AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

27 September 2017

Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

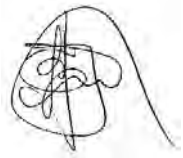
Dear Sir/Madam,

Inquiry into the Treasury Laws Amendment (Putting Consumers First - Establishment of the Australian Financial Complaints Authority) Bill 2017

The Australian Collectors & Debt Buyers Association (ACDBA) is pleased to provide the attached Submission for consideration by the Senate Economics Legislation Committee in respect to its Inquiry into the Treasury Laws Amendment (Putting Consumers First - Establishment of the Australian Financial Complaints Authority) Bill 2017.

ACDBA is willing to appear before the Committee to expand on any of the matters raised in the Submission.

Yours sincerely,
AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION



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ACDBA SUBMISSION TO THE SENATE ECONOMICS LEGISLATION COMMITTEE:

Inquiry into the Treasury Laws Amendment (Putting Consumers First - Establishment of the Australian Financial Complaints Authority) Bill 2017

September 2017

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Introduction

The Australian Collectors & Debt Buyers Association (ACDBA) is pleased to provide this submission for consideration by the Senate Economics Legislation Committee in respect to its Inquiry into the Treasury Laws Amendment (Putting Consumers First - Establishment of the Australian Financial Complaints Authority) Bill 2017 (the Bill).

The ACDBA understands a key objective of the Bill is to address community concerns in relation to losses and damages associated with financial services dealings and consequently its principal focus appears to be protecting and supporting the rights of individual and small business consumers when making financial services related complaints.

ACDBA understands and supports this objective but respectfully submits the best outcomes of the Bill will be achieved by ensuring a balanced consideration of the interests of all parties to such complaints – consumers, small businesses and providers of financial services.

The Bill appear to be "high level". For instance, actual detail about how the complaint processes will operate is still to be determined through the Terms of Reference to be adopted in due course by the Australian Financial Complaints Authority (AFCA) established by the Bill.

The absence of clarity of how AFCA will operate has created considerable uncertainty and concern, particularly around those matters raised in this submission and whether they will be reasonably and adequately addressed once AFCA as the "one stop shop" External Dispute Resolution scheme (EDR) is established and operational.

Unequivocally, individual and small business consumers need certainty that their complaints about financial services dealings will be properly considered and resolved. Similarly, industry members need certainty and understanding of the environment in which they operate. The absence of the operational details for ACFA creates a potentially unreasonable burden upon industry members with only larger players likely to be in a position to address such uncertainty.

ACDBA members have a large footprint on the Australian economy in financial services but are not involved in investing funds or in giving financial advice – instead their transactional financial services dealings across the whole community ranging from individual and small business consumers through to governments and large, medium & small business enterprises provides a unique perspective which should be heard.

ACDBA would welcome the opportunity to play an active role in addressing the uncertainties arising from the Bill as highlighted in this submission.

About ACDBA

The Australian Collectors & Debt Buyers Association (ACDBA) was established in 2009 for the benefit of companies who collect, buy and/or sell debt. Our members[1] represent the majority of the collection market in Australia. Membership is voluntary and open to all collectors, debt buyers and sellers.

The objectives of ACDBA are to:

- represent the interests of members involved in debt collection and debt buying;
- establish and maintain a Code of Practice for the business activities of members;
- encourage best practice of members in their professional activities;
- provide opportunity for members to discuss and deliberate on matters affecting them professionally; and
- facilitate representation to further the professions of members.

Members are engaged in debt collection and debt purchase activities and may use legal action where appropriate as a means of obtaining payment from debtors. Members act on behalf of themselves (where they own the debt) or on behalf of a diverse client base, which includes the Australian government and large corporations through to small businesses.

In all cases our members commit to collection activity which is legal, professional, complies with the ACDBA Code of Practice (Code) and otherwise takes into account consumers unique financial and personal circumstances.

The Australian collection industry is large and growing. ACDBA members report[2] the cumulative value of debt they had under collection at 30 June 2017 exceeded $19.4 billion represented by 6.5 million files under management. Debt files by value were handled 37.5% on a contingent collection basis (i.e. on behalf of clients) and 62.5% as debt purchase collections.

Cumulatively, ACDBA members made more than 96.4 million debtor contacts in FY2017 - telephone calls, SMS, emails, non-statutory and statutory letters. For the same period, members report collecting $2.1 billion from accounts under management and writing off over $51.4 million debt in response to genuine long term hardship situations affecting Australian consumers.

Member statistics indicate a very low level of complaints against industry members. Despite the high volume of contacts detailed above, complaints reported against the industry amounted to 1 per 10,746 contacts or 724 accounts under management – this is less than 0.01% per total contacts per annum!

Debt buyers each hold an Australian Credit Licence (ACL) as they assume the role of Financial Service Provider (FSP) upon acquisition of consumer debts from the originating FSP. Pursuant to the obligations of holding an ACL, members currently belong to an ASIC approved EDR scheme.

Complaints recorded as part of Internal Dispute Resolution processes of ACDBA members are considered as any matter related to alleged unsatisfactory professional conduct and lodged as requiring investigation. Complaints should not be confused with genuine requests made by consumers for additional information to understand the terms of an account, the balance outstanding or the history of payments made.

[1] Refer Annexure A: Listing of members of Australian Collectors & Debt Buyers Association
[2] An annual data survey is conducted as a condition of membership of ACDBA

ACDBA members deal largely with consumers who had or are currently experiencing financial difficulties (including financial distress) and as such consumer responses to demands for payment are often emotionally charged. However, as noted above, a complaint rate of 0.01% per total contacts made each year is exceptionally low by any standard and particularly with regard to the financial circumstances of the consumers members engage with. This low complaint rate reflects the high level of professionalism and compassion adopted by all ACDBA members.

ACDBA launched its Code on 16 March 2016 as a mandatory binding condition for ongoing membership. In the period 16 March 2016 to 30 June 2017, no complaints were lodged by consumers alleging any member had breached the ACDBA Code.

General concerns

ACDBA and its members don't agree the creation of a "one stop shop" EDR scheme such as AFCA is the best policy solution for all financial services complaints however given the tabling and current review of the Bill, our concerns appropriately have turned to identifying and commenting on aspects of the Bill requiring prudent consideration.

Included as Annexure B to this Submission is ACDBA's Position Paper: *"Ensuring the Fair and Equitable Implementation of AFCA"* – this document sets out specific concerns and importantly provides 9 years of context evidencing the very low level of complaints made against our members and which shows on a consistent and ongoing basis, that complaints to our members are appropriately and effectively resolved.

It is ACDBA's assessment that the "one stop shop" EDR scheme as proposed by the Bill potentially favours the "big end of town" given larger institutions (such as banks and insurers) are better positioned to fund any inefficiencies and failures of the scheme which may arise compared to what other participants (including sole traders and small to medium enterprises) will be able to reasonably sustain.

The subscribers to AFCA will be diverse, comprising big and small business ranging from very large, complex and financially secure institutions through to a wide range of smaller service providers including one person operations. The differences between subscribers will be immense and it is difficult to see from a practical perspective, how a "one size fits all" scheme can work.

For example, just as the circumstances of consumers are all different, with no two consumers and their complaints being identical, the same situation applies equally in relation to industry members. No two financial industry members are identical because their demographics will vary considerably from huge billion dollar enterprises through to one person businesses with relatively modest revenue and asset backing.

The Bill and the Ramsay Report both fail to acknowledge and accommodate these fundamental differences – this is a critical oversight. The variances are immense: scale; services offered; complexity and quantum of risk; methods of service delivery; capitalisation; profitability; management efficiency and performance; and market reputation.

AFCA as the proposed "one stop shop" EDR scheme is presented as a "one size fits all" solution. The ACDBA is concerned that the absence of understanding and accommodating the issues of scale, diversity and performance of different industry members, represents a material risk to the efficiency and fairness of AFCA. For instance, based on the information that is available, AFCA's operational structure as presently understood appears likely to be skewed towards the bigger players and institutions to the potential detriment of smaller businesses.

There are anti-competitive consequences flowing from this given it is likely only bigger players will be able to absorb the expected material increase in compliance and complaint costs and also are the only ones best positioned to fund any failures and inefficiencies of the "one stop shop" AFCA scheme.

The Bill appears to implicitly focus on complaints relating to "financial advice" such as with mortgages and investments and this of course appropriately reflects the motivation to address community concerns in relation to possible significant losses and damages.

However, not all financial services industry members provide financial advice or manage investments for consumers. Others such as debt buyers represented by ACDBA provide transactional services.

Despite essential and very significant differences in activities, risks and values, the Bill does not appear to provide any protection to ensure scheme members who do not provide financial advice and who deal with relatively small transactional amounts, do not effectively subsidise those scheme members providing higher risk and value advice such as the banks, superannuation funds and financial advisers.

A corollary to this is the fundamental need when considering and providing a framework for complaint handling through EDR to understand and be able to adequately address disputes arising from the different financial service sectors. It is important to remember complaints are not just about financial advice, insurance and superannuation products.

Neither the Ramsey Report nor the Bill appears to adequately address how to accommodate those differences which go to the very heart of the nature, quantum and severity of complaints and their consequences for individual and small business consumers arising from different financial services.

To illustrate those differences, it is appropriate to reflect upon the fact that the value of individual complaints do vary substantially – this can range from a $100 telecommunications or utilities account through to complaints involving million-dollar investment losses. The "one stop shop" EDR Scheme proposed by the Bill provides no acknowledgement of the variances in complaint value and instead the solution for dispute resolution through AFCA is presented incongruously on the premise "one size fits all".

As an example, ACDBA members report[3] the average value of individual account under collection for FY2017 is $4,375 (with the range across member responses being $1,419 to $15,603). Contrast this with the cost of EDR and IDR for ACDBA members under the existing complaints framework with average EDR fees per complaint of $954 and average IDR costs per complaint of $248. As can be seen, unrecoverable IDR and EDR costs make up a substantial portion of an ACDBA member's collectable debt. The concern is that this will be even higher under AFCA.

[3] FY2017 annual member data survey conducted as a condition of membership of ACDBA

As noted earlier, one of the key objectives of the Bill is to protect and support individual and small business consumers in respect to their financial services complaints. However, the Bill appears silent in reinforcing the fundamental requirement that AFCA consider only legitimate complaints and not spurious ones.

In situations where spurious complaints are lodged by a consumer or a third-party representative (and they are lodged, as evidenced by the complaints experience data detailed in Annexure B) the only reasonable conclusion as to why such spurious complaints are lodged is for the purpose of disrupting legitimate and lawful commercial activity or to otherwise threaten and subject industry members with material and unrecoverable complaint handling costs without risk of those costs being borne by the consumer. This is an aspect which on the basis of fairness and equity, the Bill should address. This is a serious and material issue that the Bill ought to have addressed, but did not.

As the 9 years of complaints demonstrate, a significant proportion of complaints lodged against ACDBA members are made for spurious reasons as evidenced in the summary table below:

Outcomes as a Percentage of Total Complaints			
Period	**FY2017**	**FY2016**	**FY2015**
No basis &/or insufficient detail to investigate or withdrawn by debtor	24%	39%	43%
Credit file listing corrected/removed	30%	26%	21%

Governance concerns

Neither the Bill nor the Ramsey Report which preceded it, adequately addresses the matter of appointment of directors to the AFCA Board. Specifically, there is no recognition or understanding of the inevitable conflicts of interest which arise when appointing a representative Board (consumer and industry) or the need to appoint only those with appropriate director and corporate governance experience.

This is a significant oversight given the national and international footprint AFCA will have on the Australian financial services landscape.

Industry representation on the Board of AFCA should be reflective of all industry sectors to be served by AFCA and not limited to representatives drawn from individual and larger industry members and certainty not just from the banking, insurance and superannuation sectors. Considered recruitment and appointment will ensure industry perspectives remain prevalent and importantly avoid the inevitability of conflicts of interests arising from member specific representatives.

This aspect is equally relevant for those chosen to represent the interests of consumers and small business on the AFCA Board. The proposed “small business” representatives to join the Board of AFCA should be part of the number representing consumers as the perspectives they will be best positioned and perhaps only qualified to offer will be as small business consumers. It would be inappropriate and unfair if those appointed to represent the “small business consumer” were placed into a governance structure and miss-counted as representing the financial services industry.

Regretfully, many industry observers have lamented the Ramsay Panel lacked effective representation from those with actual industry sector "hands on" experience, with that perception further reinforced by the evidence of the Ramsay Reports demonstrating the views and the experiences of industry were largely ignored by the Panel.

Appropriate and effective representation of both consumer/small business and industry perspectives on the Board of AFCA are essential elements to demonstrate proper and balanced governance.

Key unanswered questions as to how the Bill will effectively provide for AFCA's governance and procedures include:

1. What will be the sanctions and the process/systems to provide for effective resolution of poor or absent compliance by AFCA?

2. What will be the fall-back position to unwrap the approval of AFCA as the sole "one stop shop" EDR scheme in the event AFCA fails to respond promptly or adequately to the supervision of ASIC?

3. How will the Minister promptly remove approval of AFCA in circumstances where there is no immediately available viable alternative scheme provider to replace AFCA?

4. What will the consequences be in terms of personal distress, costs and reputational damage to consumers, small business and industry in the event of such a failure by AFCA as the "one stop shop" scheme?

5. As AFCA will essentially be a monopoly organisation, how will accountability to members and other stakeholders and transparency issues be adequately addressed? For instance, how will AFCA be held to account in situations where it provides poor service, charges excessive or otherwise unreasonable fees, makes bad decisions (i.e. not based on fact or law) or is guilty of serious mismanagement? It is unclear how such matters will be adequately dealt with and resolved, or what reasonable public disclosures AFCA ought to make and how often.

Fairness and equity concerns

As ACDBA members are not involved in investing funds for or in giving financial advice to individual and small business consumers which appears to be the principal focus of the Bill and instead their activities are entirely transactional, relating to the collection/recovery of overdue or distressed accounts, we have concerns with the AFCA "one size fits all" model having identified from the perspective of ACDBA members the following fairness and equity issues:

Despite ACDBA members engaging in a high number of consumer contacts per annum, very few complaints actually arise - a total of only 8,960 in FY2017 (being less than 0.01% of all consumer contacts) and with just 1,532 progressing to EDR for resolution. This result for many observers is diametrically opposed to their expectations and misconceptions about the industry wrongly perpetuated by ill-informed observers and the media.

The positive and professional handling of complaints by ACDBA members (see Annexure B) provides compelling evidence as to why AFCA must fully understand each market segment and establish appropriate complaints handling processes, procedures and complaints cost structures reflective of each sector and member as complaints involve more than financial advice, insurance and superannuation products.

In the interests of natural justice and as a matter of principle, the Bill should support adherence to the "Rule of Law". Currently as drafted it actively promotes inequality by allowing appeal on questions of law only for superannuation matters to the Federal Court, with all other financial service matters not being afforded the same appropriate and reasonable protection.

Confidence in and the effectiveness of any EDR scheme can only occur if determinations are made in a fair and transparent manner and are consistent with the facts and the rule of law - in other words, determinations need to be fair to both parties.

The proposed operational requirements of AFCA under the Bill appear particularly unfair and inequitable, given:

> *"(e) under the scheme, determinations made by the operator of the scheme are:*
> *(i) binding on members of the scheme; but*
> *(ii)* ***not binding on complainants*** *under the scheme;"*[4]

ACDBA believes a right of appeal against a decision which is wrong in fact or law ought to be available to all members noting that such appeals would be in relation to the basis of AFCA's decision and not against the consumer.

Further, given:

> *"when considering whether the EDR scheme is 'fair', the Minister may consider matters such as whether the complaints handling procedures of the scheme will accord with the principles of natural justice and industry best practice"*[5]

it is reasonable to ask: how will that be possible, if the system does not provide for appeals for questions of law on any matter other than a superannuation complaint? By any reasonable assessment, this is fundamentally unfair and inequitable for all non-superannuation disputes.

Additionally, given this absence of a right of appeal for questions of law, a lack of fairness and equity in the AFCA processes are further enshrined by the proposed Bill which only details an oversight role for ASIC in respect to procedural fairness:

> *"ASIC will have an enhanced oversight role over AFCA, AFCA will remain independent and responsible for its own internal processes and management of disputes. ASIC will have no role in complaints handling and will not intervene in the decision-making processes of the AFCA scheme"*[6]

[4] Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017, Schedule 1, Part 7.10A, Division 1, Subdivision B, s1051 (4)
[5] Explanatory Memorandum - Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017, chapter 1, para 1.55
[6] Ibid chapter 1, para 1.60

There is no reference or provision within the Bill for how if at all, AFCA will handle spurious claims and situations where the complainant (and advocate) are obviously "gaming the system". How will AFCA deal with complainants generated to clean credit histories where the actual credit recording is accurate e.g. court judgments?

Contact

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ACDBA is willing to appear before the Committee to expand on any of the matters raised in this Submission.

ANNEXURE A - Listing of Members of Australian Debt Buyers & Collectors Association

- ACM Group Ltd
- Australian Receivables Ltd
- Axess Australia Pty Ltd
- Baycorp (Aust) Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd
- Charter Mercantile Pty Ltd
- Collection House Limited (ASX: CLH)
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Credit Four Pty Ltd
- Dun & Bradstreet (Australia) Pty Ltd
- National Credit Management Limited
- Panthera Finance Pty Ltd
- Prushka Fast Debt Recovery
- Shield Mercantile Pty Ltd

ANNEXURE B - Position Paper: Ensuring the fair and equitable implementation of AFCA

POSITION PAPER:

ENSURING THE FAIR AND EQUITABLE IMPLEMENTATION OF AFCA

Australian Financial Complaints Authority

September 2017

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Executive Summary

This position paper relates to the Government's consumer protection reform in respect to the establishment of the Australian Financial Complaints Authority (AFCA) as a single mechanism for all financial disputes, with operational effect from 1 July 2018.

ACDBA is committed to the effective implementation of AFCA but has identified a number of factors warranting consideration to ensure its successful establishment and operation.

Background

- The majority of IDR/EDR complaints relating to ACDBA members originate with regard to the original finance/service provider and otherwise before the debt was sold/assigned
- ACDBA member EDR complaints comprise around 40% of all CIO complaints by number – 50% of these complaints arise from for-profit credit repairers abusing the no-cost EDR process by forcing members to remove credit listings or otherwise incur unrecoverable/high compulsory complaint handling fees
- There were only 1,532 ACDBA member complaints to EDR compared to 7,428 resolved IDR complaints and 96.4 million customer contacts during the 2016/17 financial year
- ACDBA members collect on behalf of government departments e.g. ATO, Centrelink
- Only Superannuation complaints have been given special dispensation in relation to "rule of law" decisions
- The ability of other EDR members to effectively deal with determinations which are wrong in law and/or fact by moving to an alternate EDR scheme will be removed with the establishment of AFCA
- If unchecked AFCA will become a monopoly able to make up its own version of the law, apply subjective concepts of fairness and equity and impose costs on members without accountability
- The ability of ASIC to deal with systemic bad or ineffective AFCA decisions will be significantly and materially limited since for instance, AFCA cannot be terminated as there will be no alternative EDR schemes
- There is a real risk that competition in the financial services sector will be skewed towards the larger players at the expense of smaller operators who typically operate on thinner margins

Key questions

- How to ensure AFCA operates under the principles of fairness, equity and accountability?
- How to ensure all AFCA members receive fair and equitable treatment and have identical rights and obligations?
- How to ensure AFCA is accountable to its members and consumers?
- How to ensure decisions made are based on the law and/or fact? What happens if they are not?
- How can ASIC ensure AFCA effectively complies with any orders it may give?
- How to ensure processes and procedures that lacked fairness and equity in the existing EDR schemes are not replicated in AFCA?
- How to ensure the EDR process is used for legitimate purposes including considering only genuine unresolved disputes with members?
- How to help ensure that AFCA does not compromise an otherwise viable and economically/socially important debt purchase and collections industry?

- How to ensure consumer interests, choice, access to products and services at competitive prices are protected while at the same time protecting the interests of SMEs (including sole operators)?

Recommendations

- Ensure fairness and equity for all members of AFCA by requiring determinations to be subject to the rule of law for everyone (not just for Superannuation complaints)
- Establish a right of review/appeal process to handle determinations which are considered wrong in law and/or fact and ensure adequate reporting and disclosure when this is found to be the case
- Establish strong governance controls, processes and procedures within AFCA including:
    - Directors elected by/from industry/industry associations
    - Limit director tenures
    - Cost and remuneration disclosure – how is revenue raised/where is it being spent
- Ensure cases brought before AFCA are genuine unresolved disputes and not cases brought as a tactic to delay legitimate collections activity or to cause members financial harm

Context

Australian Collectors & Debt Buyers Association Limited (ACDBA) is the peak body for the collections and debt buying industry in Australia and is not aligned to any major institution or advisory group. Our 17 members[1] are independent businesses committed to providing quality, cost-effective and impartial financial services.

Financial services provided by ACDBA members focus upon the recovery of debts – our members are not involved in the provision of advice to, or the investing of funds on behalf of, consumers and small business. ACDBA members' services are very different to the services offered by the wider financial industry which have seen consumers and small business vulnerable to significant financial losses through retail banking and finance including through finance brokering; financial planning; general insurance, life insurance, insurance brokerage and superannuation.

ACDBA members are the biggest users of EDR by complaints per unit of revenue and make up in excess of 40% of the complaint volume handled currently by the Credit & Investments Ombudsman. This volume reflects the situation that credit complaints are more likely to surface once a consumer has stopped paying their account. Although the majority of complaints relate to events which occurred with the original credit providers prior to the sale/assignment of accounts to the ACDBA member, it is the responsibility of debt buyers to resolve those complaints.

Approximately half of debt buyer complaints presently relate to credit listings at credit bureaus - many of the complaints are driven by for-profit "credit repair" firms using the no-cost EDR jurisdiction to prosecute unfounded claims in the hope the member will amend the consumer's credit record rather than incur escalating EDR dispute fees. The potential for abusing escalating complaint fees to achieve unjustified complaint outcomes (and at the same time, undermining the integrity of the credit reporting system) is an issue that needs to be addressed, because all consumers (including those who don't complain unjustifiably) ultimately pay through higher prices and more limited availability of financial services when this sort of dysfunction and inefficiency exists unchecked in the system.

Complaints and Related Costs

ACDBA conducts an annual data survey of members to determine key demographics for the sector and provides the opportunity to track the experience and trends of complaints made against ACDBA members and how those complaints are resolved.

Consumer Contacts									
Period	**FY2017**	**FY2016**	**FY2015**	**FY2014**	**FY2013**	**FY2012**	**FY2011**	**FY2010**	**FY2009**
Number of Respondents	16	16	18	17	13	12	9	9	8
Total Consumer Contacts Made	96,438,998	63,217,722	59,514,030	65,426,503	49,783,554	35,873,078	46,828,319	33,268,977	23,173,039

[1] See Annexure A for a listing of current ACDBA members

Complaints Experience									
Period	**FY2017**	**FY2016**	**FY2015**	**FY2014**	**FY2013**	**FY2012**	**FY2011**	**FY2010**	**FY2009**
Number of Respondents	17	16	18	17	13	12	9	9	8
Number of Complaints Received									
Via IDR only	7,428	10,557	10,171	6,925	4,045	3,638	2,763	2,270	954
Via IDR then EDR	1,532	1,810	1,864	1,811	1,364	1,305	872	381	87
Total	**8,960**	**12,367**	**12,035**	**8,736**	**5,409**	**4,943**	**3,645**	**2,651**	**1,041**
Complaints as a Percentage of Consumer Contacts Made									
Via IDR	0.0077%	0.0167%	0.0171%	0.0106%	0.0081%	0.0101%	0.0059%	0.0068%	0.0041%
Via EDR	0.0016%	0.0029%	0.0031%	0.0028%	0.0027%	0.0036%	0.0019%	0.0011%	0.0004%

Complaint Outcomes									
Period	**FY2017**	**FY2016**	**FY2015**	**FY2014**	**FY2013**	**FY2012**	**FY2011**	**FY2010**	**FY2009**
Number of Respondents	16	16	18	17	13	12	9	9	8
Outcome of Complaints by number									
Account paid	118	107	388	101	93	966	19	7	0
Arrangement made /settlement accepted	515	918	753	426	409	518	179	143	2
No basis &/or insufficient detail to investigate	1,823	3,428	4,265	3,519	2,093	1,482	1,350	1,119	566
Withdrawn by debtor	95	1,375	1,325	789	137	169	29	54	3
Matter referred back to client for resolution	218	305	875	237	290	278	66	44	5
Apology letter issued to debtor	121	122	205	106	87	111	116	231	123
Credit file listing corrected/removed	2,391	3,116	2,666	526	389	367	296	61	4
Finalised by EDR award in favour of debtor	9	12	6	26	68				
Internal processes reviewed/amended	11	22	43	39	67	88	113	32	11
Outcome not reported	1,863	1,322	1,331	920	1,657	611	1,043	771	303
Unresolved	852	1,464	1,081	2,149	136	396	445	257	79
Total	**8,016**	**12,191**	**12,938**	**8,838**	**5,426**	**4,986**	**3,656**	**2,719**	**1,096**

In the FY2017 data survey, we included a question in relation to the costs of complaints.

Complaint Costs				
Resolution by	**Costs calculated as**	**Total Complaints**	**Total Costs**	**Costs per complaint**
IDR	Total direct labour costs to handle complaints from consumers	7,428	$1,843,399	$248
EDR	Total EDR Scheme Membership Fees together with EDR transactional fees paid for complaint lodgements, investigations and determinations	1,532	$1,460,952	$953
			$3,304,351	

Impact

Despite a very high level of contacts with consumers by ACDBA members the actual number of complaints received from consumers is very low. However responding to those complaints is a significant cost impost upon those businesses.

Costs are minimised where the parties involved are able to achieve resolution of the complaint through the member's IDR processes where the average cost per complaint is $248 whereas in contrast where escalated to EDR processes the average cost is $953 for each complaint.

These costs when considered within the context of the low complaint rate and the outcomes of such complaints impose an unreasonably high financial burden which all consumers (including those who don't complain unjustifiably) ultimately pay through higher prices.

Both industry and consumers require certainty in how complaints will be considered and resolved through EDR. The reform process establishing AFCA although creating a "one-stop-shop" for complaints confusingly provides a different standard for how complaints will be handled. A consistent approach for the handling of all complaints based on the "rule of law" will ensure fairness and equitable outcomes in this consumer protection regime and minimise adverse impacts for consumers and industry members.

Reform

The Government proposes the AFCA as a single mechanism for all financial disputes, with operational effect from 1 July 2018. The one-stop shop EDR scheme is said to deliver an important benefit by enabling consumers to approach a single scheme to resolve all financial complaints.

ACDBA in acknowledging the Government's EDR framework reform culminating in the establishment of AFCA points out a key concern arising from the Exposure Draft Bill for the new EDR framework is that despite the concept being for a "one-stop shop" the proposed legislation will enshrine different standards for the handling of complaints from different industries within that "one-stop-shop" framework - specifically the Bill details that in the case of superannuation complaints only:

> *"1.33 The EDR decision-maker may refer questions of law to the Federal Court at its own initiative or at the request of one of the parties to the superannuation complaint."*

Why the "rule of law" shall apply for superannuation complaints only and not for all complaints of the finance industry is the obvious question.

No explanation is provided either in the Ramsay Review or the Government's reform package to justify this unique provision for the superannuation industry – a reasonable or legitimate basis for such a special procedure is difficult to envisage.

Concerns

ACDBA believes in the interest of fairness and equity, all decisions of the EDR decision-maker should be based on the rule of law and this fundamental principle should be outlined in the legislation establishing the EDR framework to ensure good and proper governance for this important area of consumer protection.

Complaints should be decided in accordance with the law only and there should be some avenue for appeal on matters of law. Although an issue existing in the present EDR system, the members' freedom to move to an alternative EDR scheme has tended to keep the extent of 'fairness'/'legal error' over-reach in check. We expect the proposed single scheme, unshackled from this accountability to members will need additional controls. If these controls are not legislated, they should be contained in the Terms of Reference (TOR) and any regulatory guide which informs the TOR.

As a private monopoly, AFCA will have considerable discretion to impose its own version of the law and fairness on industry together with the costs of its choosing - these two issues warrant strong governance controls including: individual directors elected by industry groups; limited director tenures; and a strong regime of cost and remuneration disclosure. AFCA should be required to itemise and separately disclose costs, in particular those costs not directly attributable to complaint resolution including outreach and marketing costs. Remuneration and cost disclosures should be subject to an annual member vote and the 2 strikes rule for a board spill should apply where the disclosure reports fail to achieve 75% majority support.

The establishment of AFCA as a monopoly industry ombudsman is at odds with what happens in overseas jurisdictions where such an approach is not evident. The risks of a monopoly industry ombudsman in the absence of proper legislative and governance controls, are the scheme would have the power to make up its own version of the law, apply subjective concepts of fairness and without any accountability impose costs on members.

In essence, AFCA would have more influence over the financial services industry than either the courts or the parliament, but without any of the accountability which applies to those institutions. This ultimately will be bad for industry and consumers.

A real concern for those focussed on the best protection for consumers and industry is to ask what would happen if AFCA’s operation in the future proves to be bad and ineffective? Whilst it is proposed that ASIC will oversee the regulatory controls of AFCA, potentially, it could issue whatever orders it deemed necessary but if the scheme doesn't respond adequately, ASIC would be in the insidious position of not being able to really terminate it, because to do so, would leave consumers with no scheme at all! At least under the present two scheme EDR model, each scheme knows it can be terminated and members/consumers can resort to the alternative. This is a form of accountability which will be glaringly absent for the proposed oversight of AFCA.

The potential for dysfunctional 'law making' by a single monopoly industry scheme and the impact it can have on the efficiency and effectiveness of one of the most important sectors of the economy is so extreme that it warrants AFCA being subject to very tight controls and accountability. The rule of law and governance controls advocated by ACDBA must be appropriately incorporated into the TOR and some mechanism must be imposed to ensure they cannot be altered without some form of democratic member process.

ACDBA is also concerned about the potential to damage competition in the market for financial services. Larger incumbent operators tend to be in a better position to absorb costs associated with the sort of regulatory dysfunction that AFCA may create, while smaller operators (including some of ACDBA's members) without these advantages and operating on thinner profit margins will be forced out. We fear an even less competitive financial services market may eventuate if controls such as those advocated by ACDBA are not included in arrangements for AFCA so as to limit the scope for economic harm.

Additional Background

ACDBA made submissions in 2016 and 2017 to the Ramsay Review, which are available at www.acdba.com. The submissions provide additional detailed information in relation to the concerns and considerations about the EDR framework ACDBA raised on behalf of members with the Review Panel.

Contact

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ANNEXURE A -
Listing of Members of Australian Debt Buyers & Collectors Association

- ACM Group Ltd
- Australian Receivables Ltd
- Axess Australia Pty Ltd
- Baycorp (Aust) Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd
- Charter Mercantile Pty Ltd
- Collection House Limited (ASX: CLH)
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Credit Four Pty Ltd
- Dun & Bradstreet (Australia) Pty Ltd
- National Credit Management Limited
- Panthera Finance Pty Ltd
- Prushka Fast Debt Recovery
- Shield Mercantile Pty Ltd