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29 September 2017

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**Email:** [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

**Re. Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017**

Dear Secretariat,

The Financial Planning Association (FPA) welcomes the opportunity to provide comments on *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017*. We support measures to provide consumers with access to fair and independent resolution of disputes through a simpler and timelier alternative to the court system. However, we are particularly concerned about the following aspects of the Bill:

*Expertise*

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. Subsection 1050(1) provides, broadly, that the Minister may authorise an external dispute resolution scheme if the Minister is satisfied that certain mandatory requirements will be met. One of those requirements is that appropriate expertise is available to deal with complaints: s 1051(4)(c).

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 1051(4)(c) be changed to the following: '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.

*Competition*

Current EDR scheme rules provide broad and flexible criteria to be applied in determining complaints. For example, FOS Terms of Reference provide, broadly, that '... FOS will do what in its opinion is fair in all the circumstances, having regard to each of the following: a) legal principles; b) applicable industry codes or guidance as to practice; c) good industry practice; and d) previous relevant decisions of FOS or a Predecessor Scheme (although FOS will not be bound by these)': [8.2]. There is no reason to believe that this approach will change under AFCA.

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This breadth and flexibility provides considerable power to affect competition in financial services markets, given there would be only one EDR scheme. If AFCA adopts an approach to resolving complaints that has disproportionate negative impact on a subset of a market, this has the potential to drive firms out of that market. To help deal with this problem, we recommend that s 1051A is amended to include a general consideration of 'the competitiveness and efficiency of financial services markets'.

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

Yours sincerely

**Dimitri Diamantes CFP®**

*Policy Manager*

Financial Planning Association of Australia<sup>1</sup>

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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.
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