

EARLY RELEASE OF SUPERANNUATION
BENEFITS
SUBMISSION TO THE TREASURY INQUIRY

February 2018

INTRODUCTION

1. ANZ appreciates the opportunity to make a 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 (**Draft Bill**).
2. ANZ welcomes the introduction of the Australian Financial Complaints Authority (**AFCA**) and looks forward to working with Dr Malcolm Edey to ensure a smooth transition from our current arrangements with the Financial Ombudsman Service (**FOS**) to AFCA.
3. ANZ supports AFCA's decision making power being underpinned by an obligation to do what is fair in all the circumstances. We endorse the proposed structure of the AFCA with equal industry and consumer representation with an independent chair.
4. We note the engagement of an independent assessor is now stipulated in the Draft Bill as a requirement for AFCA to obtain Ministerial approval. We believe there is scope to better clarify the nature of the role and whether the independent assessor will have any right of review in respect of the merits of a decision.
5. We support the provision of internal dispute resolution data to ASIC as an important initiative to increase transparency and accountability in the industry. We note that there is a great deal of work to be done in order to ensure the data gathered is comparable between financial firms.

TRANSITION TO AFCA

Development of the AFCA Terms of Reference

6. The operation of the AFCA scheme will be determined by AFCA's Board and set out in its Terms of Reference. ANZ supports the Board having the flexibility to operate the scheme under its Terms of Reference.
7. The AFCA Board's ability to materially amend its Terms of Reference will be subject to approval by ASIC (as is currently the case for FOS). Previous changes to the FOS terms of reference have been subject to a stakeholder consultation process. ANZ hopes that this stakeholder engagement will continue to be a part of the material change process adopted by the AFCA board.
8. The Terms of Reference will set out key information about the jurisdiction of the scheme including monetary limits, the type and size of consumers and businesses which can access the scheme, the type of disputes it can consider and the discretionary and non-discretionary grounds on which it can exclude disputes.

Fairness in decision making

9. Section 1051(4) of the Bill requires that an external dispute resolution scheme resolve a dispute in a way that is “fair, efficient, timely and independent”.
10. Paragraph 8.2 of the FOS Terms of Reference specify that, when deciding a dispute and whether a remedy should be provided, “FOS will do what in its opinion is fair in all the circumstances” having regard to legal principles, industry code, good industry practice and previous relevant decisions.
11. The concept of fairness underpins the trust consumers place in external dispute resolution bodies and ANZ would support it remaining a central tenant of the decision making process of AFCA.

AFCA’S OPERATION

Appointment of the AFCA Board

12. ANZ supports the proposed structure of the AFCA Board set out in section 1051(3)(d) of the Draft Bill.
13. A Board with equal consumer and banking skill and experience, with an independent chair, is a structure that has worked well for FOS ensuring confidence in FOS from consumer and industry groups alike and provided longevity and stability to the organisation.

Role of the independent assessor

14. Section 1051(2)(c) of the Bill elevates the role of the independent assessor, already in place at FOS, to a legislative requirement for the scheme to obtain Ministerial approval.
15. The Explanatory Memorandum (**EM**) makes the following observations about the independent assessor’s role:
 - *The scheme must have an independent assessor, to focus on reviewing the handling of complaints (page 9)*
 - *The scheme must have an independent assessor to assess the handling of complaints, with a focus on reviewing the service provided to users in the handling of the disputes (if the assessor determines that the complaint was not handled satisfactorily, the assessor may recommend that AFCA take certain actions) (page 17)*
 - *When considering whether the EDR scheme is ‘accountable’, the Minister may consider matters such as... whether the scheme will provide for an independent assessor... (page 20)*

16. While the EM makes it clear that the independent assessor will have a “focus on reviewing the handling of complaints” it does not explicitly state that this role will not extend to a review of the merits or the substantive outcome of a dispute.
17. The EM nonetheless appears to have this intent as it mirrors the language of Recommendation 6 from the EDR Panel review which also states, in paragraph 9.42, that “the independent assessor should not be an avenue of appeal for individual disputes”.¹
18. We appreciate that this matter, like others, may be clarified in the Terms of Reference when they are drafted. However, given that the independent assessor role is now a legislative requirement, and the EM specifically refers to the scope of the role, we suggest that the Committee seek further clarity about the independent assessor’s ability to review AFCA’s decisions.
19. In particular, whether the independent assessor role in “reviewing the handling of complaints” will extend to a review of a decision by AFCA in respect of:
 - the facts or merits of a dispute
 - a decision to accept or exclude a dispute on the basis of its jurisdiction or
 - a decision to commence a systemic issue investigation or make findings in respect of remediation of a systemic issue investigation.

INTERNAL DISPUTE RESOLUTION DATA

Internal Dispute Resolution (IDR) Data

20. The Bill empowers ASIC to require that a financial services licensee provide ASIC with information relating to its internal dispute resolution operations.
21. ANZ has publicly indicated its support for increased transparency around the performance of financial services licensees in respect of their internal dispute resolution (**IDR**) systems.² However, we are aware that there is no standardised approach to IDR data collection among financial services licensees.
22. Given ASIC’s ability to publish this data, and the comments in the EM that publication will “drive firms to improve their IDR practices by increasing transparency about the performance of their firm relative to other firms”, a detailed consultation process would be

¹ See page 181 of the Review of the financial system external dispute resolution and complaints framework

² Letter from Mr Shayne Elliott to Mr David Coleman MP, Chair of House of Representatives Standing Committee on Economics (6 March 2017); available at: <http://www.aph.gov.au/~media/02%20Parliamentary%20Business/24%20Committees/243%20Reps%20Committees/Economics/Review%20of%20the%20Reserve%20Bank%20second%20report/Documents/ANZ%20response%20to%20ECS%20for%20web.pdf?la=en>

appropriate to ensure an effective standardised reporting format is developed. Individual licensees may also require time to establish necessary systems and processes.

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