



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

23 September 2016

Email: smallbusiness@fos.org.au

Re. Expansion of FOS's small business jurisdiction

Dear Sir/Madam,

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback on FOS's proposal to expand its small business jurisdiction. The FPA supports moves to provide fast and affordable dispute resolution for more consumers, including small business consumers.

However, we encourage FOS to consider the effect of associated fee increases on FOS members, especially members who are themselves small businesses. Further, we ask that the likely behavioural responses of members to the change be considered.

If you have any queries or comments, please do not hesitate to contact me at policy@fpa.com.au or on 02 9220 4500.

Yours sincerely

Dimitri Diamantes

Policy Manager

Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) has more than 11,000 members and affiliates of whom 9,000 are practising financial planners and 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
 - In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
 - We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
 - The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
 - We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1st July 2013 all new members of the FPA will be required to hold, as a minimum, an approved undergraduate degree.
 - CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
 - We are recognised as a professional body by the Tax Practitioners Board
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EXPANSION OF FOS'S SMALL BUSINESS JURISDICTION

FPA submission to:
Financial Ombudsman Service

23 September 2016

INTRODUCTION

The FPA supports moves to provide fast and affordable dispute resolution for more consumers, including small business consumers. While such changes need to be funded, we are concerned about hitting representatives and smaller financial services licensees with additional costs at a time when revenue and cost pressures are already heightened. To this end, we encourage FOS to consider the effect of associated fee increases on FOS members, especially members who are themselves small businesses.

Further, we would suggest that members' likely behavioural responses to the change be considered. Depending on whether FOS members see value in an expanded small business jurisdiction, they might move to a competitor scheme.

1. Expanding FOS's jurisdiction for small business credit facility disputes

Do you agree with FOS expanding its small business jurisdiction and Proposals 1.1 to 1.3? If not, why not?

Financial planners and small business consumers may think an expanded small business jurisdiction in respect of credit facilities provides better value than existing dispute resolution arrangements. For example, small business consumers who are financial planners may be attracted to an expanded opportunity to resolve their own disputes with lenders and other intermediaries.

However, financial planners and their licensees may be concerned about the interaction of the combined effect of aggregation clauses and external dispute resolution (EDR) sub-limit clauses in professional indemnity (PI) insurance policies. Expanding the jurisdiction and compensation limits may, for example, increase these providers' potential self-exposure to liability for compensation; and such liability of licensees, which may mean an additional burden for financial planner representatives.

How would the proposals affect your organisation or constituents? Wherever possible could you quantify any costs or benefits anticipated and include examples?

Our constituents are financial planners. Relevantly, financial planners might provide small businesses with financial product advice in respect of margin loans; or advice about borrowing (other than margin loans) for business or investment purposes. On the flipside, financial planners may also be small businesses that have (or have received advice about) credit facilities.

Financial product advice in respect of margin lending is regulated by the licensing regime contained in the Corporations Act 2001. Australian financial services licensees (AFSL) are required to have internal dispute resolution (IDR) procedures and to be members of an ASIC-approved external dispute resolution (EDR) scheme, under the *Corporations Act 2001*. If an AFSL provides financial services to 'retail clients' (including 'small business' clients, which effectively has the same definition as in the FOS *Terms of Reference*), they must have arrangements for compensating those clients for breaches of Chapter 7 of the Corporations Act.

To comply with this obligation, the AFSL must have professional indemnity (PI) insurance cover (unless the licensee is exempt, e.g. a life insurance company). The professional indemnity insurance needs to be adequate, taking into account matters including the licensee's membership of EDR schemes.

Typically, financial planner providing advice to small businesses about borrowing would not be covered by the credit licensing regime in the *Corporations Act 2001*. In turn, the dispute resolution and professional indemnity requirements of that regime would typically not apply. However, such financial planners might choose to be members of an EDR (assuming they're not already required to for some other reason).

Expanding the jurisdictional and compensation limits for small business claimants will potentially expose AFSLs to: increased self-exposure to liability for compensation; or increased premiums for PI insurance; and an incentive to move to other EDR schemes. This is likely to have flow-on effects to financial planner representatives of the licensee, for example, increased fees. For similar reasons, financial planners who are members of EDR schemes may be exposed to the same possibilities.

We recommend that before changing jurisdictional and compensation limits, FOS finds out what members' behavioural responses are likely to be. This might involve a survey and analysis of behavioural responses to previous jurisdictional and compensation limits.

Can you provide other information about the effect of the proposals?

We have no further information.

Do you suggest changes to the new monetary limits in Proposal 1.1, and if so, what should the limits be and why?

We recommend that before changing jurisdictional and compensation limits, FOS finds out what members' behavioural responses are likely to be. This might involve a survey and analysis of behavioural responses to previous jurisdictional and compensation limits. Further, the likely behavioural response to lower jurisdictional and compensation limits should also be considered.

We acknowledge the challenges with having members self-report, however combined with a review of previous behavioural responses to monetary limits, FOS will at least be in a better position to inform its decision-making.

Do you consider that, if Proposal 1.1 is implemented, FOS will also need to make changes to its processes in addition to Proposal 1.2?

We have not identified any other changes.

2. Varying credit facilities

Do you agree with Proposal 2.1? If not, why not?

In principle, we agree with extending the terms of reference to cover disputes about unregulated credit facilities. However, again, we would suggest that before making any changes, an assessment of the likely behavioural response of members be undertaken.

Would Proposal 2.1 affect your organisation or constituents? Where possible, quantify any impact anticipated and include examples.

We expect that, typically, the proposed changes would not affect our constituency.

3. Improving consistency

Do you agree with Proposal 3.1? If not, why not?

Yes, we agree with this proposal.

Would Proposal 3.1 affect your organisation or constituents? Where possible, quantify any impact anticipated and include examples.

The proposal is unlikely to have a material effect.

4. Operating an expanded small business jurisdiction

Do you agree with Proposal 4.1? If not, why not?

While we appreciate the difficulty of funding the growth in the small business jurisdiction, we are concerned about hitting representatives and smaller licensees with additional costs at a time when revenue and cost pressures are already heightened. For example, ASIC is expected to introduce a user-pays funding model in the second half of 2017, which based on initial consultations may be relatively more expensive for small businesses, such as many advice businesses, than larger businesses. Further, fee changes could contribute to members moving away from FOS.

As a general rule, fees should reflect the expected cost to FOS of the member or class of member. However, given the potential public benefit in attracting and retaining members to the expanded small business jurisdiction, there may be an argument for fee discrimination based on the size of the member firm.

Would Proposal 4.1 affect your organisation or constituents? Where possible, quantify any impact anticipated and include examples?

Increased fees would likely be felt by our constituency, especially where they are small business members of FOS in their own right or representatives of a small licensee.

While a decision is yet to be made about the nature and extent of an expanded small business jurisdiction, would you consider a mid-2017 commencement date for changes to the jurisdiction feasible? If not, why not? If not, what date would be more appropriate and why?

A mid-2017 start date may be reasonable.

5. Traditional trustee company services

Do you agree with Proposal 5? If not, why not?

We are not opposed to this proposal.

6. Updates and other amendments

Do you agree with Proposals 6.1 to 6.5? If not, why not?

We do not oppose these proposals.