

This is the submission by FOS to the Senate's Inquiry into competition within the Australian banking sector. The submission has been prepared by the office of FOS and does not necessarily represent the views of the Board of FOS.

The submission draws on the experience of FOS and its predecessors in the resolution of disputes relating to financial services

### **Information about FOS**

FOS commenced operations on 1 July 2008. It is an independent dispute resolution scheme that was formed through the consolidation of three schemes:

- the Banking and Financial Services Ombudsman ("BFSO");
- the Financial Industry Complaints Service ("FICS"); and
- the Insurance Ombudsman Service ("IOS").

On 1 January 2009, two other schemes joined FOS, namely:

- the Credit Union Dispute Resolution Centre ("CUDRC"); and
- Insurance Brokers Disputes Ltd ("IBD").

FOS is an external dispute resolution ("EDR") scheme approved by ASIC.

Membership of FOS is open to any financial services provider carrying on business in Australia including providers not required to join a dispute resolution scheme approved by ASIC. Replacing the schemes previously operated by BFSO, FICS, IOS, CUDRC and IBD, FOS provides free, fair and accessible dispute resolution for consumers unable to resolve disputes with financial services providers that are members of FOS.

Members of BFSO, FICS, IOS, CUDRC and IBD are now members of FOS. The members of those schemes included:

- BFSO – credit providers, mortgage brokers, payment system operators, Australian banks and their related corporations, Australian subsidiaries of foreign banks and foreign banks with Australian operations;
- FICS – life insurance companies, fund managers, friendly societies, stockbrokers, financial planners, pooled superannuation trusts, timeshare operators and other Australian financial services providers;

- IOS – general insurance companies, re-insurers, underwriting agents and related entities of member companies;
- CUDRC – credit unions and building societies;
- IBD – insurance brokers, underwriting agents and other insurance intermediaries.

FOS has over 20 years' experience in providing dispute resolution services in the financial services sector and it is estimated that FOS covers up to 80% of banking, insurance and investment disputes in Australia.

FOS provides services to resolve disputes between member financial services providers and consumers, including certain small businesses, about financial services such as:

- banking;
- credit;
- loans;
- general insurance;
- life insurance;
- financial planning;
- investments;
- stock broking;
- managed funds; and
- pooled superannuation trusts.

As well as its functions in relation to dispute resolution, FOS has responsibilities to identify and resolve systemic issues and obligations to make certain reports to ASIC. FOS is a not for profit organisation governed by an independent board with consumer representatives and financial services industry representatives.

## **Submission**

### **The current level of competition between bank and non-bank providers**

From the perspective of a service involved in the resolution of disputes, we see that the banks and non-banks are reasonably competitive in their desire to reduce the number of disputes coming to FOS by promoting practices that lead to enhancements in their own internal dispute resolution processes. These enhancements have a positive impact on levels of customer satisfaction and in turn should reduce the desire of customers to take their banking elsewhere. Having adequately resourced and trained internal dispute resolution departments is a key factor in maintaining appropriate levels of customer satisfaction. If problems can be sorted out without the need for the dispute to be escalated to FOS, then this results in a "win-win" outcome.



## **The products available and fees and charges payable on those products**

The suite of products available between institutions is largely comparable at least as far as the basic products are concerned – home loans, personal loans and credit cards. Some institutions are prepared to offer more complex products (for example, reverse mortgages) or ones that involve a greater risk (for example, low doc loans) but this often depends on their appetite for risk or a desire to increase market share by selling products to different market segments.

In relation to fees and charges, these are set by each financial institution, having regard to a range of factors including their cost of funds and their willingness to attract market share in particular segments by offering discounts. FOS does not become involved in disputes about the setting of fees and charges, as that is a commercial decision for each institution, unless the fee or charge breaches a legal obligation of the financial services provider.

## **How competition impacts on unfair terms that may be included in contracts**

In our view, competition will have a limited impact on unfair terms that may be included in a contract. Generally speaking, unfair terms are “tucked away” in the fine print and will only become apparent should some event trigger an awareness of the provision by the consumer. As most products are sold on the basis of price and the positive features, the negative effect of an unfair term is unlikely to receive publicity from a financial institution unless they seek to differentiate their product as not having an unfair term like their competitors. This may occur where there is a fee attached to the unfair term (again confirming that competition is often on price) but most unfair terms, while having a cost attached to them, are not usually worthy of such comparative advertising.

The main driver for removing unfair terms is regulation that prevents the use of such terms and publicity which brings industry and consumer attention to the existence of such terms. This enables consumers to be better placed to know what to look out for when reading the fine print of their contracts and for industry and their advisers to review the terms of their contracts to remove unfair terms.

FOS will use the various legal provisions relating to unfair contract terms to improve industry standards through our systemic issue investigations. For example, a dispute lodged with FOS might indicate that a particular provision in a contract is one that contravenes laws relating to unfair terms or unconscionable contracts. In addition to resolving that particular dispute, FOS will consider if consumers other than the person who lodged the dispute has been or may be affected. In addition to compensating other consumers who may have been previously adversely affected by the unfair term, we may then require the offending contract term to be deleted or varied from not only the contract in question but others as well.

We provide regular reports to ASIC on a de-identified basis of the systemic issues we investigate. This provides ASIC with an opportunity to drive reform in these areas across the industry. We also provide our de-identified systemic issues report to major users of FOS, so that they can see if they might be affected by issues we are investigating and make changes without FOS necessarily having to be directly involved.

### **The likely drivers of future change and innovation in the banking and non-banking sectors**

As it is the role of FOS to resolve disputes, we think others will be better placed to provide a submission on this topic.

### **The ease of moving between providers of banking services**

There are two main factors that make it less likely that a consumer will move between financial services providers. The first is that some products will contain provisions, fees and charges that provide a financial disincentive to do so. These financial disincentives have been dealt with most recently by ASIC's Regulatory Guide 220 which in our view sets the right balance between the consumer's interests in being able to move from one institution to another and the FSP's right to recover the costs of providing a facility to the consumer that have not been recovered at the time the facility is terminated.

The second disincentive is more practical. Providers of banking services have for many years been encouraging customer loyalty by cross selling as many different financial services products to their customers as possible and in doing so, often provide a financial incentive for loyalty, such as discounted or no fees on a bank savings account for a customer who also has a home loan or superannuation product with the same financial services group. In addition to the practical difficulties associated with moving institutions, there is a risk the consumer could end up paying more for their financial services as a result of losing discounts and other incentives provided if they use only one institution for their financial services.

The practical impediment to moving relates to re-establishing your financial imprint – having a new account number or numbers extends beyond re-establishing direct debits which the measures introduced in 2009 sought to address by requiring institutions to provide details of all direct debits. Customers must also advise their employer of their new account number in order to receive salary credits and to advise of the new loan account number in order to make direct salary payments to their loan account. If they are in receipt of regular payments to their account they must also advise each sender of their new account details in order to receive such



payments. The end result is that moving from one FSP to another could be regarded as a “hassle” that is not worth the effort.

FOS is of the view that portable account numbers would take the hassle out of moving from one FSP to another, by eliminating the need to advise multiple parties of new account details, although ironically the implementation of such a system would require every account holder to advise of their new account details unless the transition involved a process for the old and new numbers to operate in tandem.

The development of portable account numbers is not straightforward and is likely to involve considerable development and implementation costs. While institutions use a common starting point with the BSB numbers at the start of each account number, each institution has a different method for allocating account numbers, some use numbers, others use a combination of numbers and letters and the length of account numbers also differs between providers. For these reasons, the cost of developing and implementing a common portable account numbering system is likely to be expensive.

If it is considered desirable to implement a system of portable account numbers, it would be appropriate in our view, to take the opportunity to re-design the payment system to eliminate once and for all the problems associated with internet banking payments going to the wrong account due to a mistake made by the consumer in entering the recipient’s number (whether as a result of entering the wrong details or from being given the wrong account number in the first place.) At present, the system does not cross check the name with the account number and it is sometimes difficult to recover a mistaken payment. While this will be addressed to some degree in the revised EFT Code, the development of a portable account numbering system provides an opportunity to develop a payment transfer system that eliminates mistaken payments by cross checking the name and number of the intended recipient given that the account number is now tied to the account holder regardless of what financial institution they bank with.

### **The impact of the large banks being considered “too big to fail” on profitability and competition**

As it is the role of FOS to resolve disputes, we think others will be better placed to provide a submission on this topic.

### **Regulation that has the impact of restricting or hindering competition within the banking sector, particularly regulation imposed during the global financial crisis**

During the GFC, the Commonwealth enacted two major pieces of legislation that affected the individuals and small businesses who are able to lodge a dispute with

FOS. These were the *National Consumer Credit Protection Act 2009* (NCCP) and the *Australian Consumer Law* (ACL). In our view, both of these pieces of legislation had an overall positive impact on the banking sector by creating a more level regulatory playing field.

The NCCP effectively re-enacted the previously State based Uniform Consumer Credit Code extending its reach to residential housing investment, creating a statutory concept of responsible lending and a licensing regime for all credit providers and those providing credit assistance. Further, any person engaging in the provision of credit or providing credit assistance was required by the NCCP to be a member of an ASIC approved EDR scheme.

While banks, credit unions, building societies and some non bank lenders and brokers had voluntarily joined EDR schemes, the compulsory licence regime provides additional protection to consumers dealing with those lenders and brokers who were not inclined to join an EDR scheme and thus helped level the playing field. While it could be argued the licensing regime and compulsory EDR membership restricts or hinders competition by increasing the cost of entry into the sector, the overall impact is positive as consumers can choose to use any lender or broker with the knowledge that they are all subject to the same regulatory regime and that there is an avenue of redress should things go wrong that can be accessed at no cost to the consumer.

The ACL introduced provisions restricting the use of unfair contract terms. In the vast majority of contracts we see at FOS, mainstream lenders do not in the main have contracts that contain what would be regarded as unfair terms. Certainly the impending introduction of the ACL, together with consumer pressure, seems to have had an impact on reducing the amount charged in relation to certain exception fees imposed by mainstream players in the banking sector. The ACL, together with the recently released ASIC Regulatory Guide 220 regarding exit fees will in our view enhance competition in the banking sector by ensuring a level playing field and reducing or eliminating fees and charges that prevent or restrict consumers from moving from one financial institution to another, while protecting the legitimate interests of FSP's to recover their actual costs lost as a result of such a move, thus ensuring a fair balance between the interests of FSP's and consumers.

### **Opportunities for, and obstacles to, the creation of new banking services and the entry of new banking service providers**

As it is the role of FOS to resolve disputes, we think others will be better placed to provide a submission on this topic.



## **Assessment of claims by banks of cost of capital**

As it is the role of FOS to resolve disputes, we think others will be better placed to provide a submission on this topic.

## **Any other policies, practices and strategies that may enhance competition in banking, including legislative change / Comparisons with relevant international jurisdictions**

One of the key drivers promoting competition in banking has been disclosure so that consumers may compare the cost of products. The National Credit Code ("NCC") is the principal legislative tool that mandates disclosure with respect to loan products. Many disputes received by FOS are due to consumers' failure to fully appreciate their contractual obligations at the time of contract entry. In more recent times FOS has received large numbers of disputes where consumers have entered into fixed rate loans without appreciating the potentially significant break costs that may apply if they seek to pre-pay their loan in a falling interest rate environment.

The NCC requires comprehensive pre-contractual disclosure of, amongst other matters, fees and charges. As a result, the disclosure statement is routinely 7 to 10 pages in length. Not all consumers comprehensively review this information. Informed choice would be assisted by an additional targeted disclosure statement at the top of the first page of the pre-contractual disclosure statement summarising limited but key information, such as the interest rate, dollar cost of credit (where required by the NCC), repayment obligations and significant fees, including information on break costs and other exit fees .

A similar approach to that suggested here has applied in the United States under the *Truth in Lending Act* 15 U.S.C. ss1601. Under that law four key costs must be disclosed in a prominent disclosure box format at the top of the first page of the contract. We have attached examples of the United States Truth in Lending Disclosure Statement which we believe may assist consumers in obtaining a better appreciation of their loan commitments.

## **The role and impact of past inquiries into the banking sector in promoting reform**

As it is the role of FOS to resolve disputes, we think others will be better placed to provide a submission on this topic.

## FEDERAL TRUTH IN LENDING DISCLOSURE STATEMENT

**Creditor: YOUR FAVORITE MORTGAGE CORPORATION**  
**Borrower(s):**

**Account Number: 1111111**

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid after you have made all payments as scheduled
7.337 %	\$ 205,017.52	\$ 138,796.50	\$ 343,814.02

Your payment schedule will be:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	WHEN PAYMENTS ARE DUE
359	\$ 955.05	Monthly beginning 09/01 /01
1	951.07	Monthly beginning 08/01/31

**Variable Rate:** If checked, your loan contains a variable rate feature. Disclosures about the variable rate feature have been provided to you earlier.

**Demand Feature:** If checked, this obligation has a demand feature.

**Insurance:** You may obtain property insurance from anyone you want that is acceptable to the creditor.

If checked, you can get insurance through Your Favorite Mortgage Corporation. You will pay \$ \_\_\_\_\_ for 12 months hazard insurance coverage. You will pay \$ \_\_\_\_\_ for 12 months flood insurance coverage.

**Security:** You are giving a security interest in property being purchased property located at  
**1234 118TH STREET, NW, WASHINGTON, DC 20009**

Assignment of brokerage account and pledge of securities Personal property: stocks and lease

Assignment of life insurance policy Other:

**Late Charges:** If a payment is late, you will be charged 5.000 % of the payment.

**Prepayment:** If you pay off early, you may will not have to pay a penalty. You may will not be entitled to a refund of part of the finance charge.

**Assumption:** Someone buying your house may, subject to conditions, be allowed to cannot assume the remainder of the mortgage on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and penalties and assumption policy.

### ACKNOWLEDGMENT

By signing below you acknowledge that you have received a completed copy of this Federal Truth in Lending Statement prior to the execution of any closing documents.

Borrower/Date of Acknowledgment \_\_\_\_\_

Borrower/Date of Acknowledgment \_\_\_\_\_



**FEDERAL TRUTH-IN-LENDING DISCLOSURE STATEMENT**  
THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO

Loan Number: (Insert Alpha-Numeric – TO BE ADDED)      Date: (Month Date, Year –TO BE ADDED)

Creditor: (Insert Corporate Name – TO BE ADDED)

Address: (Insert full address, city, state and zip - TO BE ADDED)

Borrower(s): (Insert borrower(s) full names – TO BE ADDED)

Address: (Insert full street address, city, state, zip – TO BE ADDED)

Lines containing an "x" are applicable:

<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as A yearly rate  (Insert Perc.Rate – TO BE ADDED) %	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you.  \$ (Insert Finance Amount – TO BE ADDED)	<b>Amount Financed</b> The amount of credit provided to you or on your behalf  \$(Insert Total Amount Financed – TO BE ADDED)	<b>Total of Payments</b> The amount you will have paid after you have made all payments as scheduled.  \$(Insert total dollar amount of payments)	<input type="checkbox"/> <b>Total Sale Price</b> The total cost of your purchase on credit including your down-payment of  \$(Insert Amt. TO BE ADDED) \$(Insert Amt. TO BE ADDED)
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**PAYMENT:** Your payment schedule will be:

Number of Payments	Amount of Payments **	When Payments Are Due	Number of Payments	Amount of Payments **	When Payments Are Due	Number of Payments	Amount of Payments **	When Payments Are Due
		Monthly Beginning			Monthly Beginning			Monthly beginning

(Insert Number of Payments – TO BE ADDED) (Insert Amount of Payment – TO BE ADDED) (Insert Month/Date/Year – TO BE ADDED)

\_\_\_\_DEMAND FEATURE: This obligation has a demand feature.

☐ **VARIABLE RATE FEATURE:** Your loan contains a variable rate feature. Disclosure about the variable rate feature have been provided to you earlier.

**INSURANCE:** The following insurance is required to obtain credit:

\_\_\_ Credit life insurance and credit disability \_\_\_ Property Insurance \_\_\_ Flood Insurance \_\_\_ Mortgage Insurance

You may obtain property insurance from any insurer that is acceptable to the Lender.

**SECURITY:** You are giving a security interest in: (Insert full property address – TO BE ADDED)

\_\_\_\_ The goods or property being purchased \_\_\_\_ Real property you already own

FILING FEES: \$(Insert numerical amount w/decimal - TO BE ADDED)

LATE CHARGE: If payment is more than (Insert number of days -- TO BE ADDED) days late, you will be charged (Insert percentage amount -- TO BE ADDED)% of the payment.

**PREPAYMENT:** If you pay off early, you

\_\_\_\_\_ may \_\_\_\_\_ will not have to pay a penalty.

\_\_\_\_\_ may \_\_\_\_\_ will not be entitled to a refund of part of the finance charge.

**ASSUMPTION:** Someone buying your property.

\_\_\_\_ may \_\_\_\_\_ may, subject to conditions \_\_\_\_\_ may not assume the remainder of your loan on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the

scheduled date and prepayment refunds and penalties.

all dates and numerical disclosures except the late payment disclosures are estimates.

Each of the undersigned acknowledge receipt of a complete copy of this disclosure. The disclosure does not constitute a contract or a commitment to lend.

Applicant	Date
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Applicant _____	Date _____
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Applicant	Date
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Applicant \_\_\_\_\_ Date \_\_\_\_\_

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Applicant	Date
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<b>Applicant</b>	<b>Date</b>
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**\*\*NOTE:** Payments shown above do not include reserve deposits for taxes, assessments, and property or flood insurance.

FEDERAL TRUTH-IN-LENDING DISCLOSURE STATEMENT

WCM DIRECT, LLC

Regg4.15