

Submission: Improving dispute resolution in the financial system

Australian Timeshare and Holiday Ownership Council

The Australian Timeshare and Holiday Ownership Council (**ATHOC, we, our, or us**) is the industry body for the timeshare industry. ATHOC is a not-for-profit industry body established in 1994 to represent all interests involved in the Australian timeshare industry, and to work toward national industry best practice.

ATHOC operates nationally with an elected board representing a range of membership categories covering resorts, timeshare owners, developers and promoters, marketers, exchange companies and organisations providing professional advice to the timeshare industry.

ATHOC aims to foster a high standard of ethics and adherence to industry best practice amongst its members and to maintain good standing with all stakeholders (by requiring its members to abide by a code of ethics and a code of practice), to continually promote the benefits of the industry and to protect the goodwill of both members and consumers, and to assist members to achieve growth and profitability.

ATHOC’s members include several AFS licensees, in particular responsible entities of timeshare schemes and sellers of timeshare and this submission is made on behalf of those members. These licensees are members of either the Financial Ombudsman Service (**FOS**) or the Credit and Investments Ombudsman (**CIO**).

Consumers who acquire timeshare products from a responsible entity may obtain a loan to assist fund such purchase. The lender will hold an Australian credit licence and while such entities are not members of ATHOC they are related to, or work in conjunction with, a responsible entity of a timeshare scheme. Credit licensees, and their representatives, are also members of FOS or CIO.

Review query	Response
1 Are there other statutory powers the EDR body will need to resolve superannuation complaints effectively?	ATHOC has no comment on this query as it is not applicable to ATHOC’s members.
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?	Yes, subject to our submission on question 3, ATHOC considers the Bill strikes an appropriate balance.
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?	ATHOC’s submits that the provisions of the Bill which require AFCA’s decisions on superannuation complaints to not be contrary to law and enable parties to a superannuation complaint to have a right of appeal to the Federal Court on questions of law should extend to all complaints. In deciding complaints, an EDR scheme often makes decisions based on its

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	<p>interpretation of the relevant laws and how they should apply (as well as making decisions on questions of fact).</p> <p>ATHOC is concerned that EDR decision making is too uncertain under the current FOS and CIO regimes and this uncertainty will likely continue under the AFCA.</p> <p>ATHOC’s members have experienced numerous instances where the EDR schemes depart from the law in making decision in the pursuit of unsatisfactorily uncertain and flexible concepts like best practice in decision making and fairness. Even where an EDR scheme seeks to apply the law, its decision-makers may do so incorrectly and the scheme is unable to be held to account, even though such decision may have significant adverse consequences for both a specific licensee and the relevant industry more generally. Further, different EDR decision –makers (often within the same EDR scheme) have adopted different interpretations of particular legislative provisions and such inconsistency results in significant uncertainty for licensees and makes it very difficult for licensees to establish efficient compliance systems and to treat consumers consistently. Uncertainty also produces poor and inconsistent outcomes for consumers.</p> <p>The uncertainty, inconsistency and errors by an EDR scheme in the interpretation and application of applicable laws increases compliance, legal and product costs and these costs are ultimately passed on to consumers. This produces an efficient and uncompetitive financial system to the detriment of all consumers and the economy.</p> <p>ATHOC is concerned that, in moving from a two-scheme model to a single monopoly EDR scheme, these existing problems will be exacerbated. A single scheme will be less accountable to members and less concerned with providing certainty on the interpretation and application of laws to promote efficient and competitive operations.</p> <p>To address these concerns, ATHOC submits that proposed section 1057(3), which requires that all decisions must not be contrary to the law, and proposed sections 1056 and 1061(1), which provides for appeal to the Federal</p>

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	<p>Court on questions of law, should be extended to all disputes.</p> <p>ATHOC believes this will significantly enhance the certainty of the EDR system for the benefit of both consumers and licensees.</p> <p>Further, ATHOC considers there is no compelling argument or clear logic to providing a right of appeal on questions of law for superannuation complaints but not other types of complaints. ATHOC submits that extending requirements for EDR decisions to be made in accordance with the law and enabling appeals on questions of law will enhance the certainty and accountability of the EDR system and this certainty will improve efficiency and reduce compliance, legal and other costs for licensees and produce better outcomes for consumers.</p>
<p>4 Are there any additional issues that should be considered to ensure an effective transition to the new EDR scheme?</p>	<p>ATHOC recommends all existing complaints being considered by FOS or CIO should be transitioned to AFCA on 1 July 2018 rather than continue to be handled by FOS or CIO. Further, transitioned complaints should be:</p> <ul style="list-style-type: none"> (a) given priority by AFCA; (b) managed in a manner which reflects the progress and stage of the complaint with FOS/CIO at the time of transition (that is, ACFA does not deal with the matter as it would a new complaint); and (c) to the extent AFCA will have a similar fee structure to the existing EDRs and charge fees as a complaint moves through the 'stages' of the resolution process, given fee relief by ACFA so the licensee is not charged a fee in relation to a 'stage' of ACFA's complaint resolution process where the licensee has already paid a fee to CIO or FOS for a comparable stage or milestone. <p>Requiring licensees to be a member of, and pay fees to, AFCA while also requiring licensees to continue to pay fees to FOS and CIO in relation to existing complaints will impose an unreasonable financial burden on licensees.</p> <p>Further, ATHOC's members already experience extensive delays and inefficiencies with FOS and CIO in handling of complaints due to high staff turnover and under-resourcing which results in costs to ATHOC's members.</p>

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	<p>This situation will only be exacerbated as FOS's and CIO's turnover and resourcing issues will only worsen following AFCA replacing these entities as the mandatory EDR scheme.</p>
<p>5 Would moving immediately to a compensation cap of \$1 million have significant impacts on the availability/price of professional indemnity insurance?</p>	<p>ATHOC believes an immediate tripling of the compensation cap will significantly increase the price of professional indemnity insurance and recommends that the increased cap be implemented gradually over a three year period. For example, ATHOC proposes that the cap be increased to \$500,000 from 1 July 2018, \$750,000 from 1 July 2018 and \$1 million from 1 July 2020 to reduce the immediate financial impact on licensees.</p>
<p>6 Are the existing sub-limits for different insurance products still required?</p>	<p>ATHOC has no comment on this query as it is not applicable to ATHOC's members.</p>
<p>7 Are there any reasons why credit representatives should be required to be a member of an EDR scheme?</p>	<p>ATHOC members, who are a related body corporate of, or have an association with, a credit licensee, support removing the requirement for credit representatives to be members of an EDR scheme and do not believe there is any reason as to why they should continue to be members.</p> <p>As with AFS licensees, credit licensees are responsible and liable for the conduct of their representatives. Therefore, requiring a credit licensee to be a member of an EDR scheme provides adequate consumer protection without also needing each credit representative to be a member of an EDR scheme.</p>

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<p>8 What will the regulatory impacts of the new EDR framework be?</p>	<p>ATHOC considers the key regulatory burdens as a result of the new framework will be:</p> <ul style="list-style-type: none"> (a) increased costs and inefficiencies as a result of licensees who have existing complaints with FOS or CIO paying fees to FOS or CIO in connection with such complaints while also incurring membership fees with AFCA. Also, current concerns with unreasonable delays and duplication in handling complaints being experienced with CIO and FOS due to high staff turnover and under-resourcing will be exacerbated due to CIO and FOS ceasing to be the EDR schemes for licensees; (b) increased professional indemnity insurance premiums due to the increase in the monetary compensation threshold to \$1 million; and (c) increased uncertainty and costs to licensees as a result of a monopoly EDR system interpreting and applying relevant laws where the licensees do not have an appeal avenue on questions of law and there being no requirement for AFCA to not make decisions contrary to law for non-superannuation complaints. <p>ATHOC notes that these key burdens can be addressed by implementing the recommendations proposed by ATHOC at questions 3, 4 and 5.</p> <p>ATHOC appreciates there will be additional costs with updating disclosure material, training staff and providing IDR data to ASIC. However, with sufficient advanced notice of the new EDR scheme requirements (as is currently proposed) and assuming the volume and detail of the IDR data which ASIC may request is not unreasonable ATHOC believes such costs will not pose an unreasonable or excessive burden on its affected members.</p>

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	<p>Regarding the proposed obligation to enable ASIC to request licensees provide IDR data to ASIC, ATHOC does not object to this power provided the intention is that ASIC will obtain de-identified information (i.e. not identifying the consumer) regarding the number of complaints, nature or type of complaint, percentage of complaints referred to AFCA, etc. to assist with identifying its regulatory and education priorities and will not require specific information about particular complaints or use this power as a quasi-investigative mechanism (noting ASIC already has such power to require books to be provided and persons to attend interviews).</p>
<p>Australian Financial Complaints Authority: Consultation on the authorisation process</p>	<p>ATHOC agrees with the timetable proposed for consultation on the AFCA authorisation process.</p> <p>However, ATHOC expects the consultation process will, at some stage, involve release of the draft proposes operational rules or terms of reference of AFCA. ATHOC looks forward to the opportunity to comment on the operational rules/terms of reference.</p> <p>ATHOC is concerned to ensure there are appropriate governance controls to ensure AFCA, through its board, does not just represent the interests of large financial services and credit providers and large consumer groups but also represents the interests and concerns of smaller providers and consumer groups. ATHOC expects a level of transparency and accountability will be applied to AFCA which is equivalent to ASX-listed entities in terms of financial reporting, disclosure and approval of director and executive remuneration, and appointment and rotation of directors.</p> <p>ATHOC also recommends that the operational rules/terms of reference require AFSA to, where appropriate (as in the case of timeshare), ensure its decision-makers undertake product- and industry-specific training and for complaints to be allocated to specialist decision-makers with appropriate expertise in the industry and/or product. This will facilitate complaints being handled efficiently and consistently and minimise errors resulting from a lack of understanding of a particular industry or product or of the specific regulatory requirements applying to that industry or product.</p>