Financial Rights
LEGAL CENTRE

Submission by the Financial Rights Legal Centre

Treasury

Australian Consumer Law Review: Interim Report– October 2016

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Financial Rights Legal Centre |PO BOX 538, Surry Hills 2010 | Tel (02) 9212 4216 |Fax (02) 9212 4711 |
info@financialrights.org.au | www.financialrights.org.au | @Fin_Rights_CLC | ABN: 40 506 635 273

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2015/2016 financial year.
Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

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Introduction

Thank you for the opportunity to comment on the Australian Consumer Law Review: Issues Paper. The Financial Rights Legal Centre (Financial Rights) wishes to respond to those sections of the Australian Consumer Law and Review Interim Report that impact upon consumers' interaction with financial products and services as well as issues of financial hardship more generally. Specifically this submission puts forward our perspective with respect to the interaction between the ACL and the ASIC Act (1.2.6), unfair trading (2.3.4) unfair terms in insurance contracts (2.4.2), unfair contract terms (2.4), unsolicited consumer agreements (2.5) and access to remedies (3.1.4).

1.2.6. Interaction between the ACL and ASIC Act

Option 3 – Expressly apply all consumer protections for financial services to financial products

Question 7 Should the ASIC Act be amended to explicitly apply its consumer protections to financial products?

Financial Rights believes that yes, the ASIC Act needs to be amended to explicitly apply its consumer protections to financial products.

Financial Rights notes that a key issue for consumers is that the consumer protections under Part 2, Division 2 of the ASIC Act apply largely to financial services but not to financial products.

Section 12BAB defines the "meaning of a financial service" when someone

(a) Provide[s] financial product advice (see subsection (5)); or

(b) deal[s] in a financial product (see subsection (7)); or

(c) make[s] a market for a financial product (see subsection (11)); or

(d) operate[s] a registered scheme; or

(e) provide[s] a custodial or depository service (see subsection (12)); or

(f) operate[s] a financial market (see subsection (15)) or clearing and settlement facility (see subsection (17)); or

(g) provide[s] a service (not being the operation of a derivative trade repository) that is otherwise supplied in relation to a financial product (other than an Australian carbon credit unit or an eligible international emissions unit); or

(h) *engage[s] in conduct of a kind prescribed in regulations made for the purposes of this paragraph.*

As this definition indicates financial services relate to financial products but it is far from clear as to the interaction. Financial products are defined under Section 12BAA as

> *a facility through which, or through the acquisition of which, a person does one or more of the following:*
>
> *(a) makes a financial investment (see subsection (4));*
>
> *(b) manages financial risk (see subsection (5));*
>
> *(c) makes non-cash payments*

Given the consumer protections apply to financial services only, consumers are left open to exploitation when purchasing a financial product and with less rights to protection than with other goods or products.

One element that does not transfer over from the ACL to a financial product is, for example, the fit for purpose regime. Under the consumer guarantee, products and services must be fit for purpose – that is be fit for the purpose the business told you it would be fit for and for any purpose that you made known to the business before purchasing. The equivalent section under the ASIC Act is section 12ED where there is an implied warranty that the financial *services* supplied will be "reasonably fit for that purpose …."

Financial products are not subject to this same consumer protection under the ASIC Act or ACL. Some financial products such as all credit contracts are subject to the suitability regime under the NCCP. Insurance products, for example, are not subject to a suitability or fit for purpose test.

Even as applied to financial services section 12ED remains limited in scope as it doesn't impose a positive obligation on the financial service provider to look into the personal circumstances of the consumer.

This situation needs to be clarified and amended to ensure that consumers receive equal protections in their consumption of non-financial goods and services and financial goods and services. Financial Rights notes that the fit for purpose regime has not been listed as one of the elements that need clarity under the ASIC Act. We recommend that every single consumer protection applying to goods and services generally be applied to financial goods (products) and services under the ASIC Act.

Applying the fit for purpose (or product suitability) regime to financial products would be transformative and ensure less exploitation of consumers in the financial services sector.

Financial Rights notes that the Financial Services Inquiry recommended the introduction of a targeted, principles-based product design and distribution obligation[1] which has subsequently

[1] Financial System Inquiry, December 2014, Recommendation 21, available at: http://fsi.gov.au/publications/final-report/chapter-4/accountability/

been supported by Government.[2] This should be implemented as soon as possible as it would go some way to assisting consumers however we support the need for this to go further to ensure that there are suitability requirements placed upon the distributors of financial products and services to assess whether the consumer falls within the target group.

2.3.4 Unfair Trading

Q.42. Is there further evidence of a gap in the current law that justifies an economy-wide approach?

Financial Rights has previously submitted that new financial businesses known as Debt Management Firms have emerged falling in between the cracks. While these businesses do fall within the consumer protection provisions of the ACL, the ACL protections have so far proven to be inadequate to protect vulnerable consumers. There are also significant difficulties in applying the consumer guarantees to new and emerging services such as those provided by debt management firms. For example, how does a consumer or regulator know whether a new and emerging service is "fit for any specified purpose" when there is nothing to compare that new service to and there are no standards set for what is essentially a useless service.

While we believe that regulators need to consider targeted action against debt management firms we believe that one important alternative way to deal with these exploitative businesses would be via a general prohibition on unfair trading.

As the ACL currently stands it is far too reactive to a fast changing landscape, where new exploitative business models develop to take advantage the regulatory gaps and unregulated and yet-to-be regulated commercial spaces. A general prohibition on unfair trading has the potential to correct this failing and assist regulators to proactively prosecute traders with inherently unfair business models before the harm has taken place.

Financial Rights notes that the recent interim report issues by the Ramsey Review into the External Dispute Resolution and complaints framework has stated that "should a consumer have a grievance with a debt management firm they have little scope for redress"[3] The report recommends that Debt Management Firms should be required to be a member of an industry ombudsman scheme and that debt management firms be licensed. Financial Rights supports these findings.

[2] Improving Australia's financial system: Government response to the Financial System Inquiry "The Government agrees to create a targeted and principles-based financial product design and distribution obligation. Implementation of this recommendation will be subject to detailed consultation with stakeholders to ensure that the scope of the obligation enhances consumer protection without placing an undue burden on industry."
http://www.treasury.gov.au/~/media/Treasury/Publications%20and%20Media/Publications/2015/Government%20response%20to%20the%20Financial%20System%20Inquiry/Downloads/PDF/Government_response_to_FSI_2015.ashx

[3] Para 5.78, Ian Ramsay, *Interim Report: Review of the financial system external dispute resolution and complaints network*, 6 December 2016,
http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Reviews%20and%20Inquiries/2016/Review%20into%20EDR/Key%20Documents/PDF/EDR_interim.ashx

Financial Rights also believes a prohibition on unfair trading could also assist in this regard by preventing harm in the first place and ensuring that inherently and fundamentally unfair business practices are not legitimised through licensing.

2.4.2 Unfair terms in insurance contracts

Q. 43 Should the ASIC Act's unfair contract terms protections be applied to contracts regulated under the Insurance Contracts Act?

Yes, Financial Rights strongly recommends that the absurd and patently unfair exemption under the Insurance Contracts Act against the application of the unfair contract term regime be removed. Financial Rights sees no argument at all why some insurance contracts should be exempted as opposed to others. All insurance contracts should be subject to the unfair contract terms regime. We point to our previous submissions addressing the key arguments against the introduction put forward by the Insurance Council of Australia.

One additional resource that we would direct this Review to is the 2009 inquiry by the Senate Economics and Legislation Committee into the Trade Practices Amendment (Australian Consumer Law) Bill, and section 15 of the Insurance Contracts Act 1984 (IC Act). This inquiry found that consumers are not provided with adequate protection in insurance contracts under existing law. We strongly suggest that this continues to be the case to this day and the lack of any real action in this area has caused significant harm to insurance consumers.

If so:

• How should it be designed? For example, should it apply to all types of insurance contracts, or are some exemptions appropriate?

Financial Rights suggests that the wheel does not have to be re-invented with respect to designing an appropriate unfair contract terms regime applying to insurance contracts. Financial Rights points to the previous attempt to enact such a regime with the Government's development of an Exposure Draft Insurance Contracts Amendment (Unfair Terms) Bill 2013.

One note before describing the design of this regime is that it would have applied to general insurance contracts only. We are strongly of the view that any unfair contract terms regime should apply to all insurance contracts with no exceptions. Just as it is an unwarranted and unreasonable anomaly that insurance contracts are exempted from the UCT regime, exempting one part of the insurance sector from any new regime would be similarly unreasonable. The issues of fairness of terms in life insurance policies are as important and relevant as those that relate to general insurance and extend to and include group life products that can provide TPD and death cover to the most vulnerable members of the community. Consumer groups, including ourselves did not oppose this approach at the time on the understanding that the Government would consult further on how unfair terms would be extended to life insurance contracts.

The principles for the design of the 2013 Insurance Contracts Amendment (Unfair Terms) Bill were set out by the then Minister as follows:

> ***Principles for extending Unfair Contract Terms laws to general insurance contracts***
>
> *Unfair contract terms (UCT) laws for insurance will be introduced into the Insurance Contracts Act 1984(IC Act), based on the UCT regime that applies under the Australian Securities and Investments Commission Act 2001 (ASIC Act) and with the following elements which includes some tailoring for insurance:*
>
> - *the regime will apply to consumer contracts that are standard form insurance contracts;*
> - *it will be included as part of the duty of utmost good faith;*
>   - *that is, if a term is found to be unfair, the insurer will be in breach of the duty of utmost good faith;*
> - *the remedy available where a term is found to be unfair will be that the party may not rely on the term;*
> - *in addition to the above remedy, a court may consider whether there is another more appropriate remedy;*
> - *ASIC and consumers will both have the right to take action under UCT laws;*
> - *ASIC will have the range of enforcement powers that are currently available to it to administer the UCT laws in the ASIC Act replicated in the IC Act for the purposes of enforcing the UCT laws in the IC Act;*
> - *the UCT regime will not apply to a term to the extent it:*
>   - *defines the main subject matter of the contract;*
>   - *sets the upfront price payable under the contract; or*
>   - *is a term required, or expressly permitted by a law of the Commonwealth or a State or Territory.*
> - *the definition of an unfair term is that the term:*
>   - *would cause a significant imbalance in the parties rights and obligations under the contract;*
>   - *would cause detriment to a party if relied on;*
>   - *is not reasonably necessary to protect the legitimate interests of the party advantaged by the term. For the purposes of determining whether a term in an insurance contract is reasonably necessary to protect a legitimate interest, a term will be reasonably necessary if it reflects the underwriting risk accepted by the insurer.*
> - *the insurer will have the onus of proof that a term is reasonably necessary to protect their legitimate interests; and*

- *the UCT regime will not apply to life insurance contracts at this stage.*[4]

This proposal by the Minister came out of extensive consultation by Treasury, the Assistant Treasurer and his office with insurers and consumer advocates. The proposal—in particular the decision to insert new elements in the Insurance Contracts Act rather than simply extend the existing ASIC Act provisions to insurance—was not the preferred option for consumer advocates at the time.[5] However we took the view that the legislation was a workable compromise with the insurance sector, had importantly had the support of the Insurance Council of Australia and was a considerable improvement on the current situation. It was also achieved through genuine negotiation between both sides of the debate. Any argument from the Insurance Council of Australia against such a regime is disingenuous and simply one of political opportunism.

Financial Rights is happy for this current review to consider yet again the full sweep of options considered in 2013 but we would support the compromise design developed at that time. The only exception to this is we believe that the regime should be extended to both general and life insurance contracts for the reasons of inherent unfairness as outlined above.

Would any changes to the definition of 'main subject matter' be required? Would the same types of terms be considered 'unfair'?

With respect to whether changes to the definition of "main subject matter" be required, we take the view that the 2013 Insurance Contracts Amendment (Unfair Terms) Bill approach to this was correct that it prevented terms which form part of the main subject matter of a contract from being challenged on the basis that is it an unfair contact term. This is the case under the ASIC Act and the ACL. We support not defining the term "main subject matter" as the meaning of the term has already been established at law. We however would not want the "main subject matter" be given a broad reading, that is for example, that 'main subject matter' be taken to include 'terms and exclusions that define an insurance contract's scope of cover. This is not our understanding of the definition of "main subject matter". While exclusions and conditions precedent help define the scope of cover, they could not by any definition be considered the reason the transaction takes place. A broad definition of main subject matter would effectively mean that key terms of an insurance contract that a consumer are more likely to challenge for unfairness would be immune from review.

Given the importance of a "main subject matter" provision to the overall operation of the unfair terms regime, we would encourage proper and clear guidance being given to the Court as to the context in which main subject matter sits within the regime. That is, that this is consumer protection legislation intended to apply generally to the terms of insurance

[4] Minister Bradbury, Media Release: Protection from unfair terms in general insurance contracts. http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/171.htm&pageID=003&min=djba&Year=&DocType=

[5] A full description of the options canvassed can be found in Treasury's *Unfair terms in insurance contracts – Options Paper*: http://icareview.treasury.gov.au/content/ download/unfair terms options/unfair terms options paper .pdf There were five options put forward: Maintaining the status quo; Option A – Permitting the unfair contract terms provisions of the ASIC Act to apply to insurance contracts; Option B – Extending IC Act remedies to include unfair terms provisions; Option C – Enhancing existing IC Act remedies; and Option D – Encouraging industry self-regulation to better prevent use of unfair terms by insurers.

contracts, except such particular terms that (and only those terms that) define the main subject matter. We suggest the best way to affect this is to include text in the Explanatory Memorandum and or the second reading speech explaining the purpose of the main subject matter exemption. This should not attempt to define the meaning of the term but it could, like the text from the ACL explanatory memorandum, give enough guidance to prevent an artificially broad definition gaining favour.

Would this result in any likely changes to the insurance contracts that are offered to consumers? For example, to what extent would this option address the issues or examples of unfair terms raised by stakeholders?

With respect to whether removing the exemption would result in any likely changes to the insurance contacts that are offered, we have previously argued that that yes this would occur. It would create an incentive for insurers to draft their contracts with an eye to fairness and would further encourage insurers to review their existing contracts and remove terms which may be unfair, rather than face enforcement action later. It would also improve the fairness of insurance contract fine print—making policies easier to read and compare, giving consumers stronger protection under the law, and promoting genuine competition.

What would be the compliance costs of changing insurance contracts, and how would these affect consumers?

While Financial Rights accepts that there may be some initial costs in examining and updating policies on the basis of the UCT regime, this would be money well spent in reducing the potential for harm to consumers and an acknowledgement that yes there are indeed unfair contract terms in policies currently being relied upon by insurers to the detriment of consumers. The application of the unfair terms legislation to insurance contracts could however also result in cost reductions for both industry and consumers given the potential for a reduction in the number of disputes lodged in EDR Schemes about the application of unfair terms.

The insurance industry will argue that litigation may increase and become more complex and costly. To this we would argue that the vast majority of consumers with an insurance dispute will seek to resolve that dispute in the Financial Ombudsman Service and that very few actually take legal action in court against an insurer to enforce their legal rights.

2.4 Unfair Contract Terms

Option 2. Prohibit the use of terms previously declared unfair by the courts

Option 3. Enable regulators to compel evidence from businesses to investigate whether or not a term may be unfair

Option 4. Expand the legislative examples of unfair terms

Financial Rights supports the implementation of Options 2, 3 and 4.

2.5 Unsolicited consumer agreements

Option 1 Maintain the current balance and breadth of the provisions noting the current gap in available data about the industry and the incidence of consumer problems.

48. What are your views on maintaining the current unsolicited selling provisions? Is there another approach that would provide a more effective and proportionate response? If so, how?

49. Are there any unintended consequences, risks or challenges that should be considered?

50. Should the cooling-off period be replaced with an opt-in mechanism? If so:

● How should it be designed? For example, should it apply to all unsolicited sales or only high-risk sales? How should 'high-risk' sales be defined?

● What would be an appropriate;n length of the opt-in period?

● Should there be any exemptions?

● What is the likelihood that consumers would exercise an 'opt in' right? What impact would this have on sales across all sectors that engage in unsolicited selling, and what difference would this make to consumers?

Financial Rights remains seriously concerned with the disproportionate impact of door to door sales tactics upon the financially vulnerable. We continue to strongly support an outright ban on the practice given the consumer harm versus lack of economic benefits as argued by CHOICE and the Consumer Action Law Centre.

Financial Rights notes that the Interim Report refers to ACCC commissioned independent research on door to door sales in Australia in 2011. This report found a significant number of issues with door-to-door sales including sales approaches specifically aimed at sales to elderly or other vulnerable consumers such as those on low incomes. There has also been a significant amount of research with regards to door to door selling techniques[6] and behavioural research[7] However the Interim Report goes on to state that:

> *"there is little data on the wider unsolicited selling industry, including the number of unsolicited sales, the demographics of consumers and the level of satisfaction with the products sold."*

This may or may not be the case for the broad umbrella of unsolicited sales techniques but given the research quoted by the Interim Report and the wealth of research elsewhere this is

[6] Consumer Action, Door to door sales: consumer views http://donotknock.consumeraction.org.au/wp-content/uploads/2012/04/Door-to-door-sales-Consumer-views-2012-Consumer-Action-Law-Centre.pdf , Laura Berta, Gerard Brody, Cynthia McKenzie, Strangers are calling! The experiences of door-to-door sales in Melbourne's refugee communities, Footscray Community Legal Centre, 2014

[7] Paul Harrison Beyond Door-to-Door: The Implications of Invited In-Home Selling, *Journal of Consumer Affairs*, 2014, vol. 48, issue 1, pages 195-221 as an example

not the case for door-to-door sales. The Interim Report unfortunately conflates the two and uses the broader lack of data to apply to the specific case of door to door sales.

Financial Rights asserts that there is sufficient evidence to demonstrate the harm caused by door to door sales and that action needs to be taken. If, as the Interim Reports asserts, there is a lack of broader data, then the final report should include clear recommendations to gather such data and provide some direction to further develop policy in this area.

Financial Rights regularly sees poor outcomes from door to door sales tactics. The following case study is from December 2016:

Case study 1 – Jack's story

A representative of a Solar Panel Provider approached Jack's property, uninvited to sell him solar panels. Despite advising the salesperson that he already had solar panels installed, Jack was told by installing more solar panels he could reduce his bill even further. After some discussion and calculations Jack was told the cost of the new panels would be covered by the savings he would make on his electricity bill. Jack was never told what the total cost of the panels was nor that he would be financing them. Jack was led to believe that he was providing his bank details so that the "No Interest Loan Provider" would withdraw $100 a fortnight and pass this on to his Energy Supplier for any electricity usage. Jack was not provided a copy of the Terms and Conditions, nor given the opportunity to read the documents he was signing.
The solar panels were installed on the roof of Jack's shed as there was no space on the roof of his house. Jack also discovered he was not eligible for the Small-Scale Technology Certificate discount as the Solar Panel Provider was not a Clean Energy Council approved retailer.

The Consumer Action Law Centre has commissioned research on the effectiveness of cooling off periods. The research found that cooling off periods are completely ineffective in protecting consumers. In this context and using the principles of good evidence based policy making, the use of cooling off periods must be abandoned and replaced with more effective measures which in our view is a ban.

If a ban is not accepted then we believe an opt-in requirement is necessary – that is, the consumer would have to call the salesperson themselves after a mandatory delay and say that they want to buy the product. The mandatory delay should be four days after the initial contact with the sales person aligning with best practice requirements in the UK's GAP insurance rules.[8] If there is genuine desire for the product or service the consumer will contact. This will mean there will be fewer sales, but will simply decrease by the number of sales that were only successful through the implementation of high-pressure tactics and other unethical sales practices.

[8] Financial Conduct Authority, Guaranteed Asset Protection insurance: competition remedy Including feedback on CP14/29 and final rules June 2015 https://www.fca.org.uk/publication/policy/ps15-13.pdf

3.1.4 Access to Remedies

Financial Rights notes that the Interim Report pushes aside the debate over a new for a Retail Ombudsman to a later date stating that it is unclear whether a Retail Ombudsman will be warranted and what its broader implications may be. This is disappointing and Financial Rights recommends CAANZ reconsider their position.

Access to internal dispute resolution and external dispute resolution in the financial services sector has been of enormous benefit to consumers. It has increased the availability of effective, timely and affordable mechanisms as an alternative to formal court-based dispute resolution.

This has been largely missing in the retail space with significant barriers to access justice through the necessity of taking matters to court or a tribunal. These have been largely detailed by submissions to the issues paper but we wish to address a number of the issues raised by CAANZ and request that serious reconsideration is required.

Firstly, the Interim Report states that the impacts of the UK scheme are still emerging. While the impacts of the UK may still be emerging, this should not act as a reason to not begin investigating the development of our own retail ombudsman, given our long and extensive local experience with ombudsman schemes. Furthermore, the timeframes involved in investigating and reviewing the UK scheme mean that by the time the UK have those findings we could be well along the way to developing serious options for a similar system that could then be informed by the UK's findings.

Secondly, the Interim Report argues that the wider dispute resolution landscape is the subject of multiple reviews. The wider dispute resolution landscape *is* currently being reviewed and the Ramsay Review released its own Interim Report this week. It found that external dispute resolution schemes are preferable to tribunals and courts. They state that:

> *Whilst tribunals have an appropriate place in the alternative dispute resolution, compared with the experience with ombudsman schemes (which are discussed below), tribunals:*
>
> *can be less accessible: typically because there are costs associated with their use (unlike ombudsman schemes) and they require the completion of application forms (compared with online or telephone lodgement of disputes in the case of ombudsman schemes);*
>
> *can be less flexible and dynamic: they can operate more like courts (adversarial, legalistic processes), compared with the inquisitorial approach of an ombudsman scheme, and have been accused of 'creeping legalism'. Further, as creatures of statute, Tribunals can be slower to evolve and respond to dynamic environments, often requiring legislative change or government involvement to respond to industry changes or to reform their operations;*
>
> *can apply a 'black letter law' approach to decision making: in contrast to the approach of ombudsman schemes, where the approach to dispute resolution is based on achieving 'fairness in all the circumstances', which factors in good industry practice and Codes of Practice; and*

can be focused on making a decision in relation to the individual dispute under consideration, rather than on improving industry practice more broadly (that is, there is no function to identify or address systemic issues unlike ombudsman schemes) or undertaking community outreach or stakeholder engagement.[9]

The interim report goes on to quote the findings of the recent Victorian Civil and Administrative Tribunal (VCAT) review that examined the experiences of consumers and tenants at the tribunal, and evaluated VCAT against benchmarks for industry ombudsman schemes, that "'there were very substantial barriers' that inhibit people from accessing justice at VCAT."[10]

The interim report also details the benefits of ombudsman schemes These are worth quoting here:

By providing a mechanism for complainants to resolve low value disputes, ombudsman services can deal with smaller issues in a proportional manner and can prevent them from evolving into bigger issues. Ombudsman services can also assist complainants to overcome power imbalances by helping them to assert their rights when dealing with large companies.

Unlike the traditional court system, which relies on lawyers, the rules of evidence and specific processes and procedures which can be complex and intimidating for consumers, ombudsman schemes provide claimants with a relatively simple process, led by the ombudsman, negating the need for formal legal representation. Furthermore, ombudsman services are not restricted to resolving legal issues; rather, they have scope to consider non-legal issues that would not be addressed by the judicial system.

Where there is a general problem in an industry affecting multiple consumers and a number of similar complaints are received about a particular issue, ombudsman schemes have the capacity to instigate and conduct investigations to identify systemic issues. Once these issues have been identified and investigated, ombudsman services can alert the relevant stakeholders and regulators and assist in their resolution. This approach is more cost-effective than litigation and has the potential to provide positive outcomes for consumers by promoting good industry practice.

Ombudsman schemes are also able to promote access to justice through their ability to adapt and innovate in response to changes in the external environment.[11]

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[9] Para 2.13, Ian Ramsay, *Interim Report: Review of the financial system external dispute resolution and complaints network*, 6 December 2016, http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Reviews%20and%20Inquiries/2016/Review%20into%20EDR/Key%20Documents/PDF/EDR_interim.ashx

[10] Cameron Ralph Navigator 2016, R*eview of Tenants' and Consumers' Experience of Victorian Civil and Administrative Tribunal: Residential Tenancies List and Civil Claims List – Research Report*, page 7. http://consumeraction.org.au/wp-content/uploads/2016/08/Research-report-Review-of-Tenants-and-Consumers-Experience-of-VCAT.pdf

[11] Paras 2.19-2.22, Ian Ramsay, *Interim Report: Review of the financial system external dispute resolution and complaints network*, 6 December 2016, http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Reviews%20and%20Inquiries/2016/Review%20into%20EDR/Key%20Documents/PDF/EDR_interim.ashx

We believe these findings are clear enough to warrant reconsideration of the need for a Retail Ombudsman Scheme by CAANZ. What is clear from a consumer perspective is that EDR is more effective, simpler, less legalistic, solves complaints efficiently and quickly and is supported by consumers over courts and tribunals. Financial Rights believes the benefits that consumers have gained in for example the financial services sector should be passed on and implemented in other sectors.

Finally the Interim report states that it is unclear that a retail ombudsman is warranted and what the implications may be. At a minimum Financial Rights would suggest further investigation and research into the potential introduction of Retail Ombudsman Scheme is justified and should be a key recommendation in a final ACL Review report.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,

Alexandra Kelly
Principal Solicitor
Financial Rights Legal Centre
Phone: 02 8204 1370
E-mail: Alexandra.Kelly@financialrights.org.au

Katherine Lane
Acting Coordinator
Financial Rights Legal Centre
Direct: (02) 8204 1350
E-mail: Kat.Lane@financialrights.org.au