C O R R E C T E D V E R S I O N

LAW REFORM COMMITTEE

Inquiry into alternative dispute resolution

Melbourne — 11 February 2008

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Witnesses

Ms E. Collier, policy and public affairs manager, and

Ms D. Carmody, general manager, Banking and Financial Services Ombudsman; and

Ms A. Maynard, chief executive officer, Financial Industry Complaints Service; and

Ms R. Rajadurai, manager corporate and legal services, Insurance Ombudsman Scheme.

The CHAIR — Welcome to the hearing, and thank you very much for coming along. Thank you very much for the material that you have provided us with. Hansard will be recording proceedings and you will be sent a transcript subsequent to the meeting that you can make any minor adjustments to.

I also need to remind you that the discussion operates under the auspices of the Parliamentary Committees Act, which extends parliamentary privilege to anything that you say within this forum and of course protects you from any action that might be taken if you say something that is not outside — put it that way. They are the ground rules. We have got some questions of course, but we will leave it for you to first make your PowerPoint presentation.

Overheads shown.

Ms COLLIER— My name is Eliza Collier. I am the policy and public affairs manager at the Banking and Financial Services Ombudsman scheme, and I am here with my colleague Diane Carmody, who is the general manager of the BFSO; Alison Maynard, who is the chief executive officer of the Financial Industry Complaints Service, or FICS; and Ragini Rajadurai, who is the manager of corporate and legal services at the Insurance Ombudsman Scheme, or IOS.

The three services represented here today are industry-based, external dispute resolution schemes, or EDR schemes, that resolve disputes concerning the provision of financial services. As you know, we made a joint written submission to the committee's discussion paper, and we are here today to provide additional information and to answer any questions.

I was asked to provide some additional background to the schemes and the regulatory framework that we operate within. I will also summarise a few of our key views arising from the discussion paper.

The first thing is: what do we do? BFSO, FICS and IOS are independent dispute resolution services that consider and seek to resolve disputes between Australian financial services providers that are members of each scheme and their individual and small business customers. They provide an alternative to litigation, and their services are free for consumers.

BFSO's members include banks, their related corporations and some other financial services providers, including credit providers, mortgage brokers, debt collectors and one credit reporting agency. FICS's members include life insurers, fund managers, friendly societies, stockbrokers, financial planners, pooled superannuation trusts, timeshare operators and some other financial services providers. IOS's members are Australian Prudential Regulation Authority-approved general insurance companies, underwriting agencies and related entities.

The schemes were originally set up by industry associations such as the Australian Bankers Association in the case of the BFSO, the Insurance Council of Australia in the case of IOS and the Life Insurance Federation of Australia in the case of FICS. Each of the schemes is funded by the industry participants that are members of each scheme. The members usually pay a fee for membership — usually an annual fee — in addition to a fee per dispute. In each case that fee per dispute can escalate according to how long the dispute continues.

The industry-based EDR schemes provide accessible and effective consumer redress and an affordable alternative to court litigation. There are another four industry-based EDR schemes operating in the financial services sector, including schemes specific to credit unions. There is also one statutory tribunal, the Superannuation Complaints Tribunal, operating in this area. All eight of those providers jointly provide a single 1300 telephone number to ensure accessible access by consumers. The schemes also collaborate on promotion of their services and that phone number.

As you know, BFSO, FICS and IOS have announced that they will be merging from 1 July 2008, so that will create one large dispute resolution scheme covering all of those members that I spoke of earlier.

The CHAIR — The whole eight?

Ms COLLIER — No, just the BFSO, FICS and IOS will merge.

Ms MAYNARD — And IBD, the broker scheme, has indicated it will come in shortly after.

The CHAIR — So it is the three you represent, plus one coming in, and then another four left outside?

Ms MAYNARD — There will still be four.

Ms CARMODY — It may be relevant, but the banking ombudsman also provides dispute resolution services for one of the credit union schemes. In other words, there is a credit union credit resolution centre, and they, if you like, subcontract out their dispute resolution to the BFSO. It will be a large chunk of dispute resolution going on within that one organisation.

Ms MAYNARD — I think we will cover about 80 per cent — so 70 or 80 per cent will be covered by that one large scheme. We obviously have formed a view that one scheme would be better, and we will be working at trying to entice other schemes to come in.

Ms CARMODY — ASIC may well in the longer term, frankly, have some say about that.

Ms COLLIER — I now come to the regulatory framework. Each of the schemes operating in the financial sector are approved by ASIC as EDR schemes for financial services licensees under part 7 of the Corporations Act. Under that act all licensees that provide services to retail clients must have an internal dispute resolution procedure that complies with standards set by ASIC, as well as belonging to an EDR scheme that is approved by ASIC. Membership is also a licence requirement for those financial services licensees.

The guidelines against which ASIC assesses a particular EDR scheme for approval are contained in the regulatory guide 139, which is the approval of external complaints resolution schemes regulatory guide. That guide has been designed to encompass the key principles contained in a previous document developed by the commonwealth department of industry and science in 1997, which I refer to there as the DIST benchmarks.

To gain and retain ASIC approval, EDR schemes are required to meet all the requirements in RG 139. There are six key requirements that have been drawn from the DIST benchmarks. Both the regulatory guide and the DIST benchmarks provide a lot more detail about how those six key requirements are to be obtained — they are accessibility, independence, fairness, accountability, efficiency and effectiveness. The ASIC-approved EDR schemes are also required to report quarterly to ASIC in relation to things like the number of telephone calls that we receive, the number of written disputes that we receive and the subject matter of disputes, including the product concerned and the problem encountered by the consumers. We are also required to report to ASIC on systemic issues that become apparent from our disputes and any serious misconduct. Any failure to abide by the decisions of the scheme might come into that category. We are also required to have an external, independent review every three years and report the findings of those reviews to ASIC. ASIC also convenes quarterly meetings with the schemes in relation to these reporting requirements.

Our written submission has got more detail about the kinds of ways in which we comply with regulatory guide 139, but I have included some examples for your reference. We are required to be free for consumers. We are also required to ensure the scheme's independence, and we do that in a number of ways. We have to be incorporated entities, overseen by a board consisting of equal numbers of consumer and industry representatives with an independent chair. Our terms of reference must provide that the decision-maker or ombudsman and their staff are entirely responsible for determining the disputes and are accountable only to the board. We also must ensure that the schemes are adequately funded to carry out their functions — so that is through the member contributions and also we operate under terms of references or rules.

We are required to have procedures that ensure procedural fairness and maintain confidentiality and to have mechanisms to ensure disputes are dealt with in the most appropriate forum. Obviously, that is ensuring that only disputes that fit within our terms of reference are dealt with by the scheme.

The schemes make decisions with regard to a range of sources — importantly, the law. Also applicable are industry codes of practice — for example, the code of banking practice, which is a voluntary, self-regulatory code of practice — good industry practice in general and fairness in all circumstances.

The schemes are required to be able to make decisions that are binding on their members. They do that by the members agreeing contractually to be bound by the decisions of the scheme when they join the scheme, but the decisions are not binding on consumers. That mechanism enables us to ensure that there is compliance with the decisions by the members, but the consumers have the option to go to court if they want to. It is not closing off their option to do that.

As I said before, we provide mechanisms to deal with systemic issues and independent review.

I have just got two short comments to make. The first is in relation to the possibility raised in the discussion paper of additional regulation of ADR service providers potentially including our schemes in Victoria. In our view, additional regulation of the schemes would be unnecessary given there are already detailed and rigorous approval requirements and oversight that is being provided by ASIC.

We think that those guidelines and the objective benchmarks in regulatory guide 139 and the DIST benchmarks provide best practice standards for effective industry-based EDR systems in the financial services industry. And the framework also enables ongoing evaluation and improvement of our services. We are also of the view that as national schemes it might be unworkable to have a regulation that is additional and applying only in Victoria, which might even conflict with the current regulatory framework.

The second thing that I wanted to mention is the regulation of credit and broking services. Our written submission discussed the lack of coverage by industry-based EDR schemes for consumers of some credit products and brokerage services because they are regulated on a state-by-state basis rather than through the Corporations Act and overseen by ASIC. They are not required to belong to industry-based EDR schemes.

We also indicated in our submission our support for the Victorian government's proposal to legislate to require all providers of credit or consumer credit in Victoria to subscribe to an EDR scheme. I also note that New South Wales have now released a consultation bill, which is intended to be replicated by the other states, to provide for the regulation of brokers that will include compulsory membership of an EDR scheme.

It is our view that it would be more desirable overall if both of those areas, credit and brokerage services, were regulated at a national level with oversight by ASIC, but if, however, the state regulatory regimes continue or prevail in these areas, it is our view that the ASIC approval regime for EDR schemes should remain one of the key requirements for EDR in this area.

As I have already discussed, the regulatory oversight of ASIC for EDR schemes in the financial sector provides high standards for dispute resolution, but it also provides effective mechanisms for supporting the decision making of the scheme through the requirement to report systemic issues and incidents of serious misconduct.

A number of credit providers have already joined BFSO voluntarily without the licence requirement on other financial service providers, including entities such as American Express, Esanda Finance and some mortgage brokers. We have also had a number of inquiries by other credit providers who may wish to join BFSO.

We have also covered in our written submission a number of other areas including the proposal for a central gateway for ADR disputes and also the question of court referral to EDR schemes, and we are happy to answer questions about those things rather than me addressing them specifically. That is the end of what I have got to say about it, but we are here to answer questions, thank you.

The CHAIR — Thank you very much, Eliza. Maybe if we could just start with the central gateway, because the opening question I was going to ask you was for you to step us through how consumers access the scheme — just to talk to us about that. Clearly, as you understand, from our point of view as a parliamentary committee, our biggest concern is consumers and how they fare through this hugely complex ADR system that they are confronted with, and you are one component of that, so that is a central question for us.

Ms COLLIER — One of the key ways that consumers access all of our schemes is through the jointly-promoted 1300 number. That is a number that is available for the cost of a local call to anyone in Australia. They do not need to know which scheme their financial services provider belongs to. They can just call that number and we will take them through the process of working out whether or not they need to go to FICS or IOS or BFSO — —

The CHAIR — Just to stop you there, starting with the person: if a person has a problem, how do they get the number in the first place?

Ms MAYNARD — Can I perhaps address that because we have even more stringent requirements sometimes than the other schemes.

Ms COLLIER — Yes.

Ms MAYNARD — First of all, it is a requirement that when you have a financial services licence and you deal with retail clients, that you must have an internal dispute resolution process and you must belong to an external scheme. To some degree, in all ways, all the external schemes have a requirement that the member must advise the consumer at the IDR process that they may contact the external scheme.

In addition to that, FICS has even more stringent requirements on life insurers that if they make any adverse decision in relation to a claim, even before the IDR process, they must advise consumers about FICS. Across all the schemes the requirements are the same, that the members must refer consumers; they are in breach of their agreement with the scheme if they do not refer consumers appropriately to the scheme.

Our scheme has 2700 members and sometimes they fall out of line and we have a procedure to follow up every time we become aware of a consumer not being informed properly about the scheme. We will see a letter that perhaps gives an answer in relation to an IDR complaint, and if that letter does not appropriately refer to the scheme, that member is followed up to address their procedures. In some circumstances members have been reported to ASIC for not having proper IDR processes.

Ms RAJADURAI — Just to add to that, with the general insurance industry, there is also the general insurance industry code of practice, which IOS monitors, and as part of that function the insurance industry has to advise consumers, right at the outset, of the availability of IDR and EDR. So there is also a publication in all their policy documentation and claim forms so that consumers are made aware of the existence of the scheme and the availability of the scheme.

IOS monitors the industry's performance through that. Similarly, if we identify any circumstances where there are gaps or failure to notify consumers, we would take that up with the company in question and ensure that there is improvement in their performance standards. In many instances that requires them to change documentation, implement training programs and the like, and issue that throughout the organisation on a national basis.

That is also linked in with our systemic issues reporting role to ASIC, as Alison indicated, so all schemes have that function in place.

Ms MAYNARD — And then we promote more generally, which I think Eliza was going to go on to — was that what you were going to say?

Ms CARMODY — Why not me? I was just going to talk about, if you like, our own research about how well known we are. We are very, very conscious of making sure that we are known to the public, so I can certainly speak on BFSO's account. About every couple of years we have an external person who will go out and survey 1000 members of the public, Australia wide and so on. Now our surveys are telling us that in fact the public knowledge of the banking ombudsman scheme is increasing all the time, and I think that it was round about 65 per cent in our last survey — unprompted.

Interestingly, though, in the last survey most consumers, when asked the question, 'What would you do if you have a problem with your banking service?', did actually say they would go to their banks. That is where this required referral from the service provider back to the EDR scheme is so important, but in using the word 'ombudsman', people are aware of ombudsmen. Frankly, the proliferation of ombudsmen services, whether it be finance, energy or health services, is such that consumers are pretty switched on these days, and they know that there are avenues available should they have a problem with practically any of their services.

Ms MAYNARD — But we see the merger of our schemes giving us a greater ability to promote one financial ombudsman service and to have it even better known — to exceed the surveying of the banking ombudsman too.

The CHAIR — Could I just interrupt there? It is interesting when you say that consumers are pretty switched on. I remember some time ago I was at a briefing on complaints through consumer affairs and there was a postcode analysis done. It would not surprise anyone to know that most of the postcodes were in the better educated, more affluent parts of Melbourne and Victoria. That is where complaints were coming from and where disputes were emanating from. When you say that people are switched on — of course, but it is always patchy, isn't it? Part of our concern is for marginalised groups and vulnerable consumers.

Ms CARMODY — Absolutely, and we are very conscious of that also. When we analyse postcodes we look at rural areas throughout Australia and compare them to metropolitan areas. The banking ombudsman scheme has been in the existence now since 1990 so it has had a long history. Now our figures show that the number of disputes coming in pretty well matches proportional population representation. I think Eliza was going to talk about the underrepresentation in youth.

Ms COLLIER — Our surveys showed that the group that was least aware of our service was the 18 to 25-year-old group. For that reason a lot of our promotional work has been to young people, at least in the last two or three years. We have developed a case study booklet that runs through particular problems that would affect young people such as problems with credit cards, but we have done it jointly with the telecommunications industry ombudsman. It is sort of an education package with case studies about mobile phones, credit cards, buying motor cars. We have been doing sessions, partly through the Victorian Law Foundation, going out to regional areas and doing performances based on that booklet for students. We are trying to promote that as much as possible. The new FOS organisation, the merged organisation, I think will continue to take up that particular group as one that we focus on. I think the other group that is somewhat underrepresented is older people. We are in the process of developing some material specifically aimed at older people and working with COTA, the Council on the Ageing, to promote that material.

Our terms of reference also require us to focus on promoting the scheme to disadvantaged consumers, in particular consumers in rural areas. We also do a lot of work with financial counsellors, particularly in rural areas. I know there are people going out in the next few months to talk to financial counsellors in rural New South Wales. We also do lot of work in New South Wales with Aboriginal communities — going out and giving very simple talks about what the ombudsman is, how you contact us. We are getting information from those communities about what kind of problems affect them.

Ms CARMODY — Just to pick up on that, I think the socially disadvantaged are likely to be the people you may be thinking of who would not be as switched on, and we do lot of work with financial counsellors or consumer groups. Those consumer groups are particularly active in Victoria, even more than in New South Wales. We have a greater challenge in reaching those groups, frankly, in the other states. But Victoria is well represented in that area.

Mr CLARK — I wanted to ask generally what range of performance measures you keep about different aspects of the scheme performance figures such as cost per complaint, your cost as a percentage of relevant industry revenue, what your resolution rates are, participant satisfaction, the proportion of claims that come to you rather than go direct to courts et cetera. Do you benchmark yourselves against other schemes in respect of those various measures and either now or later would you be able to provide any of that data to the committee?

Ms CARMODY — That was a huge question.

Ms MAYNARD — We all publish annual reports which have a certain amount of data. Even with us joining forces, our three schemes operate on different definitions of what is a dispute, what is the complaint and what we take in. Getting data that is comparable in this sector I know is terribly difficult. You would also think that in the one sector we would be operating in sort of more or less the same way. We have quite a difference in the way that we handle disputes. IOS is highly determinative; BFSO rarely gets to making a recommendation; and we would fall somewhere in the middle of having a lot of casework negotiation but also a highly structured conciliation process that is very structured compared to the other schemes, and then we have about 20 per cent or 30 per cent of our cases going on to determination. As to trying to compare outcomes and efficiency, the schemes have tended to grow to meet the needs of the sector they service, and we are in the middle of working out ways to mesh those together. So data except at most basic levels is quite difficult. We have no data about what goes to court compared to going to us except that we know there is a dearth of case law in our areas because we are doing so much of the work.

Ms CARMODY — Can I just try and break it down? Firstly, there is cost of complaint funding, and speaking for BFSO the cost that we charge to a bank for a particular complaint is not reflective of the cost because what the schemes are doing and the members are doing is funding a whole operation which includes policy work, including education as well as the dispute resolution. We so happen to get our budget back by divvying up the cost on a complaint basis, but in fact it is highly inflated because we do all this the activity as well. We are satisfied with the way we charge the members, because basically they are paying — it appears to be the big four that pay. For

example, in our case they have got the most customers and so it seems to be an appropriate way to charge them. In answer to that question, there is no breakdown of the cost of complaints and it would not be helpful to you.

With respect to resolution rates, what we publish, in our annual report anyway, is that 7000-odd written complaints come in. Of those we refer it back to the member and 93 per cent are resolved. Picking up from the previous people who were speaking here, resolved means that even an explanation of what has gone on may in fact resolve the complaint for the consumer. We investigate 3 per cent of cases; I think last year there were 300 or so cases that were investigated. They are unresolved.

In terms of outcomes I think the figures were that over half were in favour of the consumer. Of those remaining — let us say 50 per cent; it was a little bit less — about half of them were resolved in favour of the member. There was another half — in other words, another quarter — where there was a mediated, agreed settlement. From our perspective with the cases that are investigated it is not a desirable outcome necessarily that the consumers are right every time. It is a very poor reflection on the industry. One would expect that if the industry became better at recognising meritorious complaints and disputes they would be resolving them, and certainly in our case there is a commercial incentive to resolve them. So that is part of our education push, back to the industry, trying to help them resolve matters earlier so they are not escalated

Ms RAJADURAI — That pretty much is a theme right throughout. From IOS's perspective, as Alison pointed out, we have a more determinative function. It is a virtue of the product that we deal with, in as much as most of our disputes are claims-based disputes. Companies have highly sophisticated IDR processes, and they do deal with them fairly well given the volume of claims that are made in any one year. We publish our dispute resolution times and we have fairly stringent benchmarks in relation to our three arms of decision making, because we have a different process in the low-value disputes. I think one of the key issues is access to justice for low-value disputes. Fifty per cent of our disputes are still under $5000 and 70 per cent are under $10 000, so that is fairly significant. The role that these schemes play in the low-value disputes is fairly significant.

Ms MAYNARD — My scheme has a quite different complaint value breakdown. A recent figure is that more than half of our disputes are over $30 000. So that means we do put more resources into formal conciliation conferences and things like that because generally the disputes are of high value and we have very few low value complaints.

The CHAIR — Is there a reason for that?

Ms MAYNARD — We are mainly dealing with complaints about life insurance, financial planning, stockbroking, people's investments in superannuation — —

The CHAIR — It is your product?

Ms MAYNARD — It is the product, yes.

Mr BROOKS — Just following on, my question is in relation to the follow-up research you might do — for example, you mentioned a large percentage of the complaints might be referred back to the member, and then the bulk of those are resolved and there is no further issue; whether you do any research into what happens after that. Have you looked at those complainants and asked, 'Were you totally satisfied with the outcome?' and just tried to get a measure on that sort of stuff?

Ms CARMODY — The answer is yes — you must have been on our board! In fact we have done that just recently. In 2006, I think, we did that. That is a question people want to know the answer to. What happens to the people that we talk to on the telephone? We talk to 70 000 people on the telephone. Where do they go? What do they do? Do they actually go back to their provider? Do they get satisfaction? Why do not their issues turn into written disputes? And then, when they come to us, what happens?

The answer to that is in terms of a number of measures. In terms of satisfaction, there is a very strong correlation in a service such as we provide between satisfaction and outcome. People are satisfied if they get what they want. In fact the person doing the work for us said that people who do not get what they want are cross about neutral things. They can say that they are dissatisfied with things such as your logo or the type of paper that you use. So it is very skewed. Satisfaction is not a very useful measure for us. We sometimes get letters that say, 'Yes, we are pleased

that it has been explained to us, although we did not get what we wanted'. That is rare, but it does happen, and that is the sort of outcome actually that we are looking for. I do not think I have quite answered it.

Mr BROOKS — It was just a general question around how you measure the outcomes.

Ms CARMODY — Yes. So in fact what we do is post survey people after cases are closed. That is the answer to that. We use an external company.

Mr CLARK — Do you survey the members as well about what they think, and what sort of feedback do you get from that process?

Ms CARMODY — Yes, we did in our last survey. Generally — I am speaking for BFSO here now — over a period of time we have earned a great deal of respect, frankly, within the industry, and we are very keen to preserve that. But from time to time you get members who are unhappy. What we find when we go out for presentations — as you go deeper into these very large organisations you actually might get an area manager who is unhappy because the consumer does not pay, because you are only on the side of the consumer. You do find those sorts of attitudes arising from time to time, but I think that is what we expect.

Ms MAYNARD — We do surveying. We do an exit survey on everyone who leaves the process and a more in-depth survey of everyone who finishes the conciliation process because we are concerned, as we conduct it confidentially, to be sure that the process is operating fairly. Even if the case does not resolve, in general our feedback about the conciliation process is excellent from members and consumers. More generally we survey members and consumers. We are more likely to still get adverse feedback from members as well as consumers because many of the members of FICS are not big businesses, they are small businesses, and can resent a complaints scheme being free and that they have to pay fees to a complaints scheme. It is much more difficult for small business to accept the sort of regulatory framework that we have in the industry. Not all of them. Some of the small businesses are great, but some of them are pretty upset about the whole regulatory regime, and we are the point where they interact with the regime, so we can get quite a bit of negative feedback from members at times. We try and do lots of things to manage that and try and interact personally with those members and to bring them on side.

I think, differently from the other schemes, we have seminars, or workshops, where we offer internal dispute resolution training to our members, because we see them falling down on their side. If they cannot even do their IDR right, how are they going to interact with us and what sort of attitude are they going to have resolving complaints? So we conduct quite intensive workshops. About 900 people have been through those workshops so far learning how to resolve their own complaints. That has the added benefit that they interact better with the scheme more generally, as well as resolving complaints, because part of what we are about is yes, resolving complaints at external dispute resolution level, but also we have an obligation to educate the industry in how to resolve complaints. Sorry, that was a bit of a diversion.

Ms RAJADURAI — All the schemes perform a fairly significant education function within the industry as well to lift industry standards. At IOS we also do one-on-ones. We might go to an organisation that asks us to attend to provide training to the organisation. We have open forums where we discuss determinations with industry. They have been very well attended. In Sydney we had 70 attend, in Melbourne we have had 100, and we have been conducting those throughout the year. We have gone to every major city with those education forums, where our decision-makers are on hand. That is a unique service that we offer, compared to the court system, for example, where people can actually meet the decision-makers and find out how the decision-making process works and how they can improve their own processes internally. We also have liaison meetings with focus groups with different companies and major players in the industry to see what their issues are. We also have one-on-ones if they have particular issues that they want to address with us.

The CHAIR — We are running slightly over time and I do not want to keep you any longer than necessary. There are just a couple of more questions I think, if other people have them. One is that you say in your submission that there is a need to better promote ADR providers and you say that that could involve cooperation with federal and state governments. I am wondering what you think the state government could do to support this, or what kind of role the state government could play?

Ms RAJADURAI — Can I take that one? One of the areas where probably a lot more work needs to be done is just education broadly, particularly even in the school curriculums — that would be very useful, more from

the perspective of prevention rather than cure — lifting standards of knowledge in relation to financial products and what the avenues or opportunities are to have problems dealt with in the event that there is a difficulty, and an awareness of financial products, banking, the need to get insurance. If you are going to invest, then knowing what is available and exploring. By way of example, the schemes last year attended the home expo. Our focus then was to let people attending the expo be aware of the nature of the products out there.

The CHAIR — Do you think government can play a role in the kinds of activities that you were involved in?

Ms RAJADURAI — Certainly, yes.

The CHAIR — So consultation with education departments would be helpful?

Ms RAJADURAI — Yes, that would be very helpful. At the moment ASIC does provide education and information in relation to IDR and EDR and the knowledge that consumers can complain. More work is to be done in relation to that in a lot of subgroups.

The CHAIR — So mainly about information. I will skip through these quickly just to tidy up. One of our previous witnesses talked about schemes that are not that accessible to people who do not have expert or legal assistance, and it goes back to the conversation we had quite extensively before about disadvantaged groups. Do you have a comment on that?

Ms MAYNARD — We see it as our role to assist consumers through the processes. It is our role to provide a level playing field, and our staff take great pride in assisting consumers through the process. One of the complaints that we get from our members is that consumers get too much assistance, but also we see it as our role, especially with small members, to assist them through the process as well. We see it as creating an environment where both parties can get their case heard no matter how skilled or lacking in skills they are.

Ms CARMODY — Our disputes have very much a legal focus. It does not matter whether it is a dispute about your savings account, you have a contract. There are some terms and conditions and at the base there is a contract. Our staff members, frankly, the majority now are lawyers in both the case officer and case management group. We take it upon ourselves to identify the issues, so the consumer does not have to be skilled. All they need to say is, 'I should not have undertaken this guarantee; my mother did not speak English'. They just have to describe what happened and we take it upon ourselves to recognise what are the legal issues that need to be addressed. Just to go back, we do not think consumers require representation because we will recognise and do all the analysis. It is an inquisitorial process — they just provide us with the information and we will do the assessment as to whether there has been a breach of the law.

However, in a case where we think a consumer should have legal representation we will require the bank to pay for that. This is quite rare, but if the circumstances of a case in fact require someone to have their own advice, even about whether to settle or what to do to resolve it, we might ask the member to pay for that. I guess we do take it upon ourselves to make sure no-one is disadvantaged in that way.

The CHAIR — The last question I have, and I am sorry to keep everyone here, is the issue of the reviews the schemes conduct and the lodging of the findings of those reviews with their boards, and the connection between that and the ASIC determined benchmarks. My question is, how is there a broad systemic development that derives direction from the experience of the schemes? What is the connection?

Ms CARMODY — I am not sure. Those reviews will go to the board but also to ASIC.

The CHAIR — They do go to ASIC, do they?

Ms CARMODY — Yes, and ASIC even has input at setting the terms of reference of the review.

The CHAIR — That answers my query. There was just a gap in my knowledge about that.

Mr BROOKS — I refer to a comment that Alison made before about complaints coming from members about you doing too good a job, if you like, in terms of representing the complainant. Does that create some tension in terms of your role in keeping members relatively happy, members who have representation at the board level?

Ms MAYNARD — It goes back to being a dispute resolution scheme. We have a commitment to resolving complaints, even if they are complaints about us, so we would try to get to the heart of what the issues are with the member. When they talk about us giving too much assistance to a consumer, quite clearly we rely on the consumer to give us the facts of the dispute and, as Diane says, then we apply the law to those facts. My answer to those members is my staff may well be applying the law, but they are not making up the facts; the facts are coming straight from the consumer. I do not have staff sitting there making up cases; the facts come from the consumers and then my staff must deal with those facts as they are given to them. We have an IDR process and we also have extensive surveys and liaise with people. It is in everyone's interest for members of the schemes to be compliant and do the right thing and be accepting of the scheme and its decision.

We are the scheme that most often expels members, so I am not saying we would back away from doing what is required to uphold the rules and uphold a decision, if that becomes necessary. We also try to educate the members as we go along and have them accepting the scheme and what we do. We do have an IDR process that deals with complaints about us that can come from consumers and members, so we use that as another way of being able to deal with members and consumer concerns about what they might not have liked about the process. Obviously we may not change decisions, but we take on the feedback and deal with the concerns.

Ms CARMODY — I do not want to let the opportunity go by without answering the question, 'What else can the government do?'. I again refer in particular to disadvantaged consumers who often need advocates. If the economy goes down and there is another increase in interest rates, there are a lot of people who can complain to the banking ombudsman that they were given loans that they could not afford to pay and they would not be in this dreadful position, particularly if the value of the property has gone down. What can the state government do? Keeping a robust consumer movement going is pretty critical, frankly, and I am talking Australia wide. So if there are any spare dollars, then financial counsellors and consumer law centres, anything like that, are important. It is really an important balance, if you like, because they are the voices to keep reminding us and government what the issues are out there.

The CHAIR — Thank you for allocating this time to us. It was very valuable from our point of view. You will receive a copy of the transcript. If there are questions that we need to follow up with you, then I hope that will be all right.

Witnesses withdrew.