

Submission on discussion document: *Effective financial dispute resolution*

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Responses to discussion document questions

Issue 1: Consumer awareness of and access to dispute resolution

1 *Do you think there is a problem with low consumer awareness and access to dispute resolution?*

We agree that there is low consumer awareness of dispute resolution schemes and access to them. People often don't know that there is an issue with their loan and how to deal with it. Clients may come into our CLCs with an issue related to their lending (for example they don't understand the fees they have been charged, or the car they purchased under finance has broken down), and they do not realise they have grounds for a complaint under the CCCFA. Sometimes, the lender has not sufficiently notified the client about the option of going to a dispute resolution scheme, because that detail is buried on the lender's website or in documentation.

2 *Do you think the recent increase in the volume of disputes indicates better awareness and access to the schemes?*

There are likely a number of reasons for an increase in complaints to dispute resolution schemes. The increase may be because of better knowledge about consumer rights generally (including dispute resolution schemes), greater consumer protections for borrowers over recent years, increased bad behaviour on the part of some lenders, and/or cost of living pressures that have tipped borrowers into financial difficulty.

3 *What are the barriers for consumers in accessing financial service providers' internal complaints processes?*

We find that some lenders are better than others in responding to and resolving complaints internally in a timely manner. Others create barriers by drawing out timeframes for responding to requests for information, or drip-feeding information. Sometimes it appears as if the lender hopes the borrower will run out of steam and drop the matter. Our CLCS have found that where the client has provided a privacy waiver and asked for documentation to be sent to the CLC, some lenders have not accepted it or they are confused about what it means. This creates further work for CLCs and delay.

4 *What are the barriers for consumers in accessing dispute resolution schemes?*

Our experience is in supporting clients through the dispute resolution schemes or representing them in that process. CLCs have generally been directed to the right scheme if needs be. This extra step of having to be redirected can be a barrier to clients who do not have the time or inclination to continue to push through to another phone call or email to get to the right scheme and repeat their complaint.

We know that sometimes borrowers' complaints are not taken seriously or investigated fully and once a CLC gets involved, the complaint is progressed. We also know that, as mentioned above, sometimes borrowers don't know that there a complaint to be made unless they come to a CLC or another advocate to help them navigate their rights and the system.

5 *Do you have any specific examples or case studies of situations where consumers have experienced issues accessing a financial dispute resolution scheme?*

We refer to our comments above in relation to question 4.

Issue 2: Enhancing scheme effectiveness through improved oversight and accountability

6 *Do you think that current oversight and accountability mechanisms are sufficient to ensure schemes' effectiveness? Why/why not?*

No, we think that more can be done in this space. Our CLCs have found that they get different outcomes and experiences from the schemes. Our view is that consolidating the four schemes to one would be the best way to solve these issues.

7 *Do you think that the schemes are as effective as they could be? Why/why not?*

No, there are four schemes where there should just be one, as in the UK and Australia. This change would be one clear way to improve awareness of and access to dispute resolution for consumers, and their representatives. In addition, this would focus the work of a reporting and monitoring framework, and would give greater and consistent insight into the trends in complaints and possible policy responses to them.

We are of the view that further work is needed to make clear what schemes can award. Fair remediation where a lender has breached the CCCFA needs to be clearly outlined in legislation. In particular, the legislation should include a clear expectation that a borrower is at least put back in the position they were in before an unaffordable loan was approved. Consumers are often left with the burden of residual debt after the car from an unaffordable loan has been sold, for example. This is unacceptable from a consumer protection point of view.

8 *Do you agree with these criteria for assessing the options? Why/why not?*

The criteria are appropriate, but we think there should be specific reference to consistency of approach and fairness for consumers.

Status quo: Retain existing model and monitor the impact of aligning the schemes' rules

9 *Do you think that the new regulations will be sufficient to achieve the objectives set out above?*

No. There will still be scope for the Regulations to be applied differently across the schemes. We recommend moving from four schemes as the best way of achieving the objectives set out in the discussion document (improve consumer access, improve scheme effectiveness).

Option to address issue 1: Supporting consumer access and awareness of schemes

10 *Which of the options we have described above would be most effective to support consumers to resolve issues with their financial service provider?*

We are of the view that having one scheme would be the best way to support consumers.

We also encourage MBIE to progress all the options set out in the consultation document (paragraphs 40-50). We agree that there is room for *“more services that provide information, advice or navigation support to consumers (or those who support them such as financial mentors)”* and for *“providing clear steps and information for consumers to follow when they experience an issue or dispute”*. We also support a *“single front door”* approach (eg 0800 number) to streamline services if a shift to one scheme is not pursued.

We have met with Consumer Protection at MBIE, and also Minister Bayly, to propose a financial rights legal service as a unit of CLCA. There is simply not enough legal support for those working with consumers in the financial legal rights space. Organisations supporting financial mentors have expressed a need for legal support for financial mentors and we have worked together to develop a solution. Some CLCs have lawyers and caseworkers that have expertise in the CCCFA, but others don't. CLCs do not currently have the capacity to service the level of need across the country. We believe a small unit of three (2 lawyers and a policy lead) would be sufficient to support financial mentors and CLCs that need it with legal advice, some representation work, and law reform. We **attach** a copy of the proposal. A financial rights legal service sits squarely within option 1 and the objective of supporting consumers to use the schemes. We anticipate that the financial services reform, particularly relating to affordability assessments, will create more work for financial mentors and CLCs. We recommend that MBIE work with CLCA to find funding for this service.

CLCA also supports FinCap's submission for increased funding for financial mentoring services.

11 *What are the likely costs of implementing these options?*

We can only comment on the cost of the financial right legal service, which we estimate at \$380,000 per annum. We think 2-3 years is an appropriate period of time for a pilot.

We also believe that one scheme would be more cost efficient than the current cost of four.

12 *Should these options be led by government, or the schemes themselves?*

The Government should direct the schemes to consolidate into one. This should not be up to the schemes themselves to decide. The scheme could lead the work on the community awareness and engagement work set out in the discussion document, with input from stakeholders who are currently working with consumers. This work should build on existing relationships and include reaching those who are currently underrepresented in complaints.

The relationship with a financial legal rights service would ideally sit with MBIE.

13 *Are there any other approaches that would improve consumer access to and awareness of dispute resolution options?*

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Option to address issue 2: Enhancing scheme effectiveness through improved oversight and accountability

14 *Do you think that there is a need for dispute resolution schemes to be more accountable?*

Yes. As mentioned above, we would prefer there to be one scheme rather than four. Otherwise, we are in favour of all the measures outlined that create greater accountability, monitoring, reporting and consistency across the schemes.

15 *Do you think there are issues with the performance or effectiveness of the schemes?*

Refer to our answer to question 14.

16 *Do you think there should be consistency in how the schemes carry out independent reviews? What would be the best approach for achieving this consistency?*

Refer to our answer to question 14. If the recommendation to move to one scheme is not progressed, we recommend that all schemes be reviewed by the same independent reviewer, with the same terms of reference, and with a public report.

17 *Do you think government should set further scheme rules? If yes, what areas of the scheme rules should be set by government?*

We agree with FinCap's suggestions in its submissions for further matters that should be considered for minimum standards.

18 *Do you think it is necessary for government to make changes to ensure effective and impartial governance of the schemes? If yes, what changes would best meet this aim?*

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19 *Do you think the schemes should have to report against performance targets or standards? If yes, how should these standards be reported and what metrics should be used?*

Yes we agree in principle with schemes reporting against performance targets/standards. We agree with FinCap's suggested topics for reporting.

20 *Are there any risks or unintended consequences associated with the options we are considering?*

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21 *Will any of these proposals result in significant additional costs for the schemes, scheme participants and/or consumers? If yes, please describe the magnitude of these costs.*

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22 *Are there any other ways to improve schemes' accountability and effectiveness?*

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Other options

23 *Do you agree that the impact of regulations to align scheme rules, along with any other improvements proposed in this document, should be assessed before considering changes to the current scheme model? Why/why not?*

We do not agree with the proposal to align scheme rules rather than move to a one-scheme model. There will still be scope for the Regulations to be applied differently across the schemes. Progress towards addressing the issues identified in the consultation would be achieved with moving to one scheme.

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Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?

Some debtors are not engaging at all with a disputes resolution service for any number of reasons, and they end up as the subject of an application for judgment by default in the District Court. For example, they have not understood the nature of the proceedings filed against them, or have not had the confidence, support, or means to navigate the daunting, costly and time-consuming processes of the District Court. There may well be a dispute within the background to the application, but it is embedded in the documentation and not brought to light in that process. We understand that the Disputes Tribunal and District Court are looking at whether the Disputes Tribunal can make use their investigatory processes and existing jurisdiction to consider some of these cases. While not strictly within the scope of this consultation, this is an important part of the wider financial services and dispute resolution landscape. We support this option as a way of further facilitating access to justice and consumer protection, and recommend MBIE work with the Ministry of Justice to explore it further.

Other comments