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Review of Australia's Consumer Policy Framework
Productivity Commission

By email: consumer@pc.gov.au

Dear Commissioners

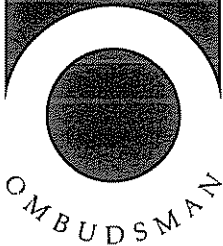
Attached is a submission by the Banking and Financial Services Ombudsman, the Financial Industry Complaints Service and the Insurance Ombudsman Service to the Review of Australia's Consumer Policy Framework Discussion Paper.

If you have any questions, please contact me by email at ecollier@bfso.org.au or by telephone on (03) 9613 7349.

Yours faithfully



Eliza Collier
Policy and Public Affairs Manager
Banking and Financial Services Ombudsman



*Review of Australia's Consumer
Policy Framework*

Productivity Commission

Discussion Paper

Submission by

Banking and Financial Services
Ombudsman Ltd

Financial Industry Complaints Service and
Insurance Ombudsman Service

February 2008

Introduction

This submission is made jointly by three industry-based external dispute resolution (EDR) schemes that resolve disputes concerning the provision of financial services: the Banking and Financial Services Ombudsman Limited (BFSO); Financial Industry Complaints Service (FICS); and the Insurance Ombudsman Scheme (IOS) (collectively, the Schemes). It responds to the Productivity Commission's Discussion Paper *Review of Australia's Consumer Policy Framework* issued in December 2007 (the Discussion Paper).

Our submission does not seek to address all of the recommendations made in the Discussion Paper. Rather, it focuses on the recommendations that have particular relevance to the Schemes and our work.

In June 2007, the Schemes made a joint submission to the Productivity Commission's *Review of Australia's Consumer Policy Framework Issues Paper* (the Issues Paper). Detailed information about each of the Schemes and the currently regulatory framework for their operations is contained in that previous submission.

The Schemes thank the Productivity Commission for the opportunity to make this submission.

Draft recommendation 5.2: Candidates for national regimes: financial products

In our previous submission, we set out our view that consumer credit providers should be required to be members of ASIC approved industry-based EDR schemes. We also indicated our general support for a move to federal legislation regulating consumer credit administered by ASIC.

In our view, the current regulatory framework for financial services, including compulsory membership of an Australian Securities and Investments Commission (ASIC) approved EDR scheme, provides strong incentives to industry participants to resolve disputes at the earliest possible stage through internal complaint handling mechanisms, while at the same time providing free and easily accessible redress for consumers with more complex disputes, at the lowest possible regulatory cost. Our previous submission outlines in detail the benefits of industry-based EDR schemes to consumers and the rigorous standards applied to such schemes in accordance with ASIC's *Regulatory Guide 139: Approval of external complaints resolution schemes*.

Accordingly, we also support the suggestion made in the Discussion Paper that any licensing system for finance brokers should be part of the proposed incorporation of consumer credit into a national financial services regime administered by ASIC, including compulsory membership of an ASIC approved EDR scheme.

As part of any such proposed transfer to national regulation, we strongly support the draft recommendation that the consumer protections in the UCCC, including MCCA proposals for amendments to close loopholes in the current regulatory regime, be transferred into any new regulatory regime, with other appropriate modifications. In our view, the UCCC provides significant protections for consumers that should not be diminished by any move to a national system of regulation.

Draft recommendation 9.1: Referral of complaints

The Schemes would be prepared to consider inclusion in any proposal for a national referral tool or information service aimed at achieving improved access to dispute resolution mechanisms for consumers.

At page 151 of the Discussion Paper, the Commission notes that there have been claims that ombudsman schemes have low recognition amongst young people. Our own research about awareness of our services also supports this claim and the Schemes currently support initiatives to improve young people's access to and awareness of ombudsman services for this reason. For example, the Schemes have participated in a joint project with members of the Australian and New Zealand Ombudsman Association (ANZOA) to promote ombudsman schemes through a youth oriented postcard. ANZOA is also considering ways to promote ombudsman schemes to young people using web-based methods.

For this reason, the Schemes support the proposal that the ACCC develop web-based referral tools and resources for consumer complaints, which may be more appealing to young people than other forms of communication. If this project proceeds, we would also encourage a focus on reaching a younger audience.

Draft recommendation 9.2 Alternative Dispute Resolution: Financial Services Ombudsman Schemes

Current arrangements

As noted in our previous submission, in addition to the Schemes, there are a number of other industry-based EDR schemes operating in the financial services sector. These are:

- Credit Ombudsman Service Limited (COSL);
- Credit Union Dispute Resolution Centre (CUDRC);
- Financial Co-operative Dispute Resolution Scheme (FCDRS); and
- Insurance Brokers Disputes Limited (IBD).

BFSO currently manages the operations of both IBD and CUDRC and the Banking and Financial Services Ombudsman, Colin Neave, is also the Dispute Manager for CUDRC.

In addition to these industry-based EDR Schemes, the Superannuation Complaints Tribunal (SCT) has been set up under statute by the Commonwealth Government to deal with superannuation related disputes.

As noted in our earlier submission, telephone enquiries to any of the schemes listed above are initially answered by the Financial Ombudsman Service (FOS). FOS is a central telephone contact point for consumers wishing to access a financial services EDR scheme. When a consumer calls the 1300 780 808 number to discuss their complaint, a FOS Enquiry Officer refers the caller to the correct scheme. If the enquiry does not involve a FOS scheme member, FOS will refer the caller to the most appropriate service. The FOS telephone number makes all eight of these schemes accessible to consumers anywhere in Australia via a local rate call.

On page 158 of the Discussion Paper, the Commission states that potential confusion about the multiple and overlapping schemes in this area is contributed to by the fact that some schemes continue to maintain additional telephone contact points. All of the schemes publicise the 1300 number as the telephone contact point for consumers. IOS and IBD do not maintain additional telephone contact points that are publicised to consumers. In the case of COSL, we understand that it maintains a separate 1800 number that is provided to consumers who are referred

directly to COSL by a member of the scheme or through its website. Some of the schemes continue to answer calls coming in on telephone numbers that are no longer publicised (such as old 1800 numbers) and some schemes maintain additional telephone numbers for administrative purposes but the maintenance of these numbers should not confuse consumers or dilute the message that FOS is the “one-stop-shop” for complaints about financial services providers.

As noted above, all of the schemes (including COSL) continue to promote the single 1300 number in shared FOS promotional activities. Since writing our last submission, these activities have included the production of a consumer friendly post-card promoting the FOS schemes, the promotion of the FOS schemes at consumer events such as the First Home Buyers Show and the creation of a FOS website, which can be found at www.fos.org.au.

A single umbrella EDR scheme for consumers

As noted in our previous submission, in our view, consolidating the services of the ASIC approved EDR schemes as much as possible can only provide benefits to consumers. The fact that there are various schemes dealing with different members of the broader financial services industry may be confusing for consumers. As noted in the Discussion Paper, there are also operational efficiencies to be gained from greater cooperation between the schemes and consolidation or sharing of assets in some cases.

For these reasons, the Schemes strongly support the recommendation in the Discussion Paper to form an “umbrella” dispute resolution scheme for consumers but with the option of individual services retaining their independence as arms within it.

Importantly, since writing our previous submission, there have been some further developments towards such convergence of EDR schemes in this sector.

In August 2007, BFSO, FICS and IOS announced that they intend to merge from 1 July 2008. In depth consultation with the stakeholders of the Schemes has commenced on how the merger can be achieved whilst maintaining a balance of the interests of consumers and the financial services industry.

It is envisaged that the new scheme will provide dispute resolution services for over 90 per cent of disputes that arise in relation to the provision of financial services in Australia. It will have a strong

commitment to fair and practical resolution of financial services disputes. Importantly, it is intended that the merged scheme will retain the industry-based nature of the current system, in conjunction with the oversight of ASIC, in line with the current regulatory framework for dispute resolution in the financial services sector.

In addition to the current merger of the Schemes, we strongly support FOS maintaining and enhancing the current single telephone based contact point for consumers for both the proposed merged entity and any separately operating schemes in the financial services sector. It is envisaged that this structure will form the basis of the proposed "umbrella" organisation for all ASIC approved schemes.

To this end, the Schemes will be working as much as possible with other ASIC approved schemes to create a single point of entry for consumers, including a common phone number, website, email, fax and postal address, through FOS, while at the same time retaining expertise in the various and distinct areas within the wider financial services industry and the separate operations of schemes not participating in the merger. It may, however, take some time to achieve the stated goal of eliminating the separate identities of the various schemes in the minds of consumers.

Importantly, BFSO already has a close working relationship with IBD and CUDRC and we envisage that those schemes will participate in achieving a single entry point for consumers in the short term future.

Common monetary limits

Draft recommendation 9.2 proposes the adoption of consistent monetary limits for all ASIC approved schemes. The Schemes support this goal.

IOS and BFSO currently have limits of \$280,000. From 1 July 2008, FICS will raise its monetary limits from \$250,000 to \$280,000 for cases involving lump sum life insurance risk and from \$100,000 to \$150,000 for non-life claims.

The Boards of each of the Schemes continue to keep the monetary limits under review. The Board of FICS recently resolved to defer any amendment to its monetary limits pending further consultation in light of the decision in *FICS v Deakin* [2006] FCA 1805 (21 December 2006) and to

review monetary limits as at 1 July 2009 with the objective of achieving parity with other EDR schemes in the financial sector.¹

It is notable that from 1 July 2007, CUDRC raised its limit from \$100,000 to \$280,000 and FCDRS has also raised its limit to \$280,000 from 18 December 2007. COSL's limit is currently \$250,000 and IBD's limit was raised to \$100,000 from 1 May 2007.

Inclusion of any new industry EDR schemes

The Schemes support the draft recommendation that any new industry-based EDR schemes in the financial services sector, including for credit, should participate in the consolidated scheme.

Draft recommendation 9.6: Consumer representation

The Schemes support draft recommendation 9.6 that Australian Governments should provide enhanced support for individual consumer advocacy through increased resourcing of legal aid and financial counselling services, especially for vulnerable and disadvantaged consumers.

The Schemes have direct experience of working with financial counsellors and consumer lawyers who assist vulnerable and disadvantaged consumers lodging a dispute. In most cases, individual consumers are not hindered in any way by a lack of representation or assistance when lodging a dispute with one of the Schemes because our processes are designed to be easy to use and the Schemes provide assistance when it is required. In some cases, however, especially where a client is particularly vulnerable and/or disadvantaged and the dispute is a complex one, it can be helpful for the consumer to have the assistance of an experienced financial counsellor or lawyer.

We also agree with the general statement in the Discussion Paper that well funded consumer advocacy for vulnerable and disadvantaged consumers is necessary to provide judicial redress, to reinforce incentives to some suppliers to act appropriately and to deal with financial difficulty arising from certain consumer transactions (at 174).

Financial counsellors also have an important role in assisting consumers in financial difficulty more generally. This has a beneficial effect for

¹ See FICS *Bulletin*, Issue 52, 5 December 2007 at <http://www.fics.asn.au/docs/Bulletin/BulletinNo52.pdf>

consumers who are assisted to manage their debts and avoid disputes with service providers and for service providers who, in working cooperatively with financial counsellors, can avoid the need for costly debt collection activities.

Finally, consumer advocates and financial counsellors play an important educative role in the community, advising consumers of their rights so that they can resolve disputes themselves and providing appropriate referrals.

Draft recommendation 11.3 Funding for consumer research and policy contributions

The Schemes strongly support the draft recommendation that Australian Governments provide additional funding for research and policy contributions by consumer groups, including funding for the basic operating costs of a representative national peak consumer body.

The Schemes support the Commission's conclusion that there is a need for additional research on consumer policy issues to provide a firm basis for future policy making and the need for Australian Governments to provide funding for such research to take place.

The Schemes also support the Commission's recommendations in relation to support for the development of greater policy contributions from consumer groups.

Effective and well-informed policy and regulatory change, especially in areas that affect vulnerable and disadvantaged consumers, can be assisted significantly by the contributions of consumer groups. Such groups often have direct experiences of dealing with the problems experienced by consumers, including early identification of emerging issues. As noted in the Discussion Paper, the Schemes currently provide an important role for consumer representatives on their respective Boards, and we value highly the contributions that consumer advocates have made to the success of each of the Schemes.

While many consumer advocacy groups consistently produce excellent and valuable submissions to law reform and policy debates, the current lack of funding for such contributions can constrain the activities of what are often relatively small organisations with limited funding. Greater funding for this role, through funding for a national peak body for consumer organisations and funding for the networking and policy

functions of consumer groups would assist in this regard and the Schemes support both of these draft recommendations.