From the Desk of Director Andy Semple

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INTERIM REPORT REVIEW INTO THE EXTERNAL DISPUTE RESOLUTION & COMPLAINTS FRAMEWORK

SUBMISSION BY THE ASSOCIATION OF SECURITIES AND DERIVATIVES ADVISERS OF AUSTRALIA - ASDAA

The Association of Securities and Derivatives Advisers of Australia (ASDAA) appreciates the opportunity to provide these comments to the Expert Panel in respect to the Interim Report review into the current Financial System External Dispute Resolution (EDR) and Complaints Framework.

ASDAA represents the interests of its members, who are from the Securities and Derivatives advisory profession. Its members are comprised of individuals who are either directors, or employees, of small to medium sized firms which hold an Australian Financial Services Licence (AFSL), but are not a Participant Member of the Australian Stock Exchange.

ASDAA has a strong desire to see that investor's receive sound investment advice and the appropriate investor protection. ASDAA members rely on the ongoing trust of their clients, and on the integrity of the Australian financial markets, for their livelihood. Without both, our clients wouldn't participate in the markets and trade in securities, exchange traded options, and other listed financial products.

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DRAFT RECOMMENDATIONS TO POSITION THE FRAMEWORK FOR THE FUTURE

DRAFT RECCOMENDATION ONE

A new industry ombudsman scheme for financial, credit and investment disputes

It is the opinion of ASDAA that the creation of a monopoly EDR body is a backwards step, especially for the Financial Service Providers (FSP's) who will be compulsory financial members of such an EDR monopoly, and consumers who will rely on such a scheme to adjudicate disputes.

At best the recommendation can be described as a "Fawlty Towers" solution. It is apparent the Expert Panel has accepted hook, line, and sinker FOS's obvious power grab to force the merge of CIO into FOS.

It is ASDAA's preference that CIO and FOS are left alone to operate as completing EDR bodies.

ASDAA is not aware of any monopoly created that has demonstrated that it is cheaper, more efficient, less complex, more accountable and transparent in the absence of competition. Service does not improve if there is only one player in the market.

We appreciate that there are currently only two EDR bodies that are presently active, FOS and CIO, but at least they can each benchmark themselves against each other. This benchmarking actually produces better outcomes for consumers and FSP's because it forces the EDR's to adopt best practice and improve their service offerings. As the Interim Report notes on Page 11, FOS gets 75% of its revenue via dispute fees, whilst its competitor CIO gets 70% of its revenue via membership fees. This is a very stark difference in funding, which only competition can bring about. Remove competition and just watch the single EDR percentage of revenue ultimately become 100% from dispute fees.

It's accepted economic theory that when firms have a monopoly power they charge prices that are higher than can be justified based upon the costs of production, and prices are higher than they would be if the market was more competitive.

For example – look at ASIC's companies registry business.

The cost to ASIC of operating the registry is less than $6 million a year, yet this bears no resemblance to how much it charges businesses and the public for using it – about $720 million annually, a return to ASIC of more than 10,000%[1]

The bottom line is that when companies have a monopoly, prices are too high and production is too low. There's an inefficient allocation of resources which will lead to lower levels of service.

[1] ASIC 'screwing' small companies with registry fees. The Australian December 23 2016

So why would the Expert Panel conclude a monopoly EDR body would act any differently to a body or corporation that monopolises the companies registry, telecommunications, or the banking spaces for example?

The fact that FOS, a current EDR body, recommended in their initial submission (Page 23) the merger of CIO **into** FOS smacks of opportunism and rampant self-interest. If the outcome sought is to further entrench institutional bias then let FOS takeover CIO.

If one follows the logic put forward by FOS's argument on why they should absorb CIO then the same argument could be made that the big four banks should do the same and merge forming one big "mega" bank, but we all know that shouldn't be allowed to happen because a big "mega" bank monopoly would be a bad outcome for everyone.

Since monopolies are the only provider, they can set any price they choose. That's known as price-fixing. They can do this regardless of demand because they know the FSP has no choice but to pay whatever membership and dispute fees they deem fit.

The problems with monopolies also go beyond the economic effects. A single EDR will also have considerable political influence, and the ability to "capture" the political and regulatory process over time. This allows the sole EDR to tilt the legal and regulatory processes against any potential threat to its market power, and to bring about changes that further enhance the revenue it earns.

Furthermore, a forced merger of CIO into FOS would mean FSP's who are dissatisfied with service levels or costs would have nowhere else to go. That's unhealthy and a poor outcome.

If there is to be any single EDR body, then it should be statutory tribunal established under legislation. For Government and ASIC to bestow such market and jurisdictional power to an unlisted public company limited by guarantee trading as a monopoly EDR scheme is just mind boggling.

Should the prevailing recommendation of the Expert Panel be accepted, then at the very least the merger of FOS and CIO must be a merger of equals, not merely a paper and pen exercise for FOS to erase their competitor CIO from history. FOS could learn a lot from how CIO assesses disputes, especially how CIO ensures that their dispute Case Managers are experienced individuals from the investment space they assess.

In responding to the remaining Draft Recommendations, ASDAA will assume the Expert Panel's Recommendation One is accepted and going forward only one EDR body will exist.

DRAFT RECCOMENDATION TWO

Consumer monetary limits and compensation caps

It is the opinion of ASDAA that increasing of monetary limits and compensation caps will lead to significantly higher PI Insurance premium costs to all FSP's.

It stands to reason; the greater amount of potential compensation sort by a consumer will lead to higher PI insurance costs to FSP's. This basic axiomatic principle seems to have escaped the Expert Panels consideration.

The Expert Panel's acknowledgement about the concerns of smaller firms (6.15 & 6.16) would seem to be hollow because should draft recommendation two alone succeed, it would severely disadvantage smaller FSP firms in comparison to large FSP firms (like the Banks and the Insurers) who can easily absorb higher PI premiums, and are in a position to pass these costs off to their consumer base.

The interim report correctly notes the current monetary limit of $500,000 and the compensation cap of $309,000 but nowhere in this interim report is there a clear indication of what the higher limits and caps would be raised too.

The limits and caps, should they be increased, shouldn't be subject to indexation but reviewed on the same five year cycle in which ASIC reviews the EDR.

DRAFT RECCOMENDATION THREE

Small business monetary limits and compensation caps

ASDAA has no specific comment to make regarding recommendation three, other than the Expert Panel should consider our comment pertaining to recommendation two. We have no opinion on what the limits and caps should be.

DRAFT RECCOMENDATION FOUR

A new industry ombudsman scheme for superannuation disputes

ASDAA has no specific comment to make regarding recommendation four.

DRAFT RECCOMENDATION FIVE

A superannuation code of practise

ASDAA has no specific comment to make regarding recommendation five and supports the call for the superannuation industry as a whole to develop and abide by a superannuation code.

DRAFT RECCOMENDATION SIX

Ensuring schemes are accountable to their users

If FSP's and their advisers are to be forced to join a single new (monopoly) EDR scheme, then ASDAA considers an independent EDR oversight tribunal should be created as a Government statutory body that also has the power to investigate and annually review the new EDR scheme. EDR schemes should also be made to report to a parliamentary committee, as the four big banks recently did.

It is unacceptable that the current EDR's, FOS and CIO, write their own reviews which they submit to ASIC every five years.

If allegations of misconduct were to be levelled against an EDR, which current entity would be responsible for conducting such an investigation? If you thought it would be ASIC you'd be wrong.

While FOS and CIO are subject to regular reviews by ASIC every five years, ASIC have said on the record at a March 2016 hearing of the Parliamentary Joint Committee on Corporations and Financial Services that FOS, and I quote from Mr Warren Day, Senior Executive Leader for Assessment and Intelligence at ASIC that "***FOS is not, however, in a position to be scrutinised by the regulator***."

In an article published 1 July 2016 by the IFA, IFA further quoted Mr Day, "***We don't investigate FOS in that respect. We oversee their external dispute resolution activities and schemes, but we don't investigate matter by matter***." When Mr Day was pressed by Senator Deborah O'Neill on who would conduct an investigation into FOS, Mr Day is quoted in replying "***I would expect the Ombudsman himself***."

Pardon? So a senior figure in ASIC thinks it's perfectly okay for the FOS Ombudsman to conduct a review of the very service he's responsible for?

Apologies to the Expert Panel for this crude analogy but that's like asking a drunk if he thinks he's had too much to drink – the answer is always going to be "*No. I don't think I have a problem.*"

It's an incredibly inappropriate judgement that the FOS Ombudsman himself should be the one to review the body they are responsible for, and that a senior person within ASIC can suggest such should raise significant concerns within the senior management ranks of ASIC, and the Federal Minister responsible for ASIC.

ASIC's attitude only further reinforces ASDAA's call for the prompt establishment of an Independent EDR Oversight Tribunal.

No one is above the law, and that includes FOS, CIO, or a newly created EDR body.

Whist this Independent EDR Oversight Tribunal would be a Government statutory body, it could easily be funded 100 per cent by being included as part of the FSP's annual EDR membership fee.

ASDAA notes, there were 5,352 FSP's, and 9,396 Authorised Credit Representative members registered at 30 June 2015[2]. Using a theoretical fee of $50+GST charged annually as part of the annual membership fee would raise approximately $737,000.00 to fund a three person tribunal panel, for example, along with some back office support for an Independent EDR Oversight Tribunal.

In comparison to FOS's $2.66 million[3] in benefits paid to 19 Key Management Personnel, a newly established Independent EDR Oversight Tribunal would be comparatively well funded by the industry members.

[2] Page 11 of the FOS General Purpose Financial Report for the year ended 30 JUNE 2015
[3] Page 39 of the FOS General Purpose Financial Report for the year ended 30 JUNE 2015

ASDAA supports the establishment of an independent assessor (6.62) and its various responsibilities (6.63 & 6.64).

DRAFT RECCOMENDATION SEVEN

Increased ASIC oversight of industry ombudsman schemes

FOS and CIO are not judicial bodies. They are public companies limited by guarantee which derive their jurisdictional powers from ASIC (Regulatory Guide 139), and forms a contract with its compulsory FSP members via their respective Terms of Reference.

ASIC in effect controls CIO and FOS' Terms of References, and CIO and FOS are not independent of ASIC.

As administrative bodies, CIO and FOS are not subject to the Freedom of Information (FOI) regime. There is no way for anyone to shine a light on its internal processes. (Being a private organisation, there has always been some question as to whether or not decisions by FOS and CIO should be subject to judicial review).

A good place for ASIC to start would be to ensure EDR schemes ARE subject to an FOI regime.

ASIC should also have the power to question an EDR scheme on whether they are receiving an inordinate amount of revenue from dispute fees. FOS especially has form in this area, as it receives 75%[4] to 80% of its revenue from dispute fees.

FOS gets to make even more money from the FSP if the dispute goes past the "Case Management" stage an on to FOS's "Decision" stage.

For the year ended 30 June 2015, FOS' total revenue was approximately $46.5 million[5], of which approximately $37.4 million (or 80%) came from dispute resolution fees.

Actual compulsory FSP membership fees accounted only for 9% of FOS's year ended 30 JUNE 2015 revenue.

Either way, FOS wins financially to the detriment of the FSP if the dispute lasts a long time.

For a non-profit, FOS certainly does quite well financially.

ASIC should also ensure the EDR doesn't expose its financial members (FSP's) to unreasonable terms. Our members have also shared their opinions with respect to FOS's **13.3 TOR clause** regarding Defamation protection.

The clause strictly prohibits a FSP from instigating defamation action of any kind against a consumer in respect of allegations made by the consumer about an

[4] Page 11 of the Expert Panel Interim Report 6 December 2016
[5] Page 30 of the FOS General Purpose Financial Report for the year ended 30 JUNE 2015

adviser or their FSP to the EDR. Again, this is why our members feel the FOS dice is so firmly loaded against them because the same prohibitions are **not** restricted to the consumer who instigated such action against the FOS member. The prohibitions even include any employee, agent or contractor of the FSP member.

ASDAA believes this could have a significantly detrimental impact on an adviser or an FSP's reputation, which is founded on trust and credibility.

Whilst ASDAA agrees that certain information provided by a consumer to FOS as part of their dispute be subjected to qualified privilege so that the consumer can confidentially put their matter before the EDR, we strongly object to the fact that the complainant is freely able to make defamatory statements to the general public, the media, and especially on social media platforms against an adviser and their FSP.

Disputes should at all times be handled in a civil matter and its ASDAA's position that should it be found during the dispute process that an adviser, or their FSP, are defamed either in or outside the EDR process then they should be allowed to take external legal matters to defend their professional reputations. Better still, the EDR should inform the complainant that unless they immediately cease and desist their defamatory remarks then their case against the FSP will be closed without prejudice.

One of ASDAA's members was recently in receipt of dreadful defaming allegations made against him by a former disgruntled client. The complainant in written correspondence to FOS that was cc'd to the adviser used words like "*crooked, corrupt, low life, dishonest, liar, incompetent, inept, criminal*" in describing the adviser.

Fortunately for the adviser in question, whom FOS found in his favour, the defaming allegations about his character were noted only in the correspondence to FOS and to the adviser.

Fortuitously for the adviser, nothing was repeated (to his knowledge) to the public or on social media.

ASDAA asks the Expert Panel again, "***Surely it isn't an EDR's role to embolden complainants to freely shred to pieces an adviser or their FSP's reputation during and even after the dispute process***?"

Furthermore, it should be incumbent any new EDR to ensure the consumer who lodges a complaint keeps all information pertaining to a dispute confidential. If the FSP is obligated to keep confidentially then so should the complainant.

DRAFT RECCOMENDATION EIGHT

Use of (expert) panels

It is ASDAA's position that the new EDR body should ensure that the Case Managers who are assigned to assess a Securities/Stockbroking disputes hold a relevant University degree and have also had at least three years relevant work experience in the Securities/Stockbroking industry.

It seems only fair that under the Governments, *Raising Professional Standards of Financial Advisers* draft legislation that the very people who will make the serious decisions regarding a Securities/Stockbroking dispute are on the same qualified level as Securities and Derivative advisers/Stockbrokers.

Compulsory FSP members need to have the faith that the EDR individuals assigned to case manage a Securities/Stockbroking dispute also have relevant practical experience in the area they will be assessing.

If the single EDR body needs to hire such expertise then they should be made to hire in the expertise (Using FOS's revenue data, they received $46.5 million in revenue the year ended 30 June 2015, ASDAA is of the opinion that they can fund the employment of at least two or three individuals who have the required Securities/Derivatives experience).

ASDAA is aware of many well qualified semi-retired Securities and Derivative Advisers/Stockbrokers who would appreciate the opportunity to be employed full-time or even part-time in such a role.

ASDAA also would like to see the new EDR appoint at a minimum three suitably qualified individuals to sit on the Securities/Stockbroking Panel.

It is ASDAA's opinion (from our member experience) that FOS is dysfunctional in that inexperienced and unqualified Case Managers form opinions on what experienced and qualified Securities and Derivatives professionals should have done with the added benefit of hindsight. Just because the FOS Case Manager has a Law degree doesn't equip them to make judgements on what a qualified Securities and Derivatives professional standard of advice and care should be.

Just imagine the outcry if this happened in other professions say Medicine or Accounting?

Law degrees do not include training in Medicine, Accounting or Securities and Derivatives Advisory.

Given the importance of FOS' dispute function, as an example, ASDAA expects them to be leading the way with a team of Case Managers who actually have had practical hands on experience in the Securities/Stockbroking industry. Sadly FOS, in ASDAA's opinion, is not leading the way. Only one person at FOS appears to possess the qualification - FOS' Stockbroking Panel member Mr Matthew Wigzell.

ASDAA notes the following:

> Of the 8 FOS Board members - **none** have any experience working in the Securities/Stockbroking industry;
>
> Of the 7 FOS Senior Leadership Group - **none** have any experience working in the Securities/Stockbroking industry;

Only two individuals are named on FOS' Stockbroking Panel[6]:

[6] Page 18 of FOS annual Review 2015 2016

Mr Matthew Wigzell: Head of Wealth Management, Private Clients at ASX Participant Paterson's;

Mr Alex Knipping: Portfolio Manager with fund manager Intrinsic Investment Management.

Inexperienced FOS Case Managers can presently award monetary compensation damages of up to $309,000. That is getting close to the sort of monetary damages awarded by Supreme Court judges.

Unlike FOS, Supreme Court judges **are** bound by the law, the rules of evidence, contract law, and their prior decisions. Supreme Court judges just can't do whatever they like, and their decisions are subject to appeal.

With respected to FOS' TOR 8.1, it is startling that FOS **is not bound by any legal rules of evidence.**

An adviser, or their FSP, affected by an adverse FOS decision in effect has no right of reply, and this is not fair. A FOS decision can ruin a FSP and adviser's reputation, the FSP may lose their ability to get PI insurance, lose their AFS licence, and/or be forced into administration or liquidation of the business.

All of that may happen because the FSP has no right of appeal or a review of an adverse FOS Determination.

Even murderers get the right to appeal their sentences.

So it is important that should a new EDR body be established, as recommended by the Expert Panel, they at least ensure FOS's current short comings in the area of capable assessment aren't repeated with the new EDR body.

Those who do not learn from history are doomed to repeat it.

It is also the perfect opportunity that the new EDR scheme at least has a means for an FSP and their Adviser have a right to appeal.

The current system setup by the government denies an adviser and the FSP to their constitutional right to a fair trial and fair hearing. See attached link for further details:

https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Fairtrialandfairhearingrights.aspx

Australia is a party to seven core international human rights treaties. Fair trial and fair hearing rights are contained in article 14 of the International Covenant on Civil and Political Rights (ICCPR).
By adopting an EDR structure the government is effectively circumventing its obligation to ensure that everyone has a right to fair trial and fair hearing as this applies to cases before courts and tribunals.

DRAFT RECCOMENDATION NINE

Internal dispute resolution

It is ASDAA's position that the last thing any FSP needs is more bureaucratic red tape and this recommendation delivers more red tape in spades.

FSP's are made up from "one man band" firms through to massive global investment/insurance conglomerates so there is no "one size fits all" IDR scheme to follow, as no one business is alike. There are small firms who deal in highly complex financial areas like Derivatives, while some large firms deal in relatively easy to understand financial areas like basic deposit products.

All AFS Licensees, regardless of their size, have the following Condition noted on their license:

> **Compliance Measures to Ensure Compliance with Law and Licence**
> *The licensee must establish and maintain compliance measures that ensure, as far as is reasonably practicable, that the licensee complies with the provisions of the financial services laws.*

And all licensees are required to maintain a ***breach and complaints registers***, which must be reviewed by the FSP's external Compliance Auditor.

Licensees are already obligated to inform ASIC should a significant and material breach occur i.e. Fraud.

Under RG165, all licensees must have in place a process to try and resolve disputes internally. ASIC sensibly have left it up to the particular licensee to self-determine what their IDR process is. **The last thing any FSP wants is for an ASIC bureaucrat to determine what the content and format of IDR reporting should be**.

Moreover, both FOS and CIO also have the power to report to ASIC any form of "systemic" risk they may determine as a FSP goes through their respective EDR process. So any further bureaucratic impost is certainly not welcome.

Furthermore, if it's the Expert Panels concern that because there is a lack of publically available IDR information that it could possibly lead to FSP's being able to hide from scrutiny any internal shortcomings let ASDAA explain to the Expert Panel the three contemporaneous external audit processes each and every licensee, regardless of their business size, face annually.

Each FSP that holds an AFS License must;

1. Be financially audited by an ASIC noted Financial Auditor.
2. Have and external compliance review that is audited by a suitably qualified External Compliance Auditor.
3. Obtain a PI insurance policy with a min cover of $2.5 million which will only be considered by a reputable PI insurer once they have obtained a current copy of both the Financial and Compliance Audit.

All of these costs are 100% borne by the FSP. ASDAA would like to note that the costs of these audits are substantial in nature to the FSP, and especially to the

small business FSP's, who has no capacity to pass the cost onto their clients in the current marketplace.

For example, an FSP with revenue in the vicinity of one million dollars per annum would be paying a financial audit fee of approximately $15,000, a compliance audit fee of approximately $15,000 and PI plus Director's insurance premiums of approximately $35,000 per annum (These PI fees are significantly higher for FSP's who had even minor EDR settlement payouts by their insurer). They would also face a substantial Accountants cost because they must provide special purpose accounts for the FSP's Auditor.

ASDAA can't see why a licensee's privacy should be waived so that ASIC can save in a database some more insignificant statistical information. ASIC already have the power to walk into any licensees place of business and demand the FSP turn over any requested information should the need arise.

What matters here are hard results. If a licensee and a complainant can come to an agreeable settlement via IDR then that's the best outcome, and is it then really anyone else's business to know what happened? If IDR fails, then that's what EDR schemes are set up for – to hopefully make an independent unbiased complaint determination.

As for IDR statistical info, if a consumer has complained to the EDR and they are now assessing it, then statistically the IDR process was 100% unsuccessful.

As for ASIC publically publishing FSP details, this should only ever occur under the most dire of circumstances. Should an FSP IDR fail in the opinion of a subjective assessment from an ASIC or EDR bureaucrat and they are publically shamed that would represent a most grievous denial of the FSP and advisers natural justice.

It's also commonly accepted knowledge by industry that because there is a free EDR scheme to consumers; it basically makes the IDR process redundant.

DRAFT RECCOMENDATION TEN

Schemes to monitor IDR

It is ASDAA's opinion that recommendation ten is an excessive overreach to allow any EDR scheme to require a FSP to register their IDR with them and for the EDR to monitor its progress. This just amounts to further layers of unnecessary and intrusive bureaucratic red tape on the FSP that helps no one.

It will also provide another excuse for monopoly EDR body to easily increase their fees – fees the FSP only pays.

DRAFT RECCOMENDATION ELEVEN

Debt management firms

ASDAA has no specific comment to make regarding recommendation eleven and supports the call for the debt management firms to be required to be a member of an industry ombudsman scheme and the requirement that they also hold a license to conduct a debt management business.

ASDAA has two specific recommendations the Expert Panel need to seriously consider and action regardless of whether there is a single EDR body created or the status quo remains unchanged.

ASDAA RECCOMENDATIONS THE EXPERT PANEL SHOULD CONSIDER

ASDAA RECCOMENDATION ONE

Modest complaint registration fee

The shared opinion of ASDAA members is that FOS is a highly aggressive consumer advocate, and not an independent external dispute resolution body, as they claim to be. It is the shared opinion of our members that FOS is no friend of Securities and Derivatives advisory/Stockbroking profession.

Our members say this because of FOS' inability, or unwillingness, to toss out the most obviously frivolous and/or vexatious disputes levelled against them and the FSP's they work for.

The distrust from Securities and Derivatives professionals begins when a complaint can be lodged about an adviser or FSP at no cost to the consumer.

It is ASDAA's position that the Expert Panel considers anyone who makes a formal complaint about an adviser, and/or an FSP to an EDR body be required to pay a modest complaint registration fee of at least $250 + GST.

According to the FOS 2015/2016 annual review[7], 34,095 disputes were received by FOS.

By applying ASDAA's theoretical dispute registration fee of $250 + GST, this would have seen FOS raise approximately $8.5 million + GST, which FOS could then apply as an offset against the dispute fees charged to the FSP's, thus having the desired effect of lowering the dispute cost to FSP's.

A modest complaint registration fee would also go a long way to ensure the consumer isn't lodging a **frivolous or vexatious complaint** against an adviser or FSP. Should the consumers complaint end up being upheld by the EDR, then the registration fee would be refunded along with the adjudicated monetary compensation awarded.

As it currently stands however, it is entirely unfair to the FSP member that they are 100 percent exposed to the cost of the EDR's complaint fee structure.

It is not unreasonable for the complainant to have some cost exposure to the dispute process, especially if they are seeking a significant monetary compensation figure.

Again, we come back to the missing central tenet of fairness.

[7] Page 54 of FOS annual Review 2015 2016

Maybe it would be appropriate for the EDR to charge such a modest complaint registration fee when the consumer is seeking **more than $10,000 in monetary compensation from a FSP?**

ASDAA isn't averse to imposing a reasonable threshold and ask the Expert Panel to consider the merits of this recommendation.

Recently, one of our members had a significant FOS complaint resolved in their favour, yet the direct financial cost to our member's FSP was $5,665.00 in FOS fees. (This does not include the significant dollar cost incurred by the FSP, the adviser, and the insurer in responding to the complaint that extended over a 10 month period).

So even when a FSP wins, they still lose with FOS, and if a new EDR body is to be born, then at least let it come about without the baggage of FOS's dispute handling process.

Now imagine if a small FSP had to deal with half a dozen or so claims made against them each year with them all being resolved in their favour – that's north of $33,000 in FOS fees alone and what small business can afford that?

There are well over 5,500 AFS Licensee's[8], with a significant proportion of them being small family owned businesses. Not every FSP is a subsidiary of a large Bank, Insurance, or Stockbroking company with its own unlimited internal resources and the financial capacity to easily settle any number of EDR disputes.

This places FSP's in the ATO's Small Business Category, (e.g. those with a turnover of less than $2 million dollars), at a significant disadvantage in the EDR process.

As already stated, a modest complaint registration fee would help ensure that EDR dispute fees that an FSP must pay, regardless of the dispute outcome, are at least lower than what they presently are.

ASDAA notes from the comparison table of the five international jurisdictions[9] noted that Singapore's EDR scheme isn't completely free to consumers and makes consumers pay **$50 Singaporean** at the adjudication phase. ASDAA gathers the Singaporeans do this to help stamp out frivolous or vexatious complaints and to help provide downward price pressure on fees Singaporean FSP face.

Insisting the EDR process must be "free to consumers" is an progressive ideological position adopted by aggressive consumer advocates and needs to be challenged and changed for the reasons noted in this section.

[8] As of 1 July 2016, there were 5,517 AFS Licensees recorded by ASIC

[9] Page 38 of Expert Panel Interim EDR Report

ASDAA RECCOMENDATIONS THE EXPERT PANEL SHOULD CONSIDER

ASDAA RECCOMENDATION TWO

Reduce the statute of limitations to make a complaint on the grounds of "inappropriate advice" to 3 months from the date of advice given

What ASDAA members specifically would like from their EDR body is fairness. Anyone who invests their money into listed equities, whether they received personal advice or general advice, needs to understand and accept that the value of their equity portfolio can not only go up in value but that it can decline in value. This point is highlighted in writing, and verbally, to the clients of FSP'S before commencing any market trading activity.

Market risk obviously does exist, but the current EDR complaint structure does not seem to be able or willing to differentiate between "market risk" and "inappropriate advice" when accepting complaints to pursue.

FOS, for example, encourages a consumer (a disgruntled investment client) to make a complaint of economic loss on the basis of "inappropriate advice" within **6 years** of when the consumer **first became "reasonably" aware** of such "economic loss."

This extended time period is grossly unfair to the adviser and their FSP, as it enables clients to "test" their adviser's recommendation over a significant length of time (6 years), and if the investment falls in value it can be pursued as "inappropriate advice" by a client years after the advice has been received and acted upon.

It is ASDAA's position that the Expert Panel consider reducing the statute of limitations to make such a complaint of "inappropriate advice" from the ***Investments and Advice*** **product line** to expire **3 months** after the date of purchase of a listed equities and derivatives transaction.

Clause 15.2 of FOS' Terms of Reference (TOR) should be revised to include the above mentioned amendment. **Should a new single EDR body be established then it is vital this amendment is incorporated into the new EDR TOR**.

It is extremely prejudicial that a consumer can have virtually an uncapped statute of limitations to make a complaint on the grounds of "inappropriate advice."

It should also be acknowledged that there is no legislative "Cooling Off" period for anyone who buys and sells listed securities and derivatives.

ASDAA knows of no other profession that faces such a generous statute of limitations. It is unique to all FSP's.

There is a saying in the broader Securities/Stockbroking industries that if a "*client wants a guarantee then they should buy a toaster.*" Preservation of capital in the stock market is not guaranteed and this is generally well understood and acknowledged by the vast majority of investors. By allowing consumers to lodge a complaint about economic loss on the pretence of receiving "incorrect or

inappropriate advice" as determined by an EDR Case Manager is implying that such a guarantee does in fact exist.

Keeping with the toaster analogy, even consumer products like toasters don't come with a 6 year money back guarantee should they breakdown.

ASDAA is very disappointed the Expert Panel has given ZERO consideration in their interim report on how to help reduce red tape and lower the cost to the FSP's. Everything presently on the table for discussion represents increased red tape and will put significant upside pressure on higher EDR membership and dispute fees.

The Government of the day, ASIC, and ASDAA all want to see consumers receive good advice, but good intentions can often lead to unintended consequences and the failure to achieve anything useful.

ASDAA appreciates the opportunity to provide this Submission to the Expert Panel on these significant EDR reviews.

We would be happy to discuss any issues arising from our submission, or to provide any further material that may assist the Expert Panel.

Should the Expert Panel or the Treasury department require any further information, please contact myself on (07) 5657 3620 or email andy@asdaa.com.au

Yours Sincerely,

Andy Semple
B.Com., B.App.Sc., MEASDAA
Director

Media Articles the Expert Panel may find of interest

ASIC 'screwing' small companies with registry fees. Published 23rd December 2016 in the Australian.

http://www.theaustralian.com.au/business/economics/asic-screwing-small-companies-with-registry-fees/news-story/f1c9c00cc4f9d701f7d17d8434b4205d

Increasing FOS surveillance. Posted 1 July 2016

http://www.ifa.com.au/opinion/16484-under-surveillance

Calls for Financial Ombudsman Service to be disbanded over issues in Goldie Marketing court case. Posted 16 March 2016

http://www.abc.net.au/news/2016-03-16/calls-for-financial-ombudsman-service-to-be-disbanded/7250894

The questions the Financial Ombudsman needs to answer. Posted 1 April 2016

http://www.abc.net.au/news/2016-04-01/long-the-questions-the-financial-ombudsman-needs-to-answer/7292044

A copy of each article is attached to this submission.