FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

16 June 2017

Manager
Financial Services Unit
The Treasury
Langton Crescent
PARKES ACT 2600
Email: EDR@treasury.gov.au

Re. **Improving dispute resolution in the financial system**

To Whom It May Concern,

We welcome the opportunity to provide comments on draft legislation in relation to external dispute resolution for the financial services industry.

We have provided brief answers to the questions you raised in the associated paper, below.

Question 1

Are there other statutory powers the EDR body will need to resolve superannuation complaints effectively?

FPA response

The FPA is not proposing that any other statutory powers are added to resolve superannuation complaints.

Question 2

Do you consider that the Bill strikes the right balance between setting the new EDR schemes objectives in the legislation whilst leaving the operation of the scheme to the terms of reference?

FPA response

We consider the draft Bill strikes the right balance between setting the new EDR scheme's objectives in the legislation whilst leaving the operation of the scheme to the terms of reference.

Question 3

Are there any issues that are currently in the Bill that would be more appropriately placed in the terms of reference or issues that are currently absent from the Bill that should be included in the Bill?

FPA response

Complaints involving the provision of financial services can involve complex issues of professional practice and standards of the provider of the services that are subject to dispute. To increase the likelihood that, in resolving complaints, a scheme would have an appropriate understanding of, and regard to, professional practice and standards, we recommend that s 1046(k) be changed to the following: 'the expertise the scheme would use in dealing with complaints'.

In addition, we propose that s 1047(e) be changed to the following: 'to ensure that appropriate expertise is used to deal with complaints'. These changes would focus attention on expected performance rather than mere capability, and in turn provide greater assurance that complaints would actually be dealt with using appropriate expertise. Further, 'appropriate' should be defined in the legislation by reference to the particular subject matter of the complaint.

In addition, we recommend that, under s 1048, the conditions of a scheme should also include a condition that the board of the operator of the scheme must, collectively, have expertise in consumer advocacy, financial services and professional financial planning. This would enhance confidence in the quality of decision-making of the board.

EDR disputes also have the potential to harm third-parties to a dispute. In order to help protect against unjustifiable harm, we recommend that, under s 1047, the functions of an EDR scheme also include ensuring that third-parties who may suffer damage as a result of the determination of a matter before the scheme, have a reasonable opportunity to be heard by the scheme in relation to the matter. For example, a financial planner whose advice to a consumer on behalf of a licensee is being assessed by the EDR scheme in a dispute between the consumer and the licensee may suffer reputational damage from an adverse determination. The scheme functions should include ensuring that such a financial planner has a reasonable opportunity to be heard. We would envisage that the scheme rules would restrict the ability of members to prevent such third-parties from being heard in relevant matters.

Allowing only one EDR scheme to operate reduces the scope for different approaches to governance and dispute resolution to exist. This may disadvantage members of current schemes. To help deal with this problem, we recommend that the functions under s 1047 should also include ensuring that minority interests of members of the scheme are reflected in the scheme rules and practices.

Sub-section 1048(3) of the draft Bill provides ASIC may direct the operator of an EDR scheme to increase the limits on the value of claims that can be made under the scheme. To strike a better balance between maintaining consumer protections and containing regulatory costs, we recommend that the legislation should place objective limits on the extent of any directed increase.

Question 4

Are there any additional issues that should be considered to ensure an effective transition to the new EDR scheme?

FPA response

In our view, consideration should be given as to how to avoid members of existing schemes having to pay multiple membership fees during the transition period.

Question 5

Would moving immediately to a compensation cap of $1 million have significant impacts on the availability/price of professional indemnity insurance?

FPA response

In order to respond to this question, we'd encourage FOS and the CIO to provide historical and projected data about the size of individual claims.

Question 6

Are the existing sub-limits for different insurance products still required?

FPA response

We do not have a view on this issue.

Question 7

Are there any reasons why credit representatives should be required to be a member of an EDR scheme?

FPA response

We see no reason why credit representatives should be required to be a member of an EDR scheme when authorised representatives are not.

Question 8

What will the regulatory impacts of the new EDR framework be?

FPA response

There will be additional regulatory costs associated with:

- disclosure to consumers;
- training;
- increased claim limits;
- sharing IDR data with ASIC; and,
- in the case of superannuation funds, scheme membership fees

Further, as discussed above, consolidation of EDR schemes may reduce the alignment of scheme governance and decision-making with the preferences of minority member interests. In our view, as

discussed above, this risk should be addressed by including an additional scheme function under s 1047.

If you have any queries or comments, please do not hesitate to contact me at policy@fpa.com.au or on 02 9220 4500.

Yours sincerely

Dimitri Diamantes CFP®
Policy Manager
Financial Planning Association of Australia[1]

[1] The Financial Planning Association (FPA) has more than 12,000 members and affiliates of whom 10,000 are practising financial planners and 5,600 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1st July 2013 all new members of the FPA will be required to hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board.