

30 October 2017

Mr Alan Cameron AO  
Cameron Review  
Justice Strategy and Policy Division  
Department of Justice  
GPO Box 31  
SYDNEY NSW 2001

Dear Mr Cameron

### **Review of community legal centre services**

The Financial Ombudsman Service (FOS) Australia<sup>1</sup> is an ASIC-approved independent external dispute resolution (EDR) scheme that covers disputes across the financial sector.<sup>2</sup> We welcome the opportunity to provide feedback<sup>3</sup> to your review of community legal centre services in NSW.

Our views are informed by interactions we have had over the years with people coming to FOS and their representatives, many of whom have been community-based lawyers.

#### **Our facts and figures**

In 2016-2017, 7,072 people lodged a dispute with FOS with the support of a representative (amounting to 18% of all disputes received). Of these, 166 people were represented by community-based lawyers - an increase of 6% from 2015-16. 91 of these people (51%) were represented by community-based lawyers in NSW.

In addition to helping people lodge disputes at FOS and representing them throughout the EDR process, community-based lawyers and other consumer representatives also provide a vital referral pathway to FOS. In 2016-2017, a total of 945 people (2.4%) were referred to FOS by community legal centres nationally.

---

<sup>1</sup> Information about FOS is set out in full on our website at [www.fos.org.au](http://www.fos.org.au).

<sup>2</sup> FOS is approved by ASIC under its Regulatory Guide 139 Approval and Oversight of External Dispute Resolution Schemes (Regulatory Guide 139).

<sup>3</sup> This feedback 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 experience of FOS and its predecessors in the resolution of disputes about financial services.

As a key principle of EDR, FOS should be accessible to all consumers of financial products in Australia. Such access is easier for people who are financially literate, connected to services and information through the internet, and have the support, knowledge and resources to seek EDR if they have a problem with their financial services provider. Others, who may be vulnerable or disadvantaged, may find it difficult to seek assistance directly from an EDR scheme.

### **Support for the most vulnerable and disadvantaged**

A diverse range of community-based organisations, including legal centres, make a significant contribution to the overall accessibility of dispute resolution by advising their clients about the avenues available that they would otherwise not have been aware of. We believe that this contribution is invaluable in ensuring vulnerable and disadvantaged people have appropriate representation and assistance in both internal dispute resolution and EDR.

For example, individuals currently experiencing or recovering from family violence will seek the help of a community legal service for a range of reasons, including financial abuse. In a recent FOS dispute, a NSW community-based lawyer was assisting a woman who had experienced family violence and left the home as a result. Her ex-husband (and co-borrower) stopped making payments and the financial services provider sought possession of the property. The representative asked the financial services provider to consider alternative options to resolve the dispute, including not pursuing their client for any shortfall debt if she agreed to provide consent for possession of the property.

As this example indicates, community-based lawyers are able to advocate for outcomes consistent with the FOS approach. Their clients may not themselves be confident enough to request these outcomes or may not be aware they are possible.

Community legal centres and community financial counselling services are an important part of the social infrastructure of our financial sector, connecting vulnerable and disadvantaged people to EDR schemes such as FOS, and to other important services where needed.

This work is enhanced by community legal education, including financial literacy for the individuals they support through help with budgeting, dealing with credit issues and other practical financial matters.

Without the support of these services, many people would have little or no opportunity for their dispute with a financial services provider to be considered and resolved.

### **Engaging with consumer and community legal centres.**

Consultation and engagement with consumer representatives, including community-based lawyers, is integral to our way of working, particularly helping to ensure the service we provide meets the needs of vulnerable and disadvantaged consumers.

FOS established its Consumer Liaison Group (CLG) in 2012, an advisory panel made up of representatives from financial counselling and community legal centre services. CLG meetings also provide an opportunity for specific issues and trends occurring at a systemic level to be considered.

We also work with community-based lawyers when responding to significant events, delivering professional development for financial counsellors and at outreach opportunities, providing complementary messages to the public about access to justice. Individuals from community legal services act as FOS consumer panel members, as part of decision making panel arrangements. Our engagement with consumer and community legal organisations is consistent with our engagement with industry stakeholders.

### **Funding levels of community legal services**

We are seeing a gap in the availability of community legal services and people tell us about long delays in obtaining assistance from these services. These delays and accessibility issues lead to the exacerbation of the concerns that brought them to FOS in the first place, and negatively impact both their personal and financial circumstances.

For FOS, the ongoing availability and support of community based legal services is a key aspect of the infrastructure underpinning financial sector dispute resolution. We therefore support development of a sustainable funding basis for the provision of community legal services.

### **The risk of a commercial claims management industry**

In the absence of community legal services and community financial counselling, there is a risk that the commercial 'claims management industry' will fill the void.

Claims management companies charge people a fee for providing representation. In some cases fees can be significant. The EDR arrangements in Australia mean that we are able to provide a free service to individuals and some small business, and we base our dispute processes on a co-operative approach with our stakeholders.

We consider that the development of a claims management industry in Australia of the type and scale we have seen in the United Kingdom could lead to more adversarial conduct from all parties. We do not consider this is consistent with the current approach to EDR in Australia.

Adequately funded community legal services and community financial counselling play a critical role in promoting practical financial literacy among their clients, and help prevent future problems.

Finally, community legal centres and community financial counselling services provide a holistic approach to helping people, not only through individual case work, but also advocacy, community outreach and engagement and education focussed on improving financial wellbeing. Support for sustainable community

legal services is an important part of ensuring practical access to justice for Australian community

Please do not hesitate to contact us if you have any queries or wish to discuss any aspects of this correspondence. Our contact for this matter is our Senior Manager, Strategy and Policy, Silvia Renda at [srenda@fos.org.au](mailto:srenda@fos.org.au) or on (03) 8623 2035.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Tregillis', with a stylized flourish at the end.

**Shane Tregillis**  
**Chief Ombudsman**  
**Financial Ombudsman Service Australia**