



The Institute of Public Accountants



IPA INSTITUTE OF PUBLIC
ACCOUNTANTS
Partnership beyond numbers

**Improving dispute
resolution in the financial
system**

June 2017

IPA - Deakin SME Research Centre

The Institute of Public Accountants (IPA) is one of the three legally recognised professional accounting bodies in Australia. The IPA has been in operation for over 90 years and has grown rapidly in recent years to represent more than 35,000 members and students in Australia and in more than 80 countries. The IPA has offices around Australia and in London, Beijing, Shanghai, Guangzhou and Kuala Lumpur. It also has a range of partnerships with other global accounting bodies. The IPA is a full member of the International Federation of Accountants and has almost 4,000 individual accounting practices in its network, generating in excess of \$2.1 billion in accounting services fees annually. The IPA's unique proposition is that it is for *small and medium businesses*; providing personal, practical and valued services to its members and their clients/employers. More than 75 per cent of IPA members work directly in or with small and medium enterprises every day. The IPA has a proud record of innovation and was recognised in 2012 by *BRW* as one of Australia's top 20 most innovative companies.

In 2013, the IPA partnered with Deakin University to form the IPA Deakin SME Research Partnership, a first in Australia. This partnership has grown and evolved into the IPA assisting Deakin University in establishing the IPA-Deakin SME Research Centre in 2016. The goal of the Centre is to bring together practitioner insights with cutting edge SME academic research, to provide informed comment for substantive policy development.

The IPA-Deakin SME Research Centre comprises:

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14 June 2017

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Dear Sir/Madam

Improving dispute resolution in the financial system

The IPA-Deakin SME Research Centre (IPSR) is pleased to submit our response and comments to the consultation paper in respect of the External Dispute Resolution and Complaints Framework published by Federal Treasury following the release of the Federal Budget on May 9 2017. As with many past IPA responses, we are also pleased that the Government is once again taking a much needed initiative to reform vital areas affecting Australian businesses and consumers. Indeed, the IPA supports the proposals to restructure and consolidate dispute resolution dispute mechanisms in line with successful dispute regimes currently operating in offshore jurisdictions, particularly in the UK (which has a somewhat similar regime to the one proposed in the current consultation paper) as well as systems successfully adopted in Singapore. Our members and their clients within the SME arena, rely on and are heavily dependent upon the effective operations of a financial system, including prompt and streamlined resolution if and when disputes arise, large or small.

The IPSR is a joint initiative of the Institute of Public Accountants and Deakin University. It exists to increase the awareness of government and the community more generally on issues related to individuals and small to medium businesses by contributing to policy debates, particularly as they affect our membership.

Introduction

At the outset, we wish to note that in our submission to Federal Treasury dated 27 January 2017, we supported the primary goal of establishing a single complaints resolution process that deals with complaints made by clients of financial service providers, irrespective of whether the matter referred to loans or investment advice or superannuation issues. The

interim report ¹and the final report² of the review panel recommended a single complaints authority. It is timely that the complaints resolution process was rationalised so that the function resides with one agency rather than having multiple complaints schemes. The new proposed framework reflected in the documents provided for this consultation process, reflects a more robust consideration of the concepts underlying a financial services complaints resolution scheme. That is, rather than having a separate complaints scheme established each time new financial services legislation regulating another aspect of the financial services sector, is passed by Parliament. While nothing has come to our attention in the intervening months to cause us to move away from our initial position supporting a single external dispute regime, it is important that we do take cognisance of feedback received by the IPA from members and various bodies representing a range of financial institutions, that is, on the proposals since the lodgement of the IPA's submission on the interim report. Some of the IPA's stakeholders have raised the following concerns about the proposed regime:

- Some stakeholders believe that reducing the available schemes will be more costly to some parties because there is a lack of competitive tension between dispute resolution schemes.
- Concerns have been raised with the IPA about larger banks having 'deep pockets' and extensive accompanying resources to be able to contribute funds to a dispute resolution scheme, whereas smaller entities involved in the financial services sector have fewer resources. Such a process might be regarded by some stakeholders as being 'captive' to the larger institutions.
- More consultation with industry as to how the system works in practice would have been useful, especially given that membership of a EDR scheme is a mandatory condition of holding an AFSL. A major consideration is the cost on small businesses operating in the financial services sector. The IPA has members who are small business operators and the cost of the EDR system has become a significant cost. For instance, our members may end up paying over \$500,000 without any due legal process and have no ability to appeal what they consider to be injustices. Consider also that any complaint that needs intervention by a FOS Case Worker and then goes to determination will cost that relevant IPA member in excess of \$5,000. Even if that member is successful, the complainant client in all circumstances pays nothing.
- It is important to consider all stakeholders and to balance all of their interests, that is, the consumer but also the financial service providers, especially those who are small to medium businesses.

¹ Federal Treasury (2016) Review of the financial system external dispute resolution and complaints framework – Interim Report – 6 December 2016, Commonwealth of Australia, Canberra

² Federal Treasury (2017) Review of the financial system external dispute resolution and complaints framework – Interim Report – 3 April 2017, Commonwealth of Australia, Canberra

- An EDR determination is binding. The only appeal process is to the Administrative Appeals Tribunal who can only order the EDR to again review the matter. Some IPA members do not consider this to be a right of appeal per se. The Supreme Court of Victoria will also only refer the matter back to, say, FOS. It is important to ensure that the EDR system works in practice the way it is intended to work. It may be that the process, separately from the structure, and perhaps through regulations, should be reconsidered.
- The single EDR will remove any choice that IPA members and consumers have available to them.
- The single EDR has every opportunity to increase costs to its membership base. Currently this is being promoted via ASIC to charge an Adviser Levy of some \$2,400 per adviser per annum. This will have a disproportionate impact on small businesses in the industry.
- It will be necessary to ensure that red tape and ‘bureaucracy’ do not negatively impact the operational aspects of the EDR regime.

We note that the Federal Government has flagged its intentions to provide the corporate regulator, the Australian Securities and Investments Commission (ASIC), with the power to oversee the entire dispute process and ensure that it is effectively and appropriately conducted. It is important that Federal Treasury and ASIC keep the above issues in mind as they oversee the process of transition that will see two schemes merge into one with superannuation complaints joining the single complaints body in due course.

It is further noted that the Government has decided to ensure that small businesses have the opportunity to obtain greater assistance from the financial services sector in relation to financing their operations as well as boosting the amount that is able to be subject of a complaint. This is a much needed reform and will be welcomed by small business owners that from time to time may need to lodge complaints against lenders for inappropriate behaviour. It is also a measure that sends a signal to the small business sector that the Government does want to ensure organisations in the financial services sector are held to account for any conduct that may be unacceptable.

Specific remarks related to the proposals ³appear below but we are happy to provide a perspective on any other matters at your request.

³ Federal Treasury (2017) Improving dispute resolution in the financial system: Consultation Paper – 17 May 2017 , Commonwealth of Australia, Canberra

Establishment of the Australian Financial Complaints Authority

The proposal to set up a single complaints authority as a public company limited by guarantee is supported along with the consequential winding up of the other complaints authorities that will no longer have a role (ie, once they have dealt with the backlog of complaints that currently exist). The start date of 1 July 2018 gives ample time for the authority to be properly staffed and resourced. We note that existing processes will continue to operate until the commencement of the new disputes resolution process, so that there is an opportunity for any complaints backlog to be cleared over the next 12 months.

The decision to merge the schemes over time is to be commended given that there are duplications in complaints processes that would be removed once the new regime is in place. Examples of duplications that will disappear for institutions currently involved as a result of the changes include, but may not be limited to:

- Governance arrangements that include separate boards to oversee and manage the organisations;
- Backend systems for case management and administration including the associated staff and information technology overhead costs;
- Administrative and regulatory reporting obligations and arrangements, which also includes provision for members switching schemes where an individual or organisation chooses to switch from one scheme to another;
- Complications related to the collection of data related to the operation of schemes and the conduct of members of the schemes. Different databases maintained by different organisations that will no longer require the corporate regulator and other authorities accessing information from multiple sources; and
- Duplication of all of the various functions that exist within an organisation with members that include but are not limited to member services and aspects of stakeholder liaison and government relations.

The corporate regulator also noted in its submission to the review panel that there are duplicated activities for which it is involved, that would be rationalised if one scheme came into being. Examples of such activities include but are not limited to the monitoring of two schemes, approval and oversight of changes to multiple schemes, as well as managing risks of regulatory arbitrage. The IPA acknowledges that the changes proposed in the final report of the review panel and delivered upon by the Federal Government in the Budget delivered on May 9 2017, will remove considerable duplication. The change to a single complaints regime is supported as it makes it clear to consumers that there is only one place to lodge complaints relating to the conduct of people or organisations in the financial services sector. There is also clarity for those in the sector about the authority to which complaints are referred when their conduct towards consumers comes into question.

It is further noted that the various overseas jurisdictions examined by Federal Treasury, each has a different way of dealing with issues related to the resolution of external complaints. The United Kingdom has one body that deals with disputes and Singapore has only one approved scheme to deal with disputes in the financial services arena. There are, however, multiple schemes in New Zealand and Canada that appear to work in those jurisdictions but the structure of those regimes appear complex and involved. It is questionable whether any jurisdiction would start with more than one complaints regime if they were to construct a regime with complete knowledge of how the finance sector would grow and shape itself over a long period of time, indeed it is an evolutionary process. The Government has set a target for a formal application process to commence during the second half of the year for those organisations that might wish to tender to operate the agency. We encourage the Government to ensure that the tender process is transparent and provides an equal opportunity for all tenderers to put their case.

There is likely to be a perception amongst some in the financial services industry that larger institutions will be treated more sympathetically by the complaints process simply because of their market power. This issue can be dealt with in part, by the setting up of the entity's board to include membership of those institutions involved with smaller players. This would then mean that the representative board that is intended to have equal representation from consumer groups and the industry, will also have a smaller institution presence. It would help to ensure that small financial planning firms and banking institutions would feel their interests were being represented. The IPA considers this to be a critical requirement to ensure a successful outcome for a single EDR regime. As noted above, the interests of **all** stakeholders must be balanced in the new regime.

ASIC's role in regulating the external dispute resolution scheme

The draft Bill gives ASIC the power to oversee the external dispute resolution scheme that is being created under the legislation. Powers given to ASIC to regulate the conduct of the external dispute resolution scheme are appropriate and should provide the consumers who refer complaints to the body, with assurance that the regulator is able to deal with any anomalies that arise in the administration of the complaints regime. It is noted that ASIC will be given sweeping powers to oversee the complaints regime, which is necessary to counteract any perceptions that such a complaints regime is dominated or captured by the larger players in the financial services sector.

The removal of competitive tension between schemes

The IPA supports the move towards a single dispute resolution scheme but we note that there are stakeholders who argue the two schemes that are being merged had a competitive tension that enabled process improvements to take place as a result of benchmarking. These commentators, including IPA members, believe that merging the two schemes means that neither has the capacity to benchmark against the other and that this may lead to a stagnant environment where self-regulatory innovation is less able to be achieved. One reform that resulted from benchmarking with other dispute resolution schemes was a change to rules that

enabled the external dispute resolution authority to expel a member firm that failed to introduce suggested changes to systems. Other commentators have said that competition is not a driver for good policy outcomes in an area such as dispute resolution and that it should not be considered a major factor in whether a merged structure is implemented.

It is also significant to note that representatives of the two schemes set for merger under the new system held differing views on the appropriateness of competitive tension in the running of complaints resolution schemes. The Credit and Investments Ombudsman (CIO)⁴ argued in its submission to the interim report that a single scheme would mean the end of being able to; benchmark on the quality of service to consumers, to compete on price, to innovate by benchmarking the processes used by another domestic dispute resolution scheme, and be free to choose which scheme to join because membership of one scheme will be mandatory. The CIO also stated that it believed the existing system was 'not broken' and was opposed to changes that could be more costly to those at the smaller end of the financial advisory marketplace.

The Financial Ombudsman's Service Australia (FOS) stated in its submission that the current structure was a product of history rather than design and that changes are necessary to ensure a better system of dispute resolution for the future. FOS also says that any changes that it made to its processes had nothing to do with competitive tension and instead was attributable to other reasons such as process reviews.⁵

While a single complaints regime is desirable, in fairness, there is a need to examine the remarks made by the CIO and FOS related to process improvement and reviews in order to ensure continuous improvement is embedded in the processes of review. There should at least be an annual review of the performance of the scheme in order to ensure the processes are working as intended and wherever possible improvements made to processes which improve the overall system. Process improvements that ultimately help maintain public confidence in a system should not merely rely on competition between agencies. Process improvement should be a result of appropriate risk management and risk reviews procedures within the scheme itself with feedback from the corporate regulator and, where required, Federal Treasury.

Transitioning the Superannuation Complaints Tribunal (SCT) to a single complaints authority

It is acknowledged that the SCT needs some time to transition to the new regime and that the current backlog of cases needs to be cleared before the superannuation complaints authority joins its other financial services counterparts in the streamlined structure. We encourage the Government and all relevant agencies to determine whether there is any way of expediting the merger of the SCT so that a fully integrated complaints regime can be implemented.

⁴ Credit & Investments Ombudsman (2017) Response by the Credit and Investments Ombudsman to the Interim Report by the Ramsay EDR Review Panel, Credit & Investments Ombudsman, Sydney .

⁵ Financial Ombudsman Service Australia (2017) Review of the financial system external dispute resolution framework – FOS response to the interim report 1 February 2017, Financial Ombudsman Service Limited, Melbourne

Nothing further has come to our attention that would lead us to deem the intended course of action regarding the incorporation of the superannuation complaints regime as inappropriate.

Appropriateness of the legislation

The drafting of the proposed Bill is appropriate given that it establishes an initial framework that sets down the responsibilities of the Minister and the corporate regulator. Details regarding the manner in which the regime itself will work on a day-by-day basis will be provided either in the regulations, specific directives from ASIC, or the internal processes of the scheme itself. It is important that the legislation sets down the basics of the structure and general expectations of the external disputes resolution scheme, while the operational and perfunctory aspects of the regime will be covered in more detail in accompanying regulations and directives (as discussed above). We note however, that there is considerable detail in the Bill relating to external dispute resolution with respect to superannuation complaints, and this in itself is not unreasonable given the review panel's comments have noted the special characteristics of superannuation. We urge Treasury and the Government to consider the concerns and issues raised by IPA members who work in the financial services industry, especially as small businesses. For these reasons it is critical that the new regime be thoroughly reviewed and changed as needed and at regular intervals.

We thank the Government for the opportunity to provide a response to the consultation paper for Improving Dispute Resolution in the Financial System. We would be happy to discuss any of our comments above or provide further information. In this regard please contact Vicki Stylianou at vicki.stylianou@publicaccountants.org.au or on mobile 0419 942 733.

Yours faithfully



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