

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 2 June – 4 June 2009

Question: bet 120

Topic: Dispute Resolution Schemes

Hansard Page: E111

Senator Bushby asked:

Senator BUSHBY—.....what is the rationale for selecting a maximum compensation amount of \$500,000?

Mr D'Aloisio—I stand to be corrected here. The limit of recovery is \$280,000, and that is the scheme. There is no science behind picking these limits. You are really looking at balancing, I guess, reasonableness for the financial institution in terms of agreeing to be part of a dispute resolution mechanism and looking at the sorts of claims that could be made. I think ASIC's approach has been to try to lift it from lower levels that have been operating to these higher levels and giving the industry a period of time.

Senator BUSHBY—My apology, the \$500,000 was to the value of the case that—

Mr D'Aloisio—Yes, it is \$280,000.

Senator BUSHBY—That is the maximum amount of compensation. I take it the \$500,000 limit is the cutoff in terms of what you can look at in this respect.

Mr D'Aloisio—Yes.

Senator BUSHBY—How does that limit compare with external dispute resolution schemes of a similar type in other countries?

Mr D'Aloisio—Our team looked at that. I will get you that answer.

Senator BUSHBY—You will take it on notice?

Mr D'Aloisio—Yes.

Answer:

1. There are a number of other countries that appear to operate financial services industry EDR schemes that are subject to either a jurisdictional monetary limit or compensation cap, including Canada, Ireland, the Isle of Man, New Zealand, Singapore, South Africa and the UK.
2. Please note that a compensation cap, limits the amount of compensation that an EDR scheme can award, whilst a jurisdictional monetary limit restricts access to EDR, in that a complaint involving a monetary amount in excess of the jurisdictional monetary limit cannot be handled by the scheme. In this way, the jurisdictional monetary limit also operates to restrict the amount of compensation that can be awarded.

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3. Consultation Paper 102 - *Dispute resolution - review of RG 139 and RG 165* (CP 102), publicly released on 8 September 2008, made reference to the UK's statutory EDR scheme, the UK Financial Ombudsman Service (UK FOS), which has a compensation cap of up to £100,000. At the time of publishing CP 102, £100,000 was AUS \$250,000. At 13 July 2009, £100,000 is AUS \$207,755. It should be noted that the Isle of Man also has an equivalent compensation cap for its Isle of Man Financial Ombudsman Service (Isle of Man FOS).
4. Based on current exchange rates, there are only 2 overseas equivalents that operate compensation caps that exceed Australia's \$280,000 compensation cap. This is:
 - (a) Canada's Ombudsman for Banking Services and Investments (OBSI). The OBSI can only make a recommendation that the financial service provider pay up to \$350,000 (AUS \$386,320); and
 - (b) Ireland's statutory Financial Service Ombudsman which can award compensation up to EUR 250,000 (AUS \$447,622) for all types of complaints, except for annuity (i.e. income stream) complaints, for which a EUR 26,000 (AUS \$46,522) per annum limit applies.
5. In terms of other countries that operate jurisdictional monetary limits that are lower than Australia's \$280,000 compensation cap:
 - (a) New Zealand has two schemes that operate lower compensation caps than Australia: the NZ Banking Ombudsman and the NZ Insurance & Savings Ombudsman that both operate a NZ\$200,000 (AUS \$161,125) jurisdictional monetary limit for banking complaints and life/general insurance complaints respectively;
 - (b) Singapore's Financial Industry Disputes Resolution Centre Ltd (FIDRec), operates a jurisdictional monetary limit of S\$100,000 (AUS \$87,804) for insurance complaints and a S\$50,000 (AUS \$43,902) jurisdictional monetary limit for banking, capital markets and other financial complaints;
 - (c) South Africa has 5 schemes (4 voluntary and 1 statutory). The 4 voluntary schemes operate the following:
 - (i) a compensation cap of R20,000 (AUS \$3,119) for life insurance complaints, handled by the South African Ombudsman for Long-term Insurance;
 - (ii) a jurisdictional monetary limit of R 800,000 (AUS \$124,760) for general insurance complaints, handled by the South African Ombudsman for Short-term Insurance;
 - (iii) a jurisdictional monetary limit of R1 million (AUS \$155,950) for banking complaints; and
 - (iv) no monetary limit or compensation cap applies to the South African Credit Information Ombudsman which handles complaints relating to credit reporting as awarding compensation does not appear to be an outcome that the Credit Information Ombudsman can provide.

It should be noted that South Africa's statutory scheme, the Office of Ombudsman for Financial Service Providers (FAIS Ombudsman), operates a compensation cap up to R800,000 (AUS \$124,760) and has jurisdiction to handle complaints where the 4

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voluntary Ombudsman's schemes cannot handle the complaint or there is uncertainty over jurisdiction.

Please note that this summary is based on Australian currency conversions as at 13 July 2009 and may be subject to change. See Appendix 1 for a more detailed summary.

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