

Submission: Review of the financial system external dispute resolution framework

Australian Timeshare 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**).

By way of background, consumers who attend a timeshare scheme presentation are provided with a financial services guide (**FSG**) explaining the financial services which they may be provided with along with a product disclosure statement (**PDS**) for the timeshare club which provides information about club and how it operates. Further, timeshare sales agents (who operate under an AFS licence) provide consumers who purchase a timeshare product with personal advice and a statement of advice which details any recommendation to purchase membership in the timeshare club along with a summary of the reasons underlying the recommendation. As an AFS licensee, the responsible entity and, if the timeshare sales function is performed by a separate AFS licensee, any timeshare sales company are required to have an internal dispute resolution process which meets the requirements of Regulatory Guide 165 and to be a member of an external dispute resolution scheme. The complaints resolution mechanism deal with any complaints made by consumers regarding the financial services provided by, or on behalf of, the AFS licensees, such as complaints in relation to the sales process or the operation of the club.

This submission primarily relates to those queries which are relevant to the operation and performance of the FOS and CIO (and is based on the experiences of our members who are members of these bodies) or which relate to internal dispute resolution processes. No submission is provided on the discussion questions which we have not responded to in this document. Also, no comment is provided in respect of the Superannuation Complaints Tribunal.

Internal dispute resolution

Review query	Response
<p>5 Is it easy for consumers to find out about IDR processes when they have a complaint? How could this be improved?</p>	<p>Yes.</p> <p>Under the Corporations Act, consumers must be informed of an AFS licensee’s IDR process (including how to make complaints or raise concerns) in a number of documents that are provided to them before they can purchase a timeshare product as a retail client, including FSGs and PDSs.</p> <p>We submit that the current disclosure obligations bring the IDR process to consumers’ attention and no changes or improvements are required.</p>
<p>6 What are the barriers to lodging a complaint? How could these be reduced?</p>	<p>In our members’ experience, there are little or no barriers preventing timeshare consumers from lodging an IDR complaint.</p> <p>Information about how to access the IDR process and make a complaint is clearly advised to consumers and our members facilitate complaints being made over the telephone, in writing and by email. This variety of complaint avenues ensures the IDR process is easily accessible for consumers.</p>
<p>7 How effective is IDR in resolving consumer disputes? For example, are there issues around time limits, information provision or other barriers for consumers?</p>	<p>We consider that IDR is very effective in resolving consumer disputes.</p> <p>Of the complaints received by our members in the 2015 calendar year, only approximately 6.5% are escalated to the EDRS. Given that details of how to escalate a complaint to an EDRS are provided to consumers along with the outcome of the review of their complaint (unless resolved to their complete satisfaction within five business days) and the EDRS process is free for consumers, we submit that having approximately 93.5% of complaints resolved to the consumer’s satisfaction through the IDR process demonstrates it is an effective mechanism.</p> <p>Our members consider that a maximum period of 45 days to provide a final response to a complainant is sufficient.</p> <p>However, the obligation to immediately acknowledge the receipt of complaints is unduly onerous and uncertain. We submit that the obligation to acknowledge complaints should be soon as practicable and, in any event,</p>

Review query	Response
	<p>within two business days. We acknowledge such change would depart from the requirements of AS/NZS 100002:2014.</p>
<p>8 What are the relative strengths and weaknesses of the schemes' relationships with IDR processes?</p>	<p>The key strength of an EDRS's relationship with an IDR process is the requirement for details of the EDRS to be provided to consumers in the final response to their complaint. The high visibility of the consumer's right to refer their complaint to an EDRS (including contact details for the EDRS) enables consumers to easily refer their complaint to an EDRS if not satisfied with the outcome of the IDRS process.</p> <p>Similarly, the EDRS process requirement for the consumer to utilise the IDR process before accessing the EDRS provides the opportunity for the EDRS member to resolve a consumer's complaint before incurring the expense of the EDRS process.</p> <p>A weakness which our members have observed is that the EDRS process is not (unlike the IDR process) subject to obligations to consider and determine complaints within particular timeframes and extensive delays by the EDRS cause considerable uncertainty and angst for the consumer and EDRS member and detract from the EDRS as being a timely and efficient forum for the resolution of complaints. Lengthy delays with the EDRS process also affect the continuity of a complaint as staff turnover at the EDRS and, to a lesser extent, the member may be result in repetition of questions asked and information provided, inconsistencies in views provided, duplication of activities, etc which adversely impacts the relationship between the EDRS and IDR processes.</p> <p>Another weakness with the EDRS framework is it presently allows a complaint which is being handled through the EDRS (having not been resolved through the IDR process) to morph into a matter which concerns a different, or additional issues, during the EDRS process, without the requirement for this new or additional complaint to be remitted to the IDRS process.</p>

Review query	Response
<p>9 How easy is it for consumers to escalate a complaint from IDR to EDR schemes and complaints arrangements? How common is it for disputes to move between IDR and EDR, or between EDR schemes?</p>	<p>It is very easy for consumers to escalate a complaint from the IDR process to EDRS.</p> <p>As mentioned at query 8, the high visibility of the consumer’s right to refer their complaint to an EDRS (including contact details for the EDRS), both in an FSG and PDS and in the final response to the complaint provided by the AFS licensee, enables consumers to easily refer their complaint to an EDRS if not satisfied with the outcome of the IDRS process.</p> <p>As stated in question 7, only approximately 6.5% of complaints are escalated to the EDRS.</p>

Regulatory oversight of EDR schemes and complaints arrangements

Review query	Response
<p>10 What is an appropriate level of regulatory oversight for the EDR and complaints arrangements framework?</p>	<p>We agree that ASIC’s role should be limited to oversight to ensure the EDRS are working effectively in dealing with consumer complaints and consider that it would be inappropriate for ASIC to be involved in the making of decision in relation to complaints.</p> <p>However, we consider ASIC’s oversight role should be more proactive and also that EDRS members need an effective mechanism for raising concerns with ASIC about an EDRS in order to improve the EDRS’s accountability. While ASIC undertakes periodic reviews and EDRS members can provide feedback to ASIC or the EDRS, there is no external mechanism for direct redress for EDRS members about specific concerns.</p> <p>For example, some ATHOC members have experienced significant delays in the consideration and determination of disputes which are not referable either to the acts or omissions of the member or consumer or complexity of the matter but may be due to the workload or expertise of EDRS staff.</p> <p>In this circumstance, and in situations where a member is concerned the EDRS has breached its terms of reference, EDRS members should be able to</p>

Review query	Response
	<p>raise this specific concern with ASIC and ASIC handle the concern in a timely manner.</p> <p>For example, in the circumstance identified above, the EDRS member should be able to complain to ASIC about the significant delays with a particular complaint, ASIC enquire with the EDRS as to whether there have been significant delays and the reasons for such delays and, if the EDRS members concerns are warranted, request the EDRS to commit to a reasonable time period for considering the dispute and making its determination or recommendation.</p> <p>Please note, we are not suggesting or advocating that ASIC consider or determine a dispute (or be an avenue of appeal). Rather, we propose a mechanism for an EDRS to be accountable for adhering to its principles and complying with its terms of reference or rules for specific complaints, as ASIC's current oversight role does not provide EDRS members an avenue to raise, and have addressed, specific concerns.</p> <p>We consider that a formal avenue for members to raise concerns about an EDRS with ASIC with reference to the FOS Terms of reference or CIO Rules (as applicable), would improve the fairness of outcomes overall.</p>
<p>11 Should ASIC's oversight role in relation to FOS and CIO be increased or modified? Should ASIC's powers in relation to these schemes be increased or modified?</p>	<p>Increased and modified, as discussed above in query 10.</p>

Existing EDR schemes and complaints arrangements

Review query	Response
<p>14 What are the most positive features of the existing arrangements? What are the biggest problems with the existing arrangements?</p>	<p>The most positive features of the existing framework are that consumers have free and easy access to EDRS and such rights are promoted to consumers.</p> <p>We have summarised below the biggest problems and concerns our members have found with the existing EDRS arrangements:</p> <p>Significant delays</p> <p>If a member fails to comply with a CIO requirement (which includes the requirement to respond to CIO within a certain time or to provide such information or document as requested), CIO has broad powers under rule 27 to, for example, suspend or cancel the member’s membership, notify ASIC or deal with the complaint as it considers appropriate.</p> <p>Rule 7 of the FOS Terms of reference require parties to a dispute to provide or procure information and documents requested by FOS within the timeframe specified by FOS and further, it imposes a general obligation on parties to a dispute to comply with all requests from FOS within the time frame specified by FOS.</p> <p>Members are not afforded a reciprocal level of accountability from EDRS.</p> <p>All of our members have reported experiencing significant and unreasonable delays in their dealings with EDRS. In one matter, a member was given two weeks to provide a written response to a letter from the EDRS and the EDRS subsequently took approximately eight months to acknowledge and respond to the member’s letter and provided no updates or other communications during that period.</p> <p>In another case, the EDRS took approximately 12 months from receiving the complaint to determine that it was outside the scope of its jurisdiction. A further four months after that date, the member discovered that the matter was still not closed.</p>

Review query	Response
	<p>In particular, members of FOS have reported increased delays since the introduction of the 'Determination' phase.</p> <p>Such delays are unfair on both the EDRS member and the consumer as it creates uncertainty, additional internal cost and time and unnecessary angst and stress. Further, it potentially exposes the EDRS member to further claims if the EDRS finds that the member is at fault as there may be other consumers who have the same grounds for complaint (where the EDRS member could have rectified its processes at an earlier time if the complaint was determined in a reasonable period).</p> <p>Given that a key purpose of the EDRS framework is to resolve dispute in a cooperative, efficient, timely and fair manner, delays in resolving disputes undermine this principle.</p> <p>To address this issue, we recommend that an EDRS should be subject to reasonable time limits in considering and determining disputes (as AFS licensees are under their IDR process) and accountable for adhering to such time frames.</p> <p>Lack of consistency in decision-making</p> <p>Neither EDRS is bound by previous scheme decisions. However, Rule 38 of the CIO Rules states that <i>'The scheme will therefore not be bound by any previous scheme decisions, but will be consistent in its decision-making, where appropriate.'</i> In deciding a dispute, <i>'FOS will do what in its opinion is fair in all the circumstances, having regard to... previous relevant decisions of FOS or a predecessor scheme (although FOS will not be bound by these).'</i></p> <p>Our members have encountered instances where complaints regarding substantially similar circumstances have resulted in entirely inconsistent determinations. For example, a complaint was determined to be outside an EDRS's terms of reference and a subsequent complaint regarding the same issue was accepted as being within jurisdiction.</p>

Review query	Response
	<p>While our members recognise that EDRS are not bound by previous scheme decisions, it is critical that there is consistency in decision-making as EDRS determinations impact a member’s business, procedures, dealings with consumer and resolution of complaints via an IDR.</p> <p>Leading and biased conduct by EDRS employees</p> <p>Many of our members have reported instances of leading or biased conduct by EDRS employees. Consequently we submit that the quality of policies and training support given to EDRS employees can be improved.</p> <p>For example, an ATHOC member received a complaint that a consumer ‘did not like the view’ from a particular timeshare property which the consumer visited. The complainant was not satisfied with the IDR response and escalated the matter to EDRS.</p> <p>In the first instance, the complainant was advised that the subject matter was outside of the EDRSs terms of reference. Shortly after the consumer’s discussions with the EDRS, the consumer reframed their complaint to state that ‘I was told when purchasing [the timeshare product] that I would always have a sea view’, which was subsequently accepted by the EDRS. This was despite the consumer having never raised such allegations in the IDR process or in their initial complaint to the EDRS and only making such assertions after the EDRS instructing the consumers about the kind of complaints which can be accepted.</p> <p>Our members have identified a number of instances where they are concerned that, following discussions with or information provided by EDRS, a consumer has changed the nature of their complaint or raised further issues which has resulted in a complaint being accepted which was previously rejected or the EDRS member having to provide further submissions and respond to additional allegations which had not previously been raised by the consumer.</p>

Review query	Response
	<p>In another circumstance, a member reported that an EDRS employee stated that <i>'here is another misleading complaint'</i>, before the employee had even considered the complaint. Such statement demonstrated an apparent bias in favour of the consumer, which erodes confidence in the EDRS as a fair and transparent dispute resolution process.</p> <p>We encourage EDRS to provide training to employees on interactions with consumers so as not to unwittingly coax or lead a consumer into making, or modifying, a complaint with the purpose of the consumer achieving a desired outcome (rather than resolution of a complaint). We also recommend an EDRS provide training to its employees on the importance of remaining impartial in order to achieve the goal of providing a fair and transparent dispute resolution system.</p>
<p>15 How accessible are the EDR schemes and complaints arrangements? Could their awareness be raised?</p>	<p>An EDRS is very accessible to consumers (see responses to review questions 9 and 14). We consider that users are appropriately aware of EDRS by virtue of details being provided in an FSG, PDS and in the final response to a complaint. The role of the EDRS is also highlighted on ASIC's main website and its consumer website.</p>
<p>16 How easy is it to use the EDR schemes and complaints arrangements process? For example, is it easy to communicate with a scheme?</p>	<p>Subject to significant delays sometimes experienced when dealing with EDRS as discussed above, we consider that it is convenient and easy for all users to communicate with EDRS.</p> <p>However, members are concerned that increased turnover in EDRS staff, particularly recently, impedes the ease and efficiency of dealing with an EDRS. High staff turnover regularly results in repeated requests for information and documents previously provided to the EDRS, which results in significant cost and time imposition for the EDRS member.</p> <p>For example, a member reported receiving a phone call from an EDRS employee stating the member had not responded to correspondence within the specified time frame. The member referred to an email that was sent to the EDRS the previous week and the employee indicated that they had not checked their emails.</p> <p>Though staff turnover is an element of any business, we encourage an EDRS</p>

Review query	Response
	to review turnover and consider how turnover can be minimised as continuity of staff when dealing with a complaints assists with the timely and efficient resolution of that complaint.
17 To what extent do EDR schemes and complaints arrangements provide an effective avenue for resolving consumer complaints?	We consider that an EDRS is an appropriate and effective avenue for resolving consumer complaints in the financial services and managed investment industry (which encompasses timeshare schemes). However, as set out at item 14 above, our members have identified various problems which are detracting from the efficacy of the EDRS in resolving consumer complaints.
21 Do the current EDR schemes and complaints arrangements provide consistent or comparable outcomes for users? If outcomes differ, is this a positive or negative feature of the current arrangements?	<p>Please refer to our response to query 14.</p> <p>In our members' experience, inconsistency of outcomes is a negative feature. EDRS decisions can influence how the EDRS member operates its business (for example, the nature of certain disclosures provided to consumers), the procedures and policies it implements, how it treats certain complaints, etc. If an EDRS finds against a member, it may result in the member changing its practices and procedures or resolving existing or future similar disputes in the same manner.</p> <p>If the outcomes of similar complaints are inconsistent, this uncertainty results in members being unable to revise or develop policies and procedures to minimise the likelihood of further similar complaints.</p>
25 Are the current funding and staffing levels adequate? Is additional funding or expertise required? If so, how much?	<p>Our members are concerned that the level of staff turnover impacts EDRS performance. In particular, our members consider high turnover increases the likelihood of delays in considering complaints, inconsistent decision-making, potential bias, 'leading' of consumers (due to inadequate training and experience), and inefficiencies in the complaints handling process. However, our members do not consider that turnover is necessarily indicative of inadequate funding or would justify increases in member fees.</p> <p>Also, our members consider greater industry expertise among EDRS staff will assist the consistency of decision-making and improve the efficiency of the complaints resolution process. From our members' perspective, industry expertise relates to both expertise in understanding the financial services laws and the obligations on AFS licensees and the timeshare industry in particular.</p>

Review query	Response
	<p>We suggest that periodic industry forums involving the EDRS and relevant members to discuss specific industry issues may be beneficial for EDRS staff to improve industry expertise and also for EDRS members. If appropriate, the outcomes of such forums could be reported to ASIC.</p>
<p>26 How transparent are current funding arrangements? How could this be improved?</p>	<p>CIO's current funding arrangements require members to pay a fee for each complaint which is escalated to it, even if the complaint is not warranted and not accepted by CIO. While our members support the accessibility of an EDRS, they consider it unfair and unreasonable that they should incur fees where complaints without merit are made to an EDRS.</p> <p>We propose that CIO (or any EDRS) should not charge members for complaints which are not accepted by the EDRS, where such determination was a 'simple' or 'straightforward' exercise.</p> <p>In terms of transparency, details of the funding arrangements or fee structures for CIO and FOS are provided to members.</p> <p>The CIO Fee Schedule and associated information is easily accessed on its website. However, FOS fee information is located in the member login interface, Secure Services.</p> <p>We recommend that FOS make details of its fee structure publicly available on its website to assist potential members evaluate their EDRS options.</p>
<p>27 How are the existing EDR schemes and complaints arrangements held to account? Could this be improved?</p>	<p>Our members acknowledge that both FOS and CIO have an internal complaints/suggestions procedure. However, as this is an internal procedure with no external appeal or referral avenue, our members do not consider these arrangements sufficiently or adequately hold the EDRS to account.</p> <p>As suggested in our response to queries 10 and 11, we consider the accountability of EDRS could be improved by enhancing ASIC's oversight role by giving EDRS members a formal avenue to raise concerns to ASIC if conduct by an EDRS is inconsistent with its principles or, as applicable, the FOS Terms of Reference or CIO Rules.</p>

Review query		Response
28	To what extent does current reporting by the existing EDR schemes and complaints arrangements assist users to understand the way in which the scheme operates, the key themes in decision-making and any systemic issues identified?	<p>We note both FOS and CIO provide an annual review or annual report on their website, accessible to the public, which contains this information (as well as specific information on timeshare participants). CIO also publishes decisions which set out reasons for its determinations, along with case studies (though the case studies are not regularly updated).</p> <p>However, our members do not consider this information useful or relevant in their day-to-day dealings with FOS or CIO.</p>
29	What measures should be used to assess the performance of the existing EDR schemes and complaints arrangements?	<p>While both FOS and CIO provide an annual overview and are subject to periodic external review, our members consider an effective means of raising specific concerns with an external body (namely, ASIC as discussed at query 10) will be a more valuable mechanism for improving standards than periodic performance reviews or assessments covering prior periods.</p>

Gaps and overlaps in existing EDR schemes and complaints arrangements

Review query		Response
30	To what extent are there gaps and overlaps under the current arrangements? How could these best be addressed?	<p>We consider that the most significant gap in the current framework is the lack of balance in the accountability of framework participants. While timeframes are imposed on EDRS members during the dispute resolution process with consequences for non-compliance, there are no corresponding standards applying to, or enforceable against, the EDRS.</p> <p>As per our recommendation in query 14, extending ASIC's oversight role to enable EDRS members to raise concerns with ASIC where an EDRS has not complied with its principles or terms of reference would assist to address this gap.</p>

Review query	Response
<p>31 Does having multiple dispute resolution schemes lead to better outcomes for users?</p>	<p>We consider that a choice of EDRS provider (albeit limited) is a necessary and valuable mechanism for existing and new licensees.</p> <p>It would be concerning if there was a single dispute resolution scheme as the lack of competition may lead to a deterioration in standards and increase in fees (particularly as it is mandatory for most licensees, and some other entities, to be a member of an EDRS).</p>