



19 June 2024

Consultation on Effective Financial Dispute Resolution

Introduction

Citizens Advice Bureaux New Zealand | Ngā Pou Whakawhirinaki o Aotearoa (CAB) is deeply disappointed in the failure of the discussion document “Effective financial dispute resolution”, to address the fundamental issues at the heart of the ineffectiveness of our current financial dispute resolution system. This is particularly disappointing given that MBIE also conducted a review in 2021. In the process of responding to that review CABNZ and all other major consumer facing organisations (including the Salvation Army, Consumer New Zealand and FinCap) all expressed fundamental concerns about having multiple schemes competing in the Financial Dispute Resolution space and the attendant problems with that approach.

We are dismayed that this new discussion document has no regard to the consistent message that MBIE has received from consumer advocates around the issues with having multiple schemes in this space. The discussion document has once again has ignored the opportunity to address substantive issues, and instead is proposing yet more tinkering, which will have little substantive impact on improving redress for the most vulnerable consumers who organisations like ours are dealing with.

Our service

CAB provides a free, confidential, and independent service of information, advice, and advocacy. We work to empower people to resolve their problems and we use the insights gained from our work with clients to advocate for fair policies and services for all New Zealanders.

Our service is provided from over 80 locations around Aotearoa New Zealand by our 2,500 trained CAB volunteers. In the past financial year, the CAB helped with over 360,000 client interactions across the range of issues that affect people in their daily lives. Our aim is to help people know their rights and feel empowered to act on them.



Every time a person seeks the CAB's help, we record what they sought help with and what we did in response; this gives us unique information about the issues affecting people in communities nationwide.

In the last year we have helped over 5,000 people with issues around budgeting and financial difficulties, over 3,000 people in relation to banking and other financial services and over 1,500 about other consumer financial issues. In addition to our in-depth service of information, advice and support around these issues, we also work very closely with many financial mentoring services, as well as community law centres. Many of our CABs host budgeting clinics run by financial mentoring services.

How to make Financial Dispute Resolution more effective

The discussion document notes that: "The Government is interested to understand how well New Zealand's financial dispute resolution system is working for consumers and whether there are opportunities for improvements. We are interested in ways to improve consumer awareness of and access to dispute resolution, as well as the effectiveness of schemes and the supporting regulatory framework."

We are concerned that the current framework for financial dispute resolution is not fit for purpose and is not serving the needs of consumers, and particularly the needs of the most vulnerable consumers. As the Consumer Survey¹ notes "awareness of various dispute resolution services is eroding over time", and that same survey shows that fewer than half of consumers feel there is adequate access to services to resolve disputes.

These findings are reflected in the small number of complaints received and resolved by the existing providers, which is concerning in light of the widespread issues that we and other community organisations see on the front line .

To truly improve the system for consumers, and particularly for the most vulnerable consumers we are proposing three key changes:

- 1) Remove competition from the financial dispute resolution schemes and move to have a single scheme (as they have done in Australia).
- 2) Fund the proposed financial legal rights service.
- 3) Adequately resource the community sector to support the most vulnerable consumers.

¹ <https://www.mbie.govt.nz/dmsdocument/26650-new-zealand-consumer-survey-2022-survey-findings> p.20



1) Removing competition from the Financial Dispute Resolution space

The current structure of having multiple schemes competing in the financial dispute resolution space is fundamentally flawed, as it places lenders not consumers at the heart of the system. The current system means that the dispute resolution schemes are competing for scheme members, which means that all their incentives are to be lender friendly, rather than consumer friendly. There is a clear disincentive for the schemes to be more consumer friendly, because it would create the risk of losing members to schemes seen as being more lender friendly.

As the Australian and New Zealand Ombudsman Association (ANZOA) stated in their submission into the review of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. 'ANZOA considers that 'competition' among dispute resolution schemes runs counter to the Benchmarks for Industry-based Customer Dispute Resolution (independence, accessibility, fairness, efficiency, effectiveness and accountability), which provide standards for industry-based dispute resolution in Australia and New Zealand.²'

The extensive review in Australia, *Review of the financial system external dispute resolution and complaints framework*³ (the Ramsey Review), looked at this issue in significant depth. That review identified a wide range of issues resulting from having multiple schemes including that "Allowing competition between schemes.... creates the risk that schemes compete in relation to benefits provided to financial firms, rather than on achieving better outcomes for consumers."

Among the many issues identified by the Ramsey Review was the increased confusion and complexity for consumers as a result of having multiple schemes. This is an issue that has been raised multiple times by consumer organisations. Many of the clients that we see have loans with multiple providers, which makes navigating issues particularly complex where those providers are members of different scheme. Having multiple schemes also significantly increases the complexity for consumer advocates working with clients, having to navigate different systems and process to help clients. This puts further strain on an already stretched and over capacity community organisations.

² <https://www.mbie.govt.nz/dmsdocument/362-australian-nz-ombudsman-association-submission-faa-review-pdf>

³ https://treasury.gov.au/sites/default/files/2019-03/R2016-002_EDR-Review-Final-report.pdf



The Ramsey Review concluded that the best approach for the Australian Government would be to abolish the multiple schemes and establish a singular new body that would deal with all complaints. As a result, the Australian financial complaints authority (AFCA) was established in 2018. Now both the UK and Australia, among others, have made the transition to single body dispute resolution frameworks, leaving New Zealand as an outlier.

Given the strong view by consumer organisations, who are working with the clients who are in most need to help, and the international evidence about the flaws of having multiple competing schemes we recommend that New Zealand removes competition from the financial dispute resolution schemes and move to have a single scheme

2) Fund the proposed financial legal rights service

Even if the accessibility of financial dispute resolution increases, it is still a significant ask for vulnerable consumers to use a dispute resolution scheme. The community sector has come together to propose the creation of a pilot financial legal rights service through Community Law Centres Aotearoa. This proposal has come out of long-term concern about the level of harm being caused by problem debt and the need for greater support for consumer advocates in addressing that harm.

We anticipate that such a pilot, among many other benefits, would build the confidence and capability of community services to identify complaints, access dispute resolution and engage effectively with the process. It also has the potential to improve the accountability of dispute resolution, where legal expertise might be more available to review preliminary decisions from dispute resolution staff against other decisions and the complainant's rights.

3) Adequately resource the community sector to support the most vulnerable consumers

Effective financial dispute resolution should be seen within the wider context in which it operates, which is the wider effectiveness of the consumer protection sector as a whole. Many borrowers are not well placed to understand and act upon their rights without information and support from consumer advocates. For borrowers there is a significant imbalance of power which makes taking action against a lender or disputing a decision or action can be extremely challenging, which is where it is essential that there is a sustainably funded and effective consumer protection sector.

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Privacy of natural persons