and industry, and an independent chair. The council is responsible for the overall conduct and management of the scheme and outsources the FCDRS Ombudsman's office to conduct its dispute resolution, education and awareness, and other functions. As with all approved schemes, determinations are binding on the scheme's participants but not consumers. The services of the scheme are funded by annual membership fees plus case management fees paid by members for individual disputes. It remains free for consumers.

Consumer disputes by their very nature are quite distinct to other transactions in the marketplace. The difference is predicated in large part on the unequal bargaining power that consumers have in most of their transactions.

In external dispute resolution this translates into an intention to balance that inequality with common sense, inexpensive, accessible, and fair and reasonable redress that is comprehensible and acceptable to the great majority of consumers.

The FCDRS strongly believes that there is a need for a strong consumer protection framework which reflects the inequality of bargaining power in consumer transactions.

An effective combination of assistance to consumers would include

- low-cost accessible, fast and fair redress for individual consumers
- the necessity for all financial service providers to join an ASIC approved scheme and
- strong and effective measures to be implemented and enforced by the regulator in relation to serious breaches of the regulatory framework.

It would be reasonable to say consumers are most likely to be assisted by regulatory frameworks which assist in overcoming the inequality of bargaining power, for example external dispute resolution schemes which provide fair and reasonable outcomes without the need for litigation.

Regulatory frameworks can only be successful if they can be enforced. Industry codes of conduct which are supported and enforceable by external dispute resolution schemes have also proven to be effective means of consumer protection.

All of the currently approved external dispute resolution schemes operating in Australia's financial sector offer redress to consumers whose complaints have not been resolved by individual service providers.

No evidence has been presented that would demonstrate a single dispute resolution scheme for consumers would actually improve the effectiveness of the current ADR arrangements; indeed empirical evidence indicates otherwise. All approved schemes have an arrangement whereby they are contactable via a common call centre. Future joint educational and promotional activities are also expected to be wide-ranging and frequent.

There is absolutely no evidence to indicate that the existing number of EDR schemes in the financial sector have resulted in consumer confusion, lack of access or lack of efficiency. Similarly, there is no basis for suggesting that consumer protection would somehow be altered or enhanced by the establishment of a single financial services ombudsman scheme.

In fact the FCDRS believes that if a single dispute resolution scheme was to replace the existing diversity of scheme the results would run counter to enhanced consumer protection as:

- flexibility provided by the smaller schemes would be lost
- a larger, more bureaucratic and legalistic centralised scheme would lose the capacity to respond quickly to changing marketplace conditions
- a single scheme would suffer the disadvantage of lacking specific industry knowledge and
- the pluses of an empathetic, responsive and personalised service for consumers would be lost.

This would clearly not assist consumers.

It should also be noted that the federal government had the option some years ago to duplicate the UK system where one scheme exists. Government chose to provide for multiple schemes so it must be presumed that in its consideration of the available options it found good reasons to opt for the multiple scheme system now in place.

Mr Robert Mills
Chairman
Financial Cooperative Dispute Resolution Scheme

6 February 2008