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Subject: Green Paper on Financial Services and Credit Reform

Corporations and Financial Service Division
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To Whom It May Concern

Dispute Assist Pty Ltd is an independent organisation that assists both private and commercial consumers to resolve financial disputes with Banks and lending institutions. Over the past eight years we have provided the regulators such as the Australian Securities and Investment Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) many case studies where there may be evidence of systemic non compliance of various Acts or the Code of Banking Practice. The research and case studies compiled by the company's principal, Mr Bruce Ford, has generated changes to the Code of Banking Practice for all banks regarding the issuance of bank statements to their customers and details are noted in the Australian Banking Industry Ombudsman Bulletins.

Over the last three years I have provided Minister Nick Sherry case studies outlining disputes between consumers and banks that evidence the dysfunction of state and federal laws. In particular, these examples highlighted the inadequate mechanisms for equitable expeditious and cost effective dispute resolution processes and resolve for consumers, investors and financial institutions.

Following my discussion with Treasury staff I am led to believe that submissions were only expected to touch upon issues where improvements and efficiency could be realised. Accordingly I have provided only a brief summary below of the general issues without great detail at this juncture.

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Dispute Resolution

My experience dealing with consumers over the last 8 years reveals there are many deficiencies that could and should be addressed in order to improve and simplify dispute resolution process between consumers and financial institutions. I see a continual flow of consumers that have a dispute with their bank who upon contacting their bank are not afforded internal dispute resolution in accordance with the Australian Standards as required.

Changes and improvement in the efficacy of this process would help to provide cost effective outcomes, remove protracted matters that have consumed enormous sums of money outgrowing commercial sense, reduce costs to shareholders and strengthen consumer confidence in commercial dealings with financial institutions. More importantly it would serve to improve the prudential standard of financial institutions. Not all banking disputes are the fault of banks, however I constantly see mistakes that are the banks fault and when consumers approach the bank they get an officer that is effective in putting up a stone wall that the consumer is unable to deal with and after a protracted period of time the consumer gives up out of frustration and disgust. It is in these cases that the consumer looks for assistance and I often find that once I get involved I can resolve the dispute within a short space of time. However I believe the stonewall process is widespread and used by institutions for short term gain. The social and commercial impost of this process in its current archaic state is enormous, financial institutions are currently taking a short sighted approach to their corporate conduct which is seriously undermining the long term strength of the industry as a whole particularly with the coming generation.

Whilst the Green Paper identifies the need to improve dispute resolution process for beneficiaries of Trustee Corporations, the opportunity exists to improve this area in the industry as a whole. There is currently a dysfunctional imbalance between financial institutions and consumers in relation to this process. In recent years Minister Sherry has expressed his repeated concerns at Senate Estimates on this issue with respect to the conduct of various banks.

There are measures that could be adopted to create an environment more conducive for consumers and institutions to resolve disputes without wasteful impost on regulators or the courts. These changes would provide not only a better system but I believe would provide an improved commercial bottom line.
I would be happy to facilitate further detail of how the dispute resolution process could be improved if Treasury wishes to advance this area.

Australian Banking Industry Ombudsman (ABIO)

The ABIO is funded by the banks and administers Eternal Dispute Resolution (EDR) for member banks. The large majority of Australian consumers are of the misapprehension that the ABIO is a government body. When consumers contemplate or go through the EDR process via the ABIO and realise this is not the case they

express a deep sense of being deceived and often make the comment that the ABIO is not impartial.

Currently banks are required to adopt an EDR scheme and can do so by being members of the Australian Bankers Association (ABA) and adopting one of the many editions of the Code of Banking Practice (CBP) which differ considerably dating back to 1993. This was recently exposed at Senate Estimates by Minister Sherry where a large bank had adopted the 1993 CBP but was not bound by the latest version leaving the consumer unprotected. Worse still is the situation when a financial institution has elected not to adopt the CBP. Adopting the CBP is voluntary and so adherence to the CBP operates accordingly. In addition the member banks of the scheme do not have to accept the ABIO's findings despite the ABIO being operated and funded by the industry.

In my experience there are a large number of consumers that have dealt with the scheme that note the bias and claim such a position is untenable and not impartial. The scheme should be recognised for results of fairness and no favour. Since the inception of the ABIO, the scheme still only assists claims under $280,000 and there has not been one major adverse finding against any member that sets any legal precedent.

Code Monitoring Compliance Committee (CMCC)

This organisation in my view appears like a patch to a hardware problem and has no regulatory or deterrent power rendering it toothless and unable to help consumers and shareholders effectively. The CMCC has identified and published recent systemic breaches of the CBP by banks which could have been identified by the ABIO, but for some reason were not. Notwithstanding, nothing has been done about any breach that would invite praise from the public. This organisation leaves the general public with yet another train to catch on the already dysfunctional long road back to where they began with their dispute. Ironically ASIC's website refers to the CMCC monitoring breaches but makes no mention of anything that can be done. The general public are now awake to being fed through yet another bureaucracy telling them what they have already known is not being appropriately addressed.

Bank Statements

Since 1996 there has been considerable debate over the non-provision of bank statements to consumers by financial institutions. It is an extraordinary situation that currently in Australia under the ASIC Act and the Corporations Act there is no recital or uniform definition for a bank statement. In light of the germane nature and importance of bank statements this seems an extraordinary deficiency.

The Consumer Credit Code goes to providing some definition for a bank statement, such as "the opening balance of each successive statement must not exceed the closing balance of the last statement of account".[1] Improvement of this definition into a

[1] Consumer Credit Code, s. 33.

uniform definition could be used across all jurisdictions and would improve the financial system greatly.

Merging the current regulatory acts for provision of credit and financial services with amendments would still leave the same void in this area but merely to lesser extent. Last year at Senate Estimates Minister Sherry exposed the failure of a large bank to provide bank statements involving seven figure sums. The bank had not adopted the CBP which obligated them to provide bank statements sought by the customer. ASIC then advised it did not have jurisdiction to deal with the issue nor did they have power to enforce the bank to adopt the CBP or even which version of the CBP is adopted.
A uniform definition would certainly improve and definitely simplify whatever legislative changes are made to both financial services and the provision of credit.

I would like to thank the Labor Government and the members of staff for their initiative to explore and seek the much needed improvement in the legislation of financial services and the provision of credit.

I await your reply.

Yours faithfully

Bruce Ford