



# Lifting the professional, ethical and education standards in the financial services industry

Financial Ombudsman Service Australia Submission

May 2015



# 1 Overview

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The Financial Ombudsman Service Australia (FOS)<sup>1</sup> welcomes the opportunity to provide its comments to the consultation on recommendations to lift the professional, ethical and education standards in the financial services industry.

We support initiatives to continue to lift the professional, ethical and education standards applied to all financial advisers and efforts to help rebuild consumer trust in financial services.

FOS is not well placed to comment on whether the model proposed in the recent Parliamentary inquiry<sup>2</sup> (PJC Model) is the most appropriate mechanism to achieve the outcomes sought or whether some other model would be more appropriate. We believe there are other stakeholders best placed to comment on the range of different approaches and models for how these outcomes might be best achieved.

However, we strongly support the outcomes identified in the proposed model and initiatives to increase professional and educational standards of financial advisers, including under the current proposals, those who give personal advice to retail clients on Tier 1 financial products.

The PJC's recommendations for improved professional, ethical and education standards for financial advisers are designed to improve the outcome for consumers. While these are designed to reduce the incidence of major problems re-occurring, unfortunately things still go wrong. When they do, it is important that consumers have access to effective redress.

The Financial System Inquiry recently identified that a key requirement for consumers of financial services is effective consumer redress when things go wrong. The final report of the Financial System Inquiry states: "The Inquiry recognises the importance of continuing to have an adequate consumer dispute resolution system."<sup>3</sup>

Our focus is on guaranteeing access to alternative dispute resolution for consumers and ensuring that in promoting higher professional, ethical and education standards, any arrangements proposed do not have the unintended effect of reducing access to effective redress for consumers.

Accordingly, we consider that any proposals should be carefully assessed against the clear test of consistency with current access by consumers to redress through alternative dispute resolution mechanisms and not limit or restrict such access in any way.

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<sup>1</sup> Information about FOS, and the disputes we handle, is available on our website [www.fos.org.au](http://www.fos.org.au). Overview information appears in our annual review, which is in "Publications" on the website. This submission has been prepared by the Office of the Chief Ombudsman and does not necessarily represent the views of the Board of FOS. It draws on the experience of FOS and its predecessors in the resolution of disputes about financial services.

<sup>2</sup> Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry conducted by the Parliamentary Joint Committee on Corporations and Financial Services (PJC) in 2014.

<sup>3</sup> See pages 193 and 194 of *Financial System Inquiry – Final Report*, November 2014, available on [www.fsi.gov.au](http://www.fsi.gov.au).

We recommend that the following principles should guide and inform the development of the proposed model to ensure that consumers are its central focus:

- The model should be designed to improve financial advisory outcomes for consumers.
- Consumers should continue to have equivalent and effective access to independent, fair and timely dispute resolution mechanisms and redress.
- There should be no reduction in existing requirements for adequate compensation arrangements. Rather, those arrangements should be enhanced with current gaps in cover and scope closed.
- Additional legal and regulatory complexity should be avoided where possible, including frameworks associated with complaint handling or access to compensation.
- Any duplication or overlap in roles and responsibilities should be removed or clarified to avoid confusion about who is responsible for advice and who will respond to a consumer seeking redress if something goes wrong.

We also continue to propose that a limited compensation scheme of last resort for consumers of financial services should be established as an essential element in the current reforms to improve consumer outcomes.

## **2 Importance of effective dispute resolution arrangements**

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The PJC Model proposes to extend the *Corporations Act 2001* (Corporations Act) responsibilities on financial services licensees to individual advisers and professional associations. Professional standards schemes cap the liability of participants - who may be individual financial advisers or other non-licensees such as authorised representatives - and require them to hold PI insurance, whereas the Corporations Act requires licensees to have adequate compensation arrangements and membership of an ASIC approved External Dispute Resolution Scheme.

Further, professional standards schemes may not cover all financial advisers. Unless all financial advisers are covered, the outcomes for consumers will differ, depending on who they deal with.

While we are not entirely clear as to how the model is intended to work alongside the current regulatory framework in the Corporations Law, we consider that it is important that there should be no reduction in existing access to consumer redress and compensation arrangements. Additional legal or regulatory complexity should be avoided where possible, including for consumer access to external dispute resolution.

We consider important that duplication or overlaps in roles and responsibilities need to be removed or clarified to avoid confusion about who is responsible for advice and who will respond to a consumer seeking redress if something goes wrong.

### **3 Need for a limited compensation scheme of last resort**

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PI insurance is a key element of professional standards schemes in the PJC Model. PI insurance is also the key element of the compensation arrangements that licensed financial advisers must have in place at present to comply with the Corporations Act.

To date, financial services providers have used professional indemnity insurance policies to meet the requirement for compensation arrangements. While we support further review of what can be done to enhance the effectiveness of current PI insurance arrangements, it is not a complete solution as a consumer compensation mechanism in all cases.<sup>4</sup>

As PI insurance does not provide a complete solution to the problem of unpaid compensation, a limited compensation scheme of last resort is still needed even if professional standards schemes are established to cover all licensed financial advisers.

In public submissions to several recent inquiries<sup>5</sup>, FOS has explained the need for a last resort compensation scheme and indicated how the scheme could be designed.<sup>6</sup> We would be happy to contribute to any further work being done to develop a limited compensation scheme of last resort

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<sup>4</sup> See details of unpaid compensation set out on our website [www.fos.org.au](http://www.fos.org.au) in our quarterly publication *The Circular*.

<sup>5</sup> <http://www.fos.org.au/publications/submissions/>

<sup>6</sup> See, for example, submissions by FOS to the Financial System Inquiry – especially our [second submission](#).