



Strong banks – strong Australia

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Committee Secretary  
Senate Standing Committee on Economics  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Secretary,

## Australian Financial Complaints Authority Bill 2017

The Australian Bankers' Association (**ABA**) welcomes the opportunity to provide this submission to the Senate Standing Committee on Economics (**the Committee**) Inquiry into the Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Bill 2017.

With the active participation of 24 member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and the community, to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

### ABA welcomes the “one stop shop” for external dispute resolution

The ABA welcomes the legislative package establishing a “one stop shop” for the external dispute resolution framework for financial services complaints.

The introduction of the Australian Financial Complaints Authority (**AFCA**) will create a single scheme for external resolution of consumer disputes across all areas of retail financial services including banking, insurance and superannuation, with consistent guidelines for resolution, and consistent thresholds for access and limits for financial redress (for banking and insurance complaints).

This rationalisation of the three existing external dispute resolution bodies – the Financial Ombudsman Service (**FOS**), the Credit and Investments Ombudsman (**CIO**) and the Superannuation Complaints Tribunal (**SCT**) will promote consistency for consumers and for ABA members.

Having said that, the ABA notes that the legislation is very high level and the details of how the scheme will operate and the transition arrangements between the existing and future regimes are still to be sorted. Full consultation with the industry and adequate notice of changes will be essential to ensure clarity and best consumer outcomes.

### Key dates

We note that key application dates will be set by the Minister, expected to be the Minister for Revenue and Financial Services. This includes key milestone dates for when AFCA comes into force and the date financial firms no longer need to be members of the legacy EDR schemes. Ideally these dates would be “hard” dates embodied in legislation but failing that the ABA believes it is critical that these dates be announced as early as possible to provide certainty and facilitate planning for the transition to the new AFCA scheme. This would ensure the best outcomes for consumers.



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## Industry funding

The ABA notes that the legislation lays out the broad conditions under which the AFCA scheme will operate, but that the way in which the scheme operates will be determined by AFCA's board. One of the critical operating parameters will be the funding arrangements with the scheme's operation to be financed through members of the scheme. This is an area where close consultation with the financial services stakeholders will be required. The ABA would have concerns if the AFCA was to have open ended discretion to set fees and contributions and suggests it would be preferable for strict guidelines and limits to be set in the regulations to the legislation for the determination of the member contributions.

Key requirements are to avoid cross subsidisation between financial service providers and we suggest that the guidelines provide that the fees are set on a user pays and cost recovery basis. That way, the fees paid reflect the demands on the EDR services arising from each institution. Transparency on the calculation of the fees should also be required and the model for determining and levying fees should be independently reviewed and audited.

## Transition arrangements

The ABA notes the arrangements for the transition to the AFCA scheme by 1 July 2018 will be determined by the transition team led by Dr Malcolm Edey. This team will advise the Government on AFCA's terms of reference, governance and funding arrangements, and will make recommendations on the transitional arrangements required to appropriately resolve legacy disputes of the three existing schemes. These are critical issues and the ABA suggests there should be continued engagement by the transition team with stakeholders. This would include finalising and publishing the transition arrangements as early as possible to provide certainty for both consumers and financial institutions. Sufficient transition time will be required for IT changes and to minimise customer impacts and allow for better sequencing of updates to member bank disclosure documents, training materials and other collateral.

## Regulating the AFCA scheme

While the AFCA board will have operational oversight of AFCA, the ABA notes that under Division 2 of part 7.10A, ASIC will have the power to direct material changes to the AFCA scheme including increases to the limits on the value of claims or remedies that can be made under the scheme. Such changes could have a significant impact on the banking industry and on financial service providers more widely, and among other things could adversely impact the ability of financial service providers to obtain professional indemnity insurance.

We would expect that ASIC would be required to consult with affected stakeholders prior to approving any material changes. We would further expect that ASIC would also be required to provide AFCA and member institutions with more than the minimum notice, ideally 3 to 6 months, for any significant changes to claim or remedy limits.

As set out in the Explanatory Memorandum, the exercise of these powers should not unduly inhibit or interfere with the proper decision making and operational matters or the legal obligations of the AFCA Board.

In exercising its powers we would expect that ASIC would be required to meet existing office of best practice regulation requirements.

It is noted that ASIC will have no role in complaints handling and will not intervene in the decision-making processes of the AFCA scheme. Given this, it needs to be clarified if there will be an escalation or review process for AFCA decisions other than those relating to superannuation and if so, which body will oversee this mechanism.

It would be helpful to clarify that the confidentiality provisions binding AFCA apply to all disputes, not just superannuation complaints.



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### Independent assessor

The ABA observes that one of the legislative requirements for the AFCA scheme is that it has an independent assessor. The Explanatory Memorandum notes that the independent assessor will “assess the handling of complaints, with a focus on reviewing the service provided to users in the handling of the disputes”. Further detail of the role of the independent assessor would aid clarification of its impact on the decision making structure of AFCA.

### Internal dispute resolution

The ABA supports the enhanced internal dispute resolution (**IDR**) framework and the improved transparency and standardisation of reporting about the performance of financial firms in relation to their IDR activities.

The ABA notes that ASIC will be provided with the power to determine the content and form of IDR reporting. We recommend the industry be extensively consulted on the required data and the format with a minimum 12 month period for consultation and implementation to facilitate the required changes to technology and staff training. It is critical to ensure the selected metrics facilitate a fair and unbiased comparison of bank's performance on internal dispute resolution. It is also critical in designing the reporting template to be clear on the purpose of the reporting and how it will contribute to better outcomes for consumers.

The enhanced IDR framework will complement industry efforts to improve culture, practices and behaviour through the better banking program. This includes initiatives to strengthen complaints handling and dispute resolution including the appointment of Consumer Advocates to help banks handle complaints better, improve customer experience, and minimise the likelihood of future problems.

### Farm debt mediation

Farm debt mediation (**FDM**) is a specialised and separate dispute resolution framework that allows a negotiated settlement of disputes between farmers and their financial service providers. The ABA believes that FDM should remain a separate scheme and continues to support a nationally consistent farm debt mediation scheme across Australia.

The ABA looks forward to working with the government, ASIC, the AFCA transition team and the AFCA board to ensure an external resolution scheme that offers ready access to consumers and consistent and transparent dispute resolution mechanisms.

Yours sincerely



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**Chief Economist**

