

FOS TO BE ABOLISHED AND REPLACED BY AFCA

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From 1 July 2018, the Australian Financial Complaints Authority (AFCA) will replace the Financial Ombudsman Service (FOS). FOS will remain in existence after that date only to determine existing claims that were before FOS prior to that date.

AFCA will be a “Super FOS”, consolidating the FOS, the Credit & Investments Ombudsman (CIO) and the Superannuation Complaints Tribunal (SCT) into a single industry ombudsman scheme, with the object of “reducing consumer confusion and the unnecessary duplication of costs that are a feature of the current multi-scheme framework”.^[1] This “one-stop shop” was announced as a measure in the 2017-2018 Federal Budget, adopting the recommendation of the May 2017 Review of the Financial System External Dispute Resolution and Complaints Framework (Ramsay Review).

The old FOS will be the dominant component of the new body, as FOS claims accounted for more than 80 per cent of the 41,223 financial disputes made to the three bodies in the 2016 financial year. Significantly, procedure in superannuation complaints will have less formality and technicality than the current Tribunal model of the SCT.

INCREASED JURISDICTION

The new authority will be able to award compensation of up to \$500,000 for consumer disputes, \$1 million for small business disputes and have unlimited jurisdiction for disputes relating to guarantees and superannuation. At both FOS and CIO, the current value of the claim under dispute must not exceed \$500,000, and a \$309,000 compensation cap typically applies. The SCT currently has unlimited monetary jurisdiction.

OTHERWISE UNCHANGED MODEL

While all of the detail surrounding AFCA is not yet available, it seems that just like the current FOS model, AFCA will:

- continue to deal with the insurance disputes that can be brought before FOS;
- continue to be free of charge to consumers and small businesses, with a minimum of formality and technicality to the proceedings;
- remain industry-funded;
- be governed by an independent board, with an independent chair and equal numbers of

directors with industry and consumer backgrounds;

- require all Australian Financial Services Licensees, including superannuation funds, to be members of AFCA, with decisions binding on all firms; and
- provide no avenue for appeal of AFCA decisions (other than for the very limited scenario of a decision being made to which no reasonable tribunal could properly come on the evidence). [2]

For insurers, it seems unlikely that the incorporation of FOS into the AFCA will have any significant impact on their experience in what is typically viewed as a fairly “pro-insured” forum.

[1] 9 May 2017 media release of the Hon Scott Morrison, Treasurer.

[2] *Cromwell Property Securities Limited v Financial Ombudsman Service Limited & Ors* [2014] VSCA 179

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