Rob Lomdahl | Head of Government & Regulatory Affairs | Group Corporate Affairs

12 October 2016

Professor Ian Ramsay
Chair, Independent Expert Panel
c/o EDR Review Secretariat
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600
By email: EDRreview@treasury.gov.au

Dear Professor Ramsay

Review of External Dispute Resolution and Complaints Schemes

ANZ welcomes the opportunity to make a submission to this Review of the financial system external dispute resolution (EDR) framework. The review is an important opportunity to improve the EDR system to ensure that, when required, it offers consumers an efficient and straight forward process for arriving at a fair outcome.

ANZ has contributed to the Australian Bankers' Association (ABA) submission and endorses the industry position. This letter sets out information about ANZ's approach to dispute settlement, our dealings with EDR schemes and offers comments on a revised EDR framework.

We have also made a submission to the Financial Ombudsman Service (FOS) consultation on expanding its small business jurisdiction (see Appendix 1).

Approach to internal dispute resolution

As a holder of an Australian Financial Services (AFS) licence, ANZ is required to have in place internal dispute resolution (IDR) procedures and to be a member of an ASIC-approved EDR scheme.

Customer resolution process

ANZ's IDR complaints process has three stages:

- *Lodgement:* Customers can lodge a complaint through multiple channels including phone, email, mail, fax, website, social media, in person or to an external dispute resolution body

- *Investigation* of the matter by the Complaint Resolution Centre will consider service delivery, terms and conditions, legal principles, applicable industry codes, fairness, industry practice, previous history and the customer relationship

- *Resolution*: where an error, breach or service breakdown has occurred, ANZ will return the customer to the position they would otherwise be in. If the customer does not accept the proposed resolution, they can escalate their dispute to an EDR scheme – either FOS or the Superannuation Complaints Tribunal (SCT). At this stage they are also offered the opportunity to seek an impartial review by the ANZ Customer Advocate. Most customer disputes and complaints are managed by the complaints resolution team.

Many complaints are resolved at the first point of contact, such as the branch or call centre. ANZ encourages this and provides contact centre staff with the discretion to resolve issues at the first point of contact.

All formal complaints are acknowledged within 24 hours and ANZ aims to resolve

- 90 per cent of retail and small business complaints within five business days in Australia and New Zealand
- 85 per cent of complaints relating to insurance and superannuation within 15 business days, and
- 70 per cent of financial advice complaints within 45 business days (due to the greater complexity of these matters).

There are around 90 full time equivalent (FTE) staff in the ANZ customer resolution and Customer Advocate teams.

Over the last 12 months (to September 2016) ANZ has received 53,122 complaints, around 4,400 a month. By comparison, there were 18.6 million calls across all parts of the bank to the Contact Centre over the past year.

Of the complaints handled by ANZ IDR, the Customer Advocate received 1,746 cases in the last year (1,340 from retail and small business customers and 406 wealth-related).

Of total ANZ complaints, 2,472 were lodged with FOS (5.1 per cent of complaints handled by ANZ internal dispute resolution). Of those lodged with FOS, around 50 per cent (1,233 cases) were accepted by FOS.

Effective performance reporting is important for consumer confidence in dispute resolution. ANZ supports the annual comparative tables published by FOS. This report shows the rate of disputes referred to FOS, the stage of dispute resolution reached and the outcomes (e.g. agreement, in favour of the applicant or the financial services providers).

According to the 2015-16 FOS Comparative Table Final Report:

- In terms of the chance of a dispute going to FOS accounts, ANZ is ranked one or two among major banks in the key consumer categories of consumer loans, credit cards, deposit taking and payments, and housing finance
- The chance of an ANZ dispute reaching FOS more than halved from the previous year for three consumer categories. An exception was consumer loans which rose in 2015-16 because of the inclusion of Esanda under ANZ (previously reported separately)
- ANZ is ranked number one or two among major banks in terms of FOS Dispute Stage Reached, indicating FOS matters are resolved in earlier stages of the dispute process.

A monthly benchmarking report is also used by ANZ to identify and address issues. ANZ has used the report this year to reduce complaints that go to FOS arising from customers in financial difficulty from 35 per cent of all accepted disputes in December quarter 2015 to 14 per cent of all disputes in March quarter 2016.

ANZ takes a proactive approach to investigating potential systemic issues which have been identified as a result of customer complaints. The Complaint Resolution Centre

works with the broader business to determine and address the root cause of an issue, as well as what can be done to improve the customer experience.

ANZ Customer Advocate

The Customer Advocate reviews disputes from retail, small business and wealth customers in Australia. In some cases, particularly difficult complaints may be referred directly to the Customer Advocate for resolution.

The Customer Advocate operates separately from ANZ's businesses and reports to the Senior Executive Australia Division (the head of the ANZ Australian business). ANZ is bound by the Customer Advocate's findings in all cases.

The way the role operates at ANZ complements existing IDR, is optional and customers can exit the process at any point and go to EDR. This is communicated to them throughout the process. The Customer Advocate concludes all reviews by advising the customer that they can refer the matter to FOS, if it remains unresolved. The Customer Advocate has a target service level agreement of 20 working days, which is met in the vast majority of cases.

Participation in external dispute resolution

ANZ is a strong supporter of EDR and is a member of FOS and the SCT.

Financial Ombudsman Service

ANZ has a good working relationship with FOS. FOS is widely recognised as a strong scheme (including by consumer advocate bodies) that holds banks to account. FOS includes a number of useful features which we support.

The Ombudsman can make a determination about a dispute taking into account all the information provided by the parties, applicable laws and industry codes of practice. Determinations are binding on ANZ if the customer accepts the FOS outcome. A customer can still go to court if they are not satisfied with FOS's decision.

This approach is aided by the principles FOS applies to its dispute processes and decision making: it seeks to resolve disputes fairly, informally and in a timely manner by working with the parties cooperatively and transparently. We agree with FOS that this contributes to sustaining community trust in financial services.

Funding by members both acts as an incentive to reduce the incidence of customer complaints and ensures there is sufficient funding when required.

We note the significant improvements FOS has achieved since 2015 in timeframes and that there is now a Terms of Reference (ToR) team which exclusively considers FOS jurisdictional issues. The introduction of a Fast Track process for low value disputes has been a notable improvement. And there is now a requirement to refer disputes back to the bank after lodgement with FOS to give a further opportunity for ANZ to resolve a dispute directly with its customer. This has proved a successful development with high resolution rates through this process.

To ensure small businesses have access to a simple, efficient and appropriate dispute resolution, ANZ supports increasing current jurisdiction limits as outlined in our submission to the FOS consultation. In nearly all cases we believe ANZ resolves issues either internally, including through the ANZ Customer Advocate, or through FOS. There are nevertheless benefits to expanding access to FOS to ensure small business customers have an alternative to seeking redress through the courts.

Superannuation Complaints Tribunal

ANZ interacts with the SCT in two main areas. The SCT deals with complaints made by members of superannuation products issued by ANZ or its related entities about decisions made by the Trustee or people acting on the Trustee's behalf in relation to their superannuation account.

The SCT also considers decisions or conduct of OnePath Life Limited (a registered Life Insurer and wholly owned subsidiary of ANZ) related to superannuation fund clients that OnePath provides insurance cover to. These are typically group life and group income protection policies issued to Trustees that OnePath provides insurance cover to. This includes ANZ-related superannuation fund products.

Reviewing the EDR framework

The EDR framework should provide for easy-to-access, transparent and timely resolution of customer complaints. It should seek to minimise dispute resolution through the courts.

The current system of multiple EDR schemes can create unnecessary complexity for financial services consumers. A single scheme or body for retail and small business customers would be preferable where it reduces complexity and improves accessibility.

Jurisdiction

ANZ supports expanding EDR jurisdiction and the definition of small business put forward for consideration by the ABA based on four criteria: number of full-time equivalent employees, business turnover, size of the loan for business purposes, and total credit exposure of the business group.

An important consideration for an EDR scheme is ensuring that the assessment of whether a complaint is within jurisdiction is completed as quickly as possible. Under the current framework, it can take a long time to collect and review relevant information. For example, based on FOS's current ToR, whether a business is a manufacturer or not (and subject to the 100 employees rule) is not always clear cut and can be difficult to establish. Banks commonly do not keep current information and it needs to be provided by the relevant business.

Life insurance claims

The review is also an opportunity to examine current practices around life insurance claims. In our view, life insurance and superannuation industries could play a greater role in assisting customers to process insurance claims. This includes insurers improving claim forms, how claim lodgement is explained to customers and, potentially, new measures to assist customers who have difficulty lodging a claim.

This could reduce the number of disputes and the need for costly legal advice. ANZ and many of our large superannuation fund clients are concerned with the trend towards plaintiff lawyer involvement in assisting life insurance claimants with straightforward claims.[1]

[1] Recent industry experience is of lawyers being involved particularly in group life insurance claims from the outset of a claim before an insurer has either received or made a determination in relation to the claim. It is common for legal service providers to offer claimants assistance with lodging a claim on the basis that it is a complex process. Fees charged by lawyers for their involvement, often charged on a no-win/no-fee basis where a law firm receives a percentage of a claim paid out by the insurer or superannuation fund, can significantly reduce any payment received by the claimant.

One option could be to introduce a Life Insurance Claims Assistance Service alongside the EDR framework to assist claimants (individual policy holder and members of superannuation funds) navigate the claims process. This could be funded by the life insurance industry and superannuation funds. The service could offer multi-lingual services to a claimant or their beneficiary at no cost to the policy holder.

ANZ believes every effort should be made to maximise insurance support to claimants and their families and would be happy to discuss this idea in more detail with the review panel.

Farm debt mediation

ANZ supports and encourages a national approach to farm debit mediation. ANZ's approach is to offer farm debt mediation in all cases, even if it is not mandatory. We recognise the importance of all farmers having access to the same mediation process, irrespective of where they live or do business.

ANZ's experience is that in the vast majority of cases, customers are willing, where necessary, to participate in farm debt mediation. The process involves specialist agribusiness advisers and rural counsellors who, in our experience, assist farmers resolve issues. In almost all cases an agreement is reached at the mediation to resolve the dispute.

For other small businesses, we note that ANZ has participated in a FOS trial of an initial conciliation conference which has the same objectives as a mediation. We favour continuing with this within the existing EDR framework rather than introducing mandatory small business mediation as recommended by the Parliamentary Joint Committee report on impairment of loans.

Last resort compensation scheme

ANZ supports the introduction of a last resort compensation scheme, and outlined the need to address this issue in our submission to the Senate Economic References Committee inquiry into scrutiny of financial advice in 2015.

We are working with banks to develop a model to cover retail consumers who have suffered losses because of inappropriate advice or poor conduct from a financial adviser or the failure of a managed investment scheme. This would award capped compensation and would require all AFS licensees who provide products to retail clients to contribute to the scheme as a condition of their licence. ANZ supports a scheme that applies prospectively once in place.

Please feel free to contact me or Marco Kohne, Head of Customer Resolution Delivery (marco.kohne@anz.com) if you wish to discuss any of the matters raised in this submission.

Yours sincerely

Rob Lomdahl

Appendix 1

10 October 2016

Ms Jenny Peachey
Executive General Manager – Strategic Review
Financial Ombudsman Service
By email: smallbusiness@fos.org.au

Dear Ms Peachey

Expansion of FOS's Small Business Jurisdiction

ANZ welcomes the opportunity to comment on proposals to expand the Financial Ombudsman Service (FOS) small business jurisdiction.

ANZ has also contributed to the Australian Bankers' Association (ABA) submission and endorses the industry position. This letter provides ANZ comments on specific issues raised in the consultation paper.

Proposed Amendments to Monetary limits

The consultation paper proposes amending FOS's terms of reference (TOR) to:

- increase the jurisdiction claim limit for a small business credit facility (SBCF) dispute to $2 million;
- increase the compensation cap for a claim in a SBCF dispute to $2 million;
- increase the credit facility limit for a debt-related SBCF dispute to $10 million;
- prohibit debt recovery proceedings in respect of facilities up to $10 million while a dispute is being considered by FOS; and
- the term 'small business credit facility' is included in the TOR.

ANZ supports an appropriate increase in current jurisdiction limits to ensure that small businesses have access to a simple, efficient and appropriate dispute resolution process. In nearly all cases we believe we resolve issues either internally, including through the ANZ Customer Advocate, or through FOS. We acknowledge the benefit in expanding access to FOS to ensure small business customers have an alternative to seeking redress through the courts.

Given the potential impact to FOS of the concurrent Ramsay review into external dispute resolution (EDR) and complaints schemes and the review of the Code of Banking Practice, any amendment to the jurisdiction claim limit and compensation cap in relation to small business should, in ANZ's view, await the outcome of those processes. The timing of any change should also be subject to the outcomes of these reviews.

Small business access to EDR

FOS seeks to provide a dispute resolution process for small businesses that would typically have more limited access to financial, legal and accounting advice.

We understand that through this consultation process FOS seeks information and data analysis to help ascertain the appropriate credit facility limit, claim limit and compensation caps. The ABA submission sets out data on Australian business by size and

lending and, based on this information, has put forward a proposal for a small business definition.

The proposed definition sets out four criteria based on number of full-time equivalent (FTE) employees, business turnover, size of loan for business purposes, and total credit exposure of the business group. A business that exceeds any of the criteria would not be considered a small business.

There are a range of operational issues that need to be addressed in finalising definitional changes that could potentially be applied by different bodies. In particular, at what point in business processes (e.g. at origination of the loan, or at time of dispute) the tests for jurisdiction will apply. Banks will have knowledge of loan limits, are likely to have information at the application process on other information (such as revenue or total liabilities), and may or may not have information on employment. Information, other than loan limits, will change as the circumstances of the business will change.

Given these uncertainties, it is important for banks and their customers to be clear about how and when information related to qualifying definitions will be collected and verified, and the respective responsibilities of the bank and customer.

Amending TOR to increase the jurisdiction facility limit

ANZ believes there are few small businesses with a facility limit of $10 million. There are medium-sized and larger businesses with facilities approaching $10 million that fall within existing definitions of 'small business' based on employee numbers. However, these are sophisticated businesses that could be expected to have ready access to legal representation and therefore do not require access to FOS.

The 2013 Independent review of FOS highlighted that FOS – which at the time had no limit on facility amount – was being accessed by small businesses, often property developers, with disputes about loans greater than $5 million. The independent review recommended that FOS be more active in using its discretion to exclude 'large and complex' business disputes. The jurisdictional review process alone can be time consuming and protracted. Documentation needs to be obtained and a review of complex loan arrangements can be required to determine whether the claim is within FOS terms of reference.

Businesses with disputes about larger facilities are generally in a position to seek a resolution to their dispute through the courts or through negotiation with the assistance of professional advisers. FOS should remain a dispute resolution process for genuine small businesses and FOS's resources should not, to the extent possible, be devoted to complex cases more appropriately dealt with in the courts. In view of this, ANZ queries whether the proposed jurisdictional changes will achieve the intended purpose.

The proposed $10 million facility limit is also well above definitions of small business used elsewhere. For example, the Unfair Contract Terms legislation extended to small business (effective next month) applies only where the loan value is no more than $1 million.

With no credit facility limit prior to the recent introduction of a $2 million limit, this meant there were disputes being lodged at FOS where the combined facility limit was tens of millions of dollars. These disputes were often the subject of long delays both in assessing jurisdiction and in conducting the investigation of these complaints. An example of a complex complaint subject to delays in assessing jurisdiction is 311975. This concerned facilities of approximately $7.5 million and was lodged on 30 January 2013. Jurisdictional issues were still under consideration over a year later due to the complexity of the matter, the difficulties in understanding the complaint and a debt agent.

We welcome the significant improvements FOS has achieved since 2015 in timeframes and that there is now a ToR team which exclusively considers jurisdictional issues. ANZ would be concerned if an increase in requests by members for jurisdictional assessment of complex small business issues were to have a detrimental impact on these positive changes for handling retail customer disputes.

We also support a facility limit cap for total group lending (not a single corporate entity under the current cap). There are instances where the facility may be taken out by one arm of a broader business giving rise to the question as to whether the business in dispute is a small business that the changes are intended to capture. The ABA's proposed four criteria definition includes such a facility limit cap.

Amending ToR to increase jurisdiction claim limit and cap

ANZ supports the increase of claim and compensation limits applied by FOS but is concerned that increasing these limits to $2 million would require a legally robust process with rights of appeal and the ability to take oral evidence.

FOS currently forms it views on the weight of available information and there is no power to subpoena relevant documentation or appearances from third parties in line with the court process. FOS also has limitations in its ability to assess the legitimacy of documentation and credibility of parties as is possible within a court process.

We also note that the proposed award limit of $2 million appears to be well above what similar ombudsman services in other jurisdictions apply:

- UK Financial Ombudsman Service – the maximum money award is GBP150,000 (excluding interest and costs);
- Canadian Ombudsman for Banking and Investment Services – the maximum compensation is CAD350,000;
- NZ Insurance and Financial Services Ombudsman and Banking Ombudsman Scheme – NZD200,000 applicable upper limit on claims as well as compensation across all of the EDR schemes.

We support the ABA proposal to increase the claim limit to $1 million. If it were to be increased to $2 million, we think it should be for a combined claim, not per claim.

Prohibit debt recovery proceedings in respect of facilities up to $10 million while a dispute is being considered by FOS

ANZ has concerns about the proposal to limit debt recovery proceedings up to $10 million while a dispute is being considered by FOS. This means that debt recovery on a very significant facility could be stalled due to the most minor fee issue on a facility held by the same entity. Ultimately this could be to the customer's detriment resulting in loss in equity and the ability to recover value from a security increasing the customer's debt.

Under the current ToR the financial services provider must not take any action to recover a debt the subject of the dispute, to protect any assets securing that debt or to assign any right to recover that debt. ANZ's current practice is to stop collections activities on all facilities related to a debt that is in dispute on the basis that a holistic view should be given to a dispute. It would assist if clarification could be given to the obligations to stop collections activity in relation to business facilities that might not be the "subject of the dispute".

Customers can deal with company securities to the bank's detriment whilst the bank is prohibited from taking recovery action. Whilst there are provisions under the ToR enabling ANZ to seek consent to freeze, preserve or sell assets this can add an additional layer of complexity to a dispute and this type of request requires documentation, quick

assessment and effectively what might be injunctive relief if it were obtained through the courts. As the facility limit increases, this type of exposure for the bank increases and this aspect should be taken into account.

Further, a minority of customers also re-lodge disputes multiple times even when a dispute has been ruled by FOS to be OTR. Each time this occurs a further jurisdictional assessment has to be undertaken. As the limits increase, the risk of delays in assessing jurisdiction carries a greater risk for both parties.

ANZ recommends that FOS conduct detailed research into small business cases that have been ruled outside TOR based on the current limits and on the cases that were received and ruled OTR prior to the change to the credit facility limit of $2 million. As a start, these cases should be reviewed to determine whether the businesses involved would genuinely have limited access to advice and the courts.

Dispute resolution processes

Recognising the complexities of small business disputes, FOS is proposing that parties to a dispute:

- Attend a compulsory conference; and
- Ensure that a relevant third party also attends the conference.

ANZ agrees there is a benefit to parties to a dispute attending a compulsory conference.

ANZ also agrees that it would be beneficial for FOS to have access to all information necessary to reach a determination and that some of this information would be held by third parties to the dispute. However, we think it would be problematic for FOS to place a requirement for parties to a dispute to 'ensure' relevant third parties (such as company directors, insolvency practitioners, and guarantors) attend a conference. In our experience there are many instances where this will not be practical. In some instances, such as those involving insolvency practitioners, this requirement may be at odds with their statutory obligations.

ANZ recommends having a positive obligation for parties to a dispute to 'facilitate' third party attendance where appropriate.

Operating model

ANZ supports the proposal to establish a separate specialist small business unit within FOS's banking and finance area. This unit should be adequately staffed to ensure that an increase in FOS jurisdiction does not hinder FOS's capacity to continue to deal with its broader case load effectively and expeditiously.

The ToR team would also need sufficient resourcing to deal with an increase in disputes lodged by small businesses. ANZ has concerns that the proposed expanded jurisdiction would require the FOS ToR team to handle an increased number of high value complex small business disputes. This could in turn impact FOS's ability to assess its jurisdiction to consider retail disputes in a timely way.

ANZ also recommends that a specialist small business ombudsman is appointed within FOS and that the new small business unit is staffed by people with expertise in small business disputes with current and proven industry practice, knowledge of lending practices and credit-related disputes. In ANZ's experience, lending and guarantees form the basis of the vast majority of small business disputes.

Finally, we agree that the small business unit within FOS should be largely self-funding so as to minimise the risk of these more costly disputes detracting FOS from its core

program. ANZ does not favour any proposed levy calculated in a similar way to the LPPI charge that operated until 1 July 2015. The LPPI charge was raised on every case set at $1,000 per complaint. For banks with 30 to 50 small business complaints per month, the cost of running the unit could be substantial.

It would be helpful for there to be more analysis of the likely cost of the proposed small business unit so members can have a better understanding of the funding requirements and how this could be fairly shared amongst users of the scheme.

Please feel free to contact Tom Westcott, Senior Manager Government and Regulatory Affairs (thomas.westcott@anz.com) or Marco Kohne, Head of Customer Resolution Delivery (marco.kohne@anz.com) if you wish to discuss any of the matters raised in this submission.

Yours sincerely

Rob Lomdahl