



AUSTRALIAN COLLECTORS &  
DEBT BUYERS ASSOCIATION

**SUBMISSION IN RESPONSE TO ISSUES PAPER**

# **Review of the financial system external dispute resolution framework**

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October 2016

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## Executive Summary

The Australian Collectors & Debt Buyers Association (ACDBA) is pleased to provide this Submission for the Panel's consideration in response to the Issues Paper relating to the Review of the financial system external dispute resolution framework.

This document ideally will serve to assist in educating the Panel about the debt buying industry and give perspective to a small sector with a significant footprint in Australian consumer financial services and very relevant to EDR in terms of case volumes.

The overarching challenge in preparing this submission is that as stakeholders, ACDBA and its members do not know the form, content and shape of actual changes which ultimately might arise from this Review and specifically whether or not such changes would be any better or worse for the debt buying sector than what currently exists.

We have included commentary from our members on those things about the industry EDR Scheme arrangements they like, as well as those they don't like, and what could possibly be done to improve arrangements for overall better outcomes for all users (consumers and industry).

Issues have been illuminated in respect to ensuring fairness and equity for all users of EDR Schemes as well as the need for total transparency of EDR outcomes and costs. Further we have highlighted and explained the reasons why there is an urgent need to introduce amendments to the powers of EDR Schemes to ensure that post this Review there are no ongoing incentives for misuse of the EDR system in respect to the complaints lodged for resolution.

As a stakeholder group representing a specialist subset of the financial services industry, namely the activities of debt buyers, we have been able to include in our Submission, a unique snapshot of what has actually happened in terms of complaints experience and resolutions through the existing EDR Scheme arrangements over the past 8 years. This data clearly shows that in recent years EDR outcomes very rarely demonstrate poor conduct by our members (less than 2% in 2014, 2015 and 2016 were adverse outcomes excluding credit listing related issues), and conversely, that 40% or more of EDR complaints are proven to be without basis or withdrawn by the debtor.

Our aim has been to acknowledge in balanced terms the good points about EDR as well as to identify some of the frustrations.

ACDBA and its members are optimistic of the opportunity afforded by this Review to deliver outcomes to all users of the EDR Schemes for an equal footing based upon respect and mutual obligations, inclusive of:

- Fairness and equity for all users based upon:
  - transparent, consistent and equitable outcomes for dispute resolution
  - EDR schemes being used for their primary purpose of dispute resolution and not to delay or usurp legitimate and lawful collection activities
  - EDR schemes having the capacity and expertise relevant to the industry sectors they serve
- The introduction of more rigour around the limits of the EDR schemes and the higher authority of the Courts
- EDR scheme funding models being fair, equitable and transparent
- EDR cost recovery from frivolous complainants

## About ACDBA

The Australian Collectors & Debt Buyers Association (ACDBA) was established in 2009 for the benefit of companies who collect, buy and/or sell debt. Our members<sup>1</sup> represent the majority of the collection market in Australia. Membership is voluntary and open to all collectors, debt buyers and sellers.

The objectives of ACDBA are to:

- represent the interests of members involved in debt collection and debt buying;
- establish and maintain a Code of Practice for the business activities of members;
- encourage best practice of members in their professional activities;
- provide opportunity for members to discuss and deliberate on matters affecting them professionally; and
- facilitate representation to further the professions of members.

Members are engaged in debt collection and debt purchase activities and use legal action where appropriate as a means of obtaining payment from debtors.

Our members act on behalf of many and varied clients, from large corporations to small businesses, and have a client responsibility to deliver timely and effective debt collection strategies and outcomes.

The size of the Australian collection industry is large and growing. Data<sup>2</sup> collected from ACDBA members indicates the cumulative value of debt they had under collection as at 30 June 2016 exceeded \$19.466 billion represented by 5.9 million files under management. The debt files by value were handled 38.7% on a contingent collection basis whilst 61.3% were handled as debt purchase collections.

Cumulatively, ACDBA members made more than 63.2 million debtor contacts in FY2016 - contacts included telephone calls, SMS, emails, non-statutory and statutory letters. Our members report collecting a total of \$2 billion from accounts under management in FY2016 and writing off over \$11.2 million of debt in response to genuine long term hardship situations.

Member statistics indicate a very low level of confirmed complaints against industry members. Despite the high volume of contacts detailed above for FY2016, incidents against the industry amounted to 1 per 5,101 contacts or 478 accounts under management, or less than 0.02% per total contacts per annum.

ACDBA members involved in debt buying each hold an Australian Credit Licence (ACL) as they assume the role of Financial Service Provider (FSP) upon acquisition of consumer debts from the originating FSP. Pursuant to the obligations of holding an ACL, those members belong to an ASIC approved EDR scheme.

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<sup>1</sup> Refer Annexure A: Listing of members of Australian Collectors & Debt Buyers Association

<sup>2</sup> Refer Annexure B: ACDBA Member Data Survey FY2016 with annual comparatives to FY2009

Incidents recorded as part of ACDBA member Internal Dispute Resolution processes are considered as any matter related to alleged unsatisfactory professional conduct and lodged as requiring investigation. These unsubstantiated incidents should not be confused with genuine requests made by consumers for additional information to understand the terms of an account, the balance outstanding or the history of payments made.

Recognising that collections deal exclusively with distressed debt where often the responses received to demands for payment are emotionally charged, an incident rate of 0.02% per total contacts made each year is very low.

## Discussion questions

In this Submission to the Issues Paper, we provide responses only in relation to those discussion questions relating to ACDBA members' exposure to and experiences with the External Dispute Resolution (EDR) framework.

### Principles guiding the review

**1. Are there other categories of users that should be considered as part of the review?**

We are unaware of any further categories of users to be considered.

**2. Do you agree with the way in which the panel has defined the principles outlined in the terms of reference for the review?**

Yes

**Are there other principles that should be considered in the design of an EDR and complaints framework?**

We are unaware of any further principles to be considered.

**3. Are there findings or recommendations of other inquiries that should be taken into account in this review?**

We are unaware of any findings or recommendations of other inquiries relevant to this review.

**4. In determining whether a scheme effectively meets the needs of users, how should the outcomes be defined and measured?**

It is important to measure and monitor the relative performance of each EDR Scheme but realistically we submit this will be difficult if not impossible to achieve with a simple formula. Possibly the best way is to seek some standardised measure of key indicators which reflect the principles and outcomes outlined in paragraph 11 of the Issues Paper.

Although an obvious indicator would be around the timeframes each EDR Scheme takes to resolve and close complaints, unfortunately we respectfully submit this may be problematic to implement and rely upon, as although EDR Schemes require their members to comply with response timeframes ACDBA members report that routinely complainants are not similarly held to timeframe compliance. Extending wide latitude to complainants in the obligation to meet timeframes effectively renders the use of timeframes as a meaningful measure/performance indicator unreliable.

Examples of other useful indicators as to the performance of the EDR Schemes include:

- A measure of the proportion of complaints settled at the initial stages of the complaint processes;
- A measure of the proportion of complaints where settlement is reached by way of agreement between the parties;

- A measure of the average cost (direct and indirect) of resolving each complaint

Achieving quick turnaround times for resolutions will likely always be a preference for both industry and consumers, but this should not be in isolation to or at the expense of other factors.

In particular, we submit that industry prefers to see maintenance of a helpful, constructive approach to resolving disputes and that where EDR Schemes are required to make findings and determinations the expectation is that these are based on sound interpretation of the law, relevant regulations and industry best practice as opposed to more subjective factors.

## Internal dispute resolution

An appropriate snapshot of the relationship between IDR and EDR referrals and actual evidence consumers are increasingly well aware of both IDR and EDR as options to seek resolution of complaints against FSPs is available in the following tables which detail the results of annual ACDBA member data surveys over the past 8 years:

Table 1	FY2016	FY2015	FY2014	FY2013	FY2012	FY2011	FY2010	FY2009
Number of Respondents	16	18	17	13	12	9	9	8
<b>Number of Complaints Received</b>								
Via IDR	10,557	10,171	6,925	4,045	3,638	2,763	2,270	954
Via EDR	1,810	1,864	1,811	1,364	1,305	872	381	87
<b>Total</b>	<b>12,367</b>	<b>12,035</b>	<b>8,736</b>	<b>5,409</b>	<b>4,943</b>	<b>3,645</b>	<b>2,651</b>	<b>1,041</b>
<b>Complaints Expressed as a Percentage</b>								
Via IDR	85%	85%	79%	75%	74%	76%	86%	92%
Via EDR	15%	15%	21%	25%	26%	24%	14%	8%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

As evident from Table 1 above, consumers are increasingly aware of the opportunity to lodge a complaint with an FSP and more importantly the data demonstrates ACDBA members as debt buyers, (being non-originating FSPs) champion IDR effectively for the resolution of the overwhelming majority of complaints received.

Table 2	FY2016	FY2015	FY2014	FY2013	FY2012	FY2011	FY2010	FY2009
Number of Respondents	16	18	17	13	12	9	9	8
<b>Total Consumer Contacts Made</b>	63,217,722	59,514,030	65,426,503	49,783,554	35,873,078	46,828,319	33,268,977	23,173,039
<b>Number of Complaints Received</b>								
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<b>Complaints as a Percentage of Consumer Contacts Made</b>								
Via IDR	0.0167%	0.0171%	0.0106%	0.0081%	0.0101%	0.0059%	0.0068%	0.0041%
Via EDR	0.0029%	0.0031%	0.0028%	0.0027%	0.0036%	0.0019%	0.0011%	0.0004%

The data in Table 2 above shows the extremely low ratio of complaints received (via IDR, EDR and in total) to the total number of consumer contacts made by ACDBA members in the corresponding year. Later in this Submission, we provide further analysis of the complaints received.

## **5. Is it easy for consumers to find out about IDR processes when they have a complaint?**

ACDBA members report the existence of and availability of access to their IDR processes are routinely brought to the attention of consumers through a number of ways, specifically:

- During discussions with collectors - whenever a consumer mentions any concern or complaint about his or her dealings with either the member or in relation to their account, the collectors advise the consumer of the opportunity to make use of the member's IDR processes to resolve the issue
- In written communications from members – letters sent to consumers include details of and how to access the member's IDR processes and also its EDR Scheme
- On their company websites – details of and how to access the member's IDR processes and also its EDR Scheme are set out

Consumers are additionally referred to the IDR processes of ACDBA members by:

- Financial counsellors and consumer advocates; and
- The member's EDR Scheme in the event of lodging a complaint without first attempting to resolve the issue through the member's IDR processes.

The success of this directional information to consumers is evident in the data included in Table 1 above.

### **How could this be improved?**

Any need to improve consumer awareness of IDR processes might be best addressed by a consumer education program through ACCC and its related agencies.

## **6. What are the barriers to lodging a complaint? How could these be reduced?**

ACDBA is unaware of any specific barriers to consumers in lodging complaints and points out as evidenced in the data contained in Tables 1 & 2 above, consumers have increasingly lodged complaints via IDR over the past 8 years and further demonstrating ACDBA members as FSPs are effective in ensuring IDR is accessible to their consumers.

## **7. How effective is IDR in resolving consumer disputes?**

All respondents in a recent survey<sup>3</sup> of ACDBA members to gather information for this Submission rated the effectiveness of IDR in resolving consumer disputes as being either effective or very effective – no respondents regarded IDR processes as being ineffective or of no benefit in resolving consumer disputes.

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<sup>3</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

**For example, are there issues around time limits, information provision or other barriers for consumers?**

The majority of survey respondents<sup>4</sup> reported they were unaware of any issues creating barriers for consumers through IDR processes, although two respondents did raise concerns in relation to time limits and the provision of information, namely:

Time limits are not always reasonable especially when the dispute relates to the validity of the debt or where there is a request by the consumer to the debt buyer through IDR to provide copies of letters, applications, statements from the originating FSP.

In such situations, the information requested by consumers may have originated more than 7 years prior to the request date from the consumer and consequently either:

- the originating FSP will after searching in response to a request, advise it no longer holds the information; or
- where the information is available, it often takes significant time (sometimes as long as 8 weeks) for the originating FSP to provide the information to the debt buyer to respond to the consumer's request due to the need to locate and extract the specific record from archived files.

**8. What are the relative strengths and weaknesses of the schemes' relationships with IDR processes?**

In responding to this question, we share with the Panel what ACDBA members had to say<sup>5</sup> about their experiences with their EDR Scheme in relation to their own IDR processes.

Responses in respect to the strengths of the relationship between EDR and IDR included:

- EDR provides an effective escalation pathway for legitimate complaints that IDR did not satisfactorily resolve
- The member's EDR Scheme (CIO) insists on the consumer and member attempting to resolve the issue through IDR before a complaint is accepted to be processed through EDR
- The EDR Scheme's officers are able to speak directly to the member's IDR team to discuss matters and to gather clarity on any specific complaint
- The member's EDR Scheme (CIO) and the member's IDR team work on a collaborative basis towards resolution of complaints
- The member's IDR team and its EDR Scheme (CIO) have established a practice of regular meetings for the express purpose of reviewing, discussing and gathering guidance and updates on complex and lengthy matters of complaint;
- Dealings between the member's IDR team and its EDR Scheme work on the basis of open communication with the EDR Scheme encouraging open and constructive communication between the consumer and the FSP
- The review of matters by the member's EDR Scheme (CIO) is a transparent process
- A cohesive relationship between the member's IDR and EDR processes historically sees greater than 95% of complaints resolved at the member's IDR stage, meaning EDR is limited to those complaints where EDR is genuinely needed for resolution of the issue

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<sup>4</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

<sup>5</sup> Ibid

Responses in respect to the weaknesses of the relationship between EDR and IDR included:

- In situations where a consumer is referred back by the EDR Scheme to attempt resolution of the complaint through the member's IDR processes, the member regarded it was not afforded the same opportunity (compared to when a matter is received direct from a consumer to IDR) to independently deal with resolution of the complaint with the consumer
- The time frame for re-referral to the member by the EDR to attempt resolution via IDR processes is too short
- Concern has been raised by one member that there appeared too great a reliance upon advice from credit repairers or debt mediators stating that access to IDR to resolve the complaint had been attempted when the actual situation was the credit repairer/debt mediator was actually not satisfied with the process or outcome and was elevating complaints without basis to EDR for the sole purpose of generating fees for the credit repairer/debt mediator
- One member reported a number of concerns:
  - Inadequate communication by its EDR Scheme as to how the scheme interprets its own rules
  - A lack of understanding of how the debt collections process works reflecting perhaps that some EDR staff although law graduates have limited experience or knowledge of the industry
  - An apparent inclination for the EDR Scheme to request every document imaginable (and not germane to the complaint) in relation to all dealings with a consumer and yet requesting very little documentation or information from the complainant
  - An apparent disregard by the EDR Scheme of the amount of time and effort deployed in IDR to satisfy a consumer's complaint and yet still elevating a complaint to EDR and referring it to investigation when it is evident from the material provided by the member that the complainant is not being genuine or reasonable in his or her efforts to resolve the alleged complaint
  - Concern that the EDR Scheme does not always require consumers to participate in IDR to seek a genuine resolution of the dispute before opening the complaint to its EDR processes
- Another member reported a number of concerns:
  - There have often been significant delays in responses and reviews undertaken by the EDR Scheme staff which means that matters remain open for the FSP for a significant amount of time
  - The EDR Scheme often requests information that is not relevant to the consumer's claims, without properly discussing the matter with the FSP first so as to better refine the information request to address the matter at issue
  - The EDR Scheme raises fees against its member FSP for complaints registered by the consumer with the EDR Scheme but which are later established as being outside the Scheme's jurisdiction and therefore being matters which the Scheme was unable to consider
  - Initial communications from the EDR Scheme about individual complaints at times lacks sufficient details to allow the FSP's IDR team to properly review and respond to those matters

**9. How easy is it for consumers to escalate a complaint from IDR to EDR schemes and complaints arrangements?**

All survey respondents<sup>6</sup> reported it was easy or very easy for consumers to escalate a complaint from their IDR processes to their EDR Scheme for resolution.

**How common is it for disputes to move between IDR and EDR, or between EDR schemes?**

56% of respondents<sup>7</sup> reported it was neither common nor uncommon for disputes to move between IDR and EDR, whilst 33% of respondent regarded it was a common occurrence.

## **Regulatory oversight of EDR schemes and complaints arrangements**

**10. What is an appropriate level of regulatory oversight for the EDR and complaints arrangements framework?**

ACDBA submit that the current level of regulatory oversight is adequate.

**11. Should ASIC's oversight role in relation to FOS and CIO be increased or modified? Should ASIC's powers in relation to these schemes be increased or modified?**

ACDBA submits there is no imperative to warrant any increase or modification to ASIC's oversight role in relation to FOS and CIO.

**12. Should there be consistent regulatory oversight of all three schemes with responsibility for dealing with financial services disputes (for example, should ASIC have responsibility for overseeing the SCT)?**

Whilst ACDBA has no specific view on this aspect, it understands the logic of tasking ASIC with the oversight responsibilities for the existing industry EDR Schemes and also for the SGT so as to ensure consistency in oversight governance.

**13. In what ways do the existing schemes contribute to improvements in the overall legal and regulatory framework? How could their roles be enhanced?**

Firstly, it is appropriate to acknowledge that the experience of FSPs paying the entire costs for complaints received and resolved through the EDR Schemes together with the opportunity to participate in the procedures which lead to the EDR determinations made drive continuous improvement to the operational compliance considerations of FSPs.

Additionally, the framework which includes FSPs maintaining their own IDR processes with recourse for consumers to their EDR Scheme facilitates the resolution of the vast majority of consumer complaints without the need for consumers to seek resolution of their concerns through the Australian Courts providing an appropriate and time efficient outcome for all parties.

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<sup>6</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

<sup>7</sup> Ibid

## Existing EDR schemes and complaints arrangements

In relation to our responses below ACDBA notes its members are generally supportive of the IDR and EDR processes with the ability for unresolved complaints from IDR to be escalated for resolution through EDR - as will be noted below 78% of ACDBA survey respondents<sup>8</sup> rated their EDR Schemes as being effective or very effective in resolving consumer complaints.

However, the questions from the Issues Paper below do invite us to share specific responses from our members with the Panel - such individual observations do not necessarily hold for all complaints handled by the two industry EDR Schemes.

### 14. What are the most positive features of the existing arrangements?

Generally ACDBA members report positive features of the two industry EDR Schemes in relation to process; outcomes; efficiencies; and fees. Specific comments from respondents<sup>9</sup> include:

- One member which originally subscribed to FOS and then transferred to CIO as its EDR Scheme provider specifically noted its experience was that both schemes reach similar conclusions in similar circumstances however the member also helpfully explained an important difference between the 2 schemes was:
  - CIO will make a decision at the review (early) stage and close a dispute and the Ombudsman will only investigate it further if a complaint about the decision is lodged by the consumer
  - With FOS, if the consumer doesn't accept the review decision the complaint will automatically be escalated for determination, which escalates costs dramatically for the FSP and often leads the FSP to settle out even when there is no risk of losing at determination
  - This difference is of particular relevance for debt buyers where the cost of a full determination will exceed the average debt buyer account balance of around \$8,000
- If consumers are dissatisfied with our IDR decision regarding a complaint they have a very accessible and at no cost, next step resolution process
- Our IDR process together with the determinations of the EDR Scheme help us to identify any gaps in our policies, procedures and processes
- Recourse to the EDR Scheme for resolution of a matter where the complaint could not be resolved to the satisfaction of the consumer through our IDR process generally assists in educating the consumer as to what is realistically and commercially possible in the actual circumstances surrounding the alleged complaint
- In our experience our EDR Scheme (CIO) partners with the debt buying industry to better understand industry needs and to interpret the actual impact of the decisions the Scheme makes
- Our EDR Scheme (CIO) refers consumers back to us in the situation where we have not had the opportunity to resolve the complaint through IDR thereby allowing us that opportunity
- The EDR Scheme's processes facilitate us engaging with consumers who have previously refused to speak with us as the current relevant FSP for their account
- There is transparent and open dialogue between our organisation and our EDR Scheme

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<sup>8</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

<sup>9</sup> Ibid

- We are satisfied with the impartial approach of our EDR Scheme in dealing with consumer complaints
- EDR Schemes offer a constructive, resolution-focussed approach to dispute resolution
- The existence of the two industry EDR Schemes provides the opportunity to drive continuous improvement in terms of process and efficiencies of the schemes and ultimately allowing FSPs to choose to which EDR Scheme provider they subscribe
- Having two industry EDR Schemes promotes accountability for efficiency, costs and ongoing improvement to the benefit of consumers and FSPs alike and multiple schemes potentially work to limit the scope for the pursuit of unmeritorious disputes

### What are the biggest problems with the existing arrangements?

ACDBA members when considering what might be negative features of the two industry EDR Schemes similarly expressed their thoughts in terms of process; outcomes; efficiencies; and fees. Specific comments from respondents<sup>10</sup> on this aspect include:

- Process, outcomes and efficiencies
  - One problem with the EDR process is that it can allow consumers to avoid the IDR process by going straight to the EDR Scheme and thereby incurring fees for us as the EDR member
  - A concern for us is not being able to deal with IDR complaints independently whenever a consumer lodges a complaint to our EDR Scheme (CIO) which then refers the complaint back to us for IDR – even where our IDR processes do manage to resolve the complaints to the satisfaction of the consumers involved, the EDR Scheme insists that it be copied into all correspondence between us and the consumer leaving us to wonder if the sole purpose of such a requirement is to justify charging a registration fee even though the complaint has not been through EDR processes
  - On occasions we have been concerned that certain case officers with the EDR Scheme appear to be less than impartial and possibly even biased in favour of the consumer.
  - The EDR Scheme at times appears to place too much reliance upon information sent by “for profit” credit repairers/debt mediators, notwithstanding that party’s vested interest in the outcome of the specific complaint
  - We have encountered situations where the EDR Scheme is unable to arrange expedient review of a complaint where we have advised the specific matter is outside the terms of reference on which the EDR can rule
  - Additionally we have encountered the situation of the EDR Scheme incorrectly providing consumers with the ability to refute a decision relating to the matter being outside the EDR’s terms of reference
  - On occasion we have encountered situations where consumers misuse the EDR process for the principal purpose of avoiding payment of their debts
  - Despite situations where the EDR Scheme is aware from the information provided by us that we have done everything possible to attempt to satisfy the complainant’s issue, it still accepts the complaint and refers it for investigation at a considerable cost to us as the member FSP

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<sup>10</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

- A concern for us is that despite information being provided clearly demonstrating the actual basis for a specific complaint lodged is to frustrate legal action we have on foot against the consumer, the EDR Scheme continues to investigate the complaint
- Another concern is that where it is abundantly obvious a lodged complaint is frivolous, vexatious or lacking in substance the EDR Scheme continues to investigate the complaint
- The time it takes to resolve complaints through EDR processes is a problem
- Whereas determinations by the EDR Scheme are binding on us as the member FSP it is inequitable that such determinations are not also binding upon consumers – effectively this allows the consumer to venue shop for a better outcome
- We have a concern the rules for triggering an investigation of potential systemic issues by the EDR Schemes are too loose and enable the scheme to investigate whatever it chooses
  - We submit this is a power that is potentially open to abuse/misuse by an individual or the scheme
  - The EDR Schemes should only be allowed to investigate whether or not an issue already confirmed during the investigation of a complaint is actually systemic i.e. to ascertain whether or not the confirmed issue impacts other than just upon the original complainant
- Fees
  - The financial cost of complaints being resolved through EDR Schemes can be high for us as a member FSP
  - The escalating cost structure of the EDR Schemes can be a significant burden for us as an FSP
  - Our EDR Scheme's billing arrangements are not transparent and there appears to be disparity between annual licence fees and complaint registration fees
  - As a member FSP it is frustrating to be billed where a consumer complains to our EDR Scheme yet the consumer did not allow us an opportunity to attempt to resolve the complaint through IDR and further frustrating when such complaint is then referred back to our IDR process by the EDR Scheme
  - The actual costs of switching EDR Scheme providers (overlapping membership fees, amending all publications, notifying all customers, modifying our IDR processes to align with the new EDR's processes - including reskilling of IDR staff etc) is significant and potentially negates any benefit in supporting a duopoly whereby FSPs are ultimately bearing the entire cost of maintaining duplicated governance, management, information technology etc for the 2 schemes

#### **15. How accessible are the EDR schemes and complaints arrangements? Could their awareness be raised?**

We refer the Panel to our opening remarks under the heading *Internal dispute resolution* (page 5) which provides data on the actual experience of consumers accessing our members' EDR Scheme.

Additionally the Panel's attention is drawn to our earlier response at question 5 above wherein we describe how the existence of the EDR arrangements are brought to the attention of consumers.

ACDBA does not believe there is any need to increase the awareness of consumers as to the existence of the EDR and complaints management processes.

**16. How easy is it to use the EDR schemes and complaints arrangements process? For example, is it easy to communicate with a scheme?**

In response to this question we note we have taken the question to be seeking the perspectives of the FSPs rather than consumers whom we do not directly engage with.

67% of our survey respondents<sup>11</sup> told us they found using their EDR Scheme was easy or very easy whereas 33% found use of the EDR Scheme as somewhat difficult.

Please review earlier responses to understand in greater detail how our members view their interactions with their EDR Scheme providers.

**17. To what extent do EDR schemes and complaints arrangements provide an effective avenue for resolving consumer complaints?**

78% of our survey respondents<sup>12</sup> told us they regard their EDR Scheme was either effective or very effective in resolving consumer complaints, 11% reported the EDR Scheme was neither effective nor ineffective, whereas 11% regarded their EDR Scheme was somewhat ineffective in resolving consumer complaints.

**18. To what extent do the current arrangements allow each of the schemes to evolve in response to changes in markets or the needs of users?**

Both industry EDR Schemes have demonstrated their ability to respond to market conditions and to adjust to the expectations and needs of scheme users. Specifically, both schemes look to the relevant legislation and regulations as well as industry best practice including Codes of Practice to inform them as to what the reasonable expectations upon FSPs should be.

**19. Are the jurisdictions of the existing EDR schemes and complaints arrangements appropriate? If not, why not?**

On this question we found our survey respondents<sup>13</sup> were somewhat divided: 67% of respondents regarded the jurisdictions were appropriate, however 33% of respondents disagreed. The reasons advanced by respondents who regarded the jurisdictions were inappropriate included:

- If an account has been taken legal prior to lodgement of any complaint from the consumer, then the legal system should have the sole jurisdiction to resolve the matter.
- The EDR Schemes have a tendency on occasion to over-reach insisting that judgments from the courts for the recovery of debts be set aside – this being an issue of the courts having the ultimate responsibility for resolution of the matter, consistent with paragraph 13(c) of the Issues Paper

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<sup>11</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

<sup>12</sup> Ibid

<sup>13</sup> Ibid

- One member reported concern that the EDR Schemes have a conflict of interest in respect to the way they are funded whereby there is an incentive to take matters within the scheme as such action ultimately results in revenue for the scheme – potentially the terms of reference for the schemes if issued and set by the Regulator would alleviate the differences between the schemes by providing clear jurisdictional guidelines

**20. Are the current monetary limits for determining jurisdiction fit-for-purpose? If not, what should be the new monetary limit? Is there any rationale for the monetary limit to vary between products?**

Not applicable to debt buyers.

**21. Do the current EDR schemes and complaints arrangements provide consistent or comparable outcomes for users? If outcomes differ, is this a positive or negative feature of the current arrangements?**

On this question 86% of respondents<sup>14</sup> regarded the EDR Schemes provide consistent and comparable outcomes for users, whereas 14% of respondents had an alternative perspective, the reasons for which included:

- One member has expressed a concern that where one EDR outcome may be negative for the customer and positive for the member, the same matter determined by another staff member of the same EDR Scheme may have an outcome that is positive for the customer and negative for the member and the respondent asserted this just promotes inconsistency and uncertainty as to probable determinations by the EDR Scheme.
- The same member suggests that if determinations were published (online - names removed) and followed by the EDR Scheme providers, this would result in matters being determined more efficiently for the member FSP and facilitate more matters being resolved via the member's IDR processes. Alternatively, if guidelines were published and consistently followed by the case management staff of the EDR Schemes, this would help both the consumer and the member FSP to resolve complaints more expeditiously as for both parties a certainty in the circumstances would be easier to determine.

**22. Do the existing EDR schemes and complaints arrangements possess sufficient powers to settle disputes? Are any additional powers or remedies required?**

89% of survey respondents<sup>15</sup> advised the two industry EDR Schemes possessed sufficient powers to settle disputes whereas 11% responded to the contrary.

One member told us the schemes required additional powers to make determinations against the complainant where a complaint is found to be frivolous, vexatious, lacking in substance or otherwise pursued for an improper purpose.

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<sup>14</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

<sup>15</sup> Ibid

In responding to this question, we respectfully submit an equally important consideration is whether any of the existing powers and remedies available to the two industry EDR Schemes are excessive and accordingly we invited our members to comment on this aspect. Their responses included:

- In relation to determinations made by the EDR Scheme which are binding upon the member but not upon the consumer, one member contended that if the complainant can seek recourse through another avenue then on the basis of equity to all parties to the alleged dispute then the FSP member should similarly have the same opportunity
- As noted at paragraph 13 of the Issues Paper dispute resolution in the Australian financial system consists of 3 steps: IDR, EDR and the Court system – any EDR power to order judgment from an Australian court to be set aside should be removed
- Another member advised having encountered both industry EDR Schemes attempting to usurp the powers of the judiciary: the contention being that whilst the legislature may make laws, it is the judiciary that interprets the law and if a judiciary decision is considered to be incorrect, then the parties have the opportunity for the matter to be appealed to a court with higher jurisdiction. It follows that where the judiciary of a court of competent jurisdiction has made a decision in a dispute, then the EDR Schemes have or certainly should have no ability to review such decision and this situation should be clearly expressed in the terms of reference for both industry EDR Schemes
- The terms of reference of the two industry EDR Schemes (which the FSPs joining the Schemes have no opportunity to amend) include the power to compel the member FSP to suspend all enforcement proceedings – one member's view is that this is an excessive power given the FSP member generally by such stage will have expended a significant amount of time and cost to commence such enforcement proceedings and the power under the terms of reference facilitate consumers and their advocates to lodge a complaint so as to use the EDR process to derail such proceedings. The member submits that once enforcement proceedings have been commenced (being after the stage of judgment in favour of the FSP by a court of appropriate jurisdiction), the EDR Schemes should have no power to require the FSP to suspend enforcement proceedings
- Where the outcome of a complaint is determined as being invalid, vexatious or alternatively where the EDR Scheme agrees the complaint was instigated as a means to avoid the obligation as the responsible account holder then the EDR determination ought to include that the member FSP shall be entitled to recover from the consumer all costs charged to the member FSP by the EDR Scheme for the complaint, in addition to any other monies outstanding from the consumer to the member FSP

Further to the individual views expressed by members detailed above, ACDBA notes the concerns with respect to the interference of EDR processes in enforcement actions and the misuse of complaints by some consumers and their advocates so as to thwart enforcement proceedings on foot have been extensively raised by its membership since the association was formed in 2009.

Our members report this aspect has caused unnecessary delays as well as the impost of significant costs and reputational damage upon them in respect to their appearances before the relevant courts including the Federal Magistrates Courts where Magistrates often are increasingly hostile to their proceedings being disrupted by the apparent wrongful interference of EDR Scheme directives.

**23. Are the criteria used to make decisions appropriate? Could they be improved?**

No response.

**24. What are the advantages and disadvantages of the different governance arrangements? How could they be improved?**

No response.

**25. Are the current funding and staffing levels adequate? Is additional funding or expertise required? If so, how much?**

Only 44% of survey respondents<sup>16</sup> were satisfied with the adequacy of the current funding levels and models of the two industry EDR Schemes, whereas 56% of respondents were dissatisfied for the reasons detailed elsewhere in this Submission in response to other questions.

**26. How transparent are current funding arrangements? How could this be improved?**

The transparency of the current funding arrangements for the two industry EDR Schemes is an issue of some contention for ACDBA members<sup>17</sup> with 56% regarding those arrangements were either somewhat or very transparent, 11% regarding there was neither transparency nor non-transparency whilst 33% regarded the arrangements as being somewhat or very non-transparent.

Suggestions from respondents on how transparency might be improved, included:

- The EDR Schemes being required to provide clear and unambiguous communication, including on the EDR Scheme's website as to how they calculate:
  - membership fees
  - registration and/or complaint escalation fees(We note ACDBA members report that EDR membership fees are not currently always transparent, can vary from member to member; and the EDR Scheme's formula for calculating those fees is not transparent nor disclosed to the FSP members)
- Transparency could be further enhanced by
  - The EDR Schemes providing to member and potential member FSPs a calculator for how the membership fees are worked out
  - The adopted model for funding of the EDR Scheme being based purely and transparently on a 'user pays' system
  - Member fees being charged consistently
  - The complaint fee component (which is disclosed) being the primary method of funding - fees can and are differentiated by type of complaint and the stage at which the complaint is resolved

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<sup>16</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

<sup>17</sup> Ibid

**27. How are the existing EDR schemes and complaints arrangements held to account? Could this be improved?**

Survey respondents<sup>18</sup> provided the following suggestions in respect to this question:

- Our EDR Scheme's compliance to the ASIC Regulatory Guide is held to account through its reporting to ASIC – but otherwise we feel the EDR Scheme provider, its governance and board of directors are not held accountable
- Our understanding is that our EDR Scheme is subject to periodic review from both ASIC and an external consulting review - we do not see any pressing need for our EDR Scheme provider to be held to account to any additional standard
- In our experience, open conversation with case managers of our EDR Scheme reassures us of a level of comfort and transparency that the appropriate considerations of regulations, obligations and accountability are being factored into each case review – accordingly, we see this process as holding our EDR Scheme provider accountable for reasonable outcomes.
- Each of the EDR Schemes has its own organisational arrangements which allow any issues of concern to be escalated by us as a member to appropriate managers and officers.

The two industry EDR Schemes have governance structures which make them accountable to consumers including consumer group liaison committees for regularly taking feedback to ensure the schemes are delivering for consumers.

Perspectives are dependent upon on the vantage point of the stakeholder concerned – to illustrate this: consumer representatives from time to time may lament that one or other of the schemes delivers poorer consumer outcomes although we note there is no empirical evidence either way to such a contention. Indeed, as some of the most spirited parts of ACDBA member roundtables focus on grievances about EDR Schemes this suggests there is always another point of view.

**28. To what extent does current reporting by the existing EDR schemes and complaints arrangements assist users to understand the way in which the scheme operates, the key themes in decision-making and any systemic issues identified?**

ACDBA members utilise the reports issued by the two industry EDR Schemes for a number of purpose including:

- To benchmark their company's performance in relation to complaints received through EDR against the experience of other companies operating in the same sector
- To understand any emerging trends in the complaints received by EDR both within their sector but also elsewhere in the Financial Services industry together with any systemic issues identified by the schemes
- To review in the interest of transparency the efficiencies of each EDR Scheme provider
- To review, understand and where appropriate take continuous improvement action in relation to their operations based on recent EDR determinations included as case studies

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<sup>18</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

## 29. What measures should be used to assess the performance of the existing EDR schemes and complaints arrangements?

Survey respondents<sup>19</sup> provided the following suggestions of relevant key performance indicators for EDR Schemes in respect to this question:

- Timeframes:
  - Timeliness measures should be set and adhered to by all users (FSPs, complainants and the EDR Scheme)
  - Achieving quick turnaround times for resolutions will likely always be a preference for both industry and consumers, but not at the expense of other factors
  - EDR Schemes require member FSPs to comply with response timeframes - unfortunately complainants are not always held responsible for timeframe compliance, but should be – the failure to hold both parties responsible to timeframes makes it extremely difficult to subject an EDR Scheme to any meaningful performance indicators in relation to timeframes
  - Length of time to resolve and close complaints will be an important measure
  - As some consumers and their advocates use complaints lodged with EDR Schemes to forestall continued collections without merit, complainants should be held responsible to respond within given timeframes - in particular, consumers when making an initial complaint should be required to accept that where they fail to comply with given timeframes to provide information or respond to communications, that the complaint may be closed, with no ability to refresh/restart the complaint
  
- Processes and outcomes
  - Proportion of complaints settled at initial stages;
  - Proportion of complaints settlement by agreement
  - Average cost (direct and indirect) of resolving a complaint

In conclusion, we acknowledge measuring EDR Scheme performance will be difficult to assess via any simple formula.

All users will want to see a helpful, constructive approach to resolving disputes through EDR Schemes which in the view of many ACDBA members is already the case.

In those situations where the EDR Scheme makes findings and determinations the users' expectation will be that these are always based upon sound and consistent interpretation of the law, relevant regulation and industry best practice, as opposed to any more subjective and less reliable factors.

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<sup>19</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

## Gaps and overlaps in existing EDR schemes and complaints arrangements

### 30. To what extent are there gaps and overlaps under the current arrangements? How could these best be addressed?

As we have mentioned in other responses in this Submission, FSPs are obliged to honour EDR determinations whereas consumers do not have that same obligation and can potentially “avenue shop” for a better outcome - for example, taking an action through the courts subsequent to the completion of an EDR complaint.

In the interests of fairness and equity such disparity in the obligations of users of the EDR Schemes is not appropriate – either both parties to a complaint should be bound by EDR determinations or alternatively neither party should be bound by such determinations.

In this Submission, we have also made some references to the following concerns expressed by ACDBA members that:

- “For profit” credit repairers/debt mediators are lodging complaints to EDR Schemes so as to advance their own commercial interests of generating fees chargeable to consumers including:
  - Making requests with no actual basis for a complaint (for example, the removal of an actual court judgment from civil proceedings involving the consumer)
  - Making requests in circumstances where the consumer or a “not for profit” financial counsellor could raise such concerns about correcting a credit report entry at no fee at all to the consumer
- Some consumers and their advocates lodge complaints with the EDR Schemes for the sole purpose of delaying and/or thwarting legitimate debt collection activities including enforcement actions (for example, to immediately cause the FSP to stop the repossession of security assets or to stop/delay bankruptcy proceedings)

We now refer the Panel to Table 3 which appears over the page and provides an informative analysis of the outcomes of consumer complaints received over the past 8 years by ACDBA members through their IDR and EDR processes.

<b>Table 3</b>	<b>FY2016</b>	<b>FY2015</b>	<b>FY2014</b>	<b>FY2013</b>	<b>FY2012</b>	<b>FY2011</b>	<b>FY2010</b>	<b>FY2009</b>
Number of Respondents	16	18	17	13	12	9	9	8
<b>Outcome of Complaints by number</b>								
Account paid	107	388	101	93	966	19	7	0
Arrangement made/settlement accepted	918	753	426	409	518	179	143	2
No basis &/or insufficient detail to investigate	3,428	4,265	3,519	2,093	1,482	1,350	1,119	566
Withdrawn by debtor	1,375	1,325	789	137	169	29	54	3
Matter referred back to client for resolution	305	875	237	290	278	66	44	5
Apology letter issued to debtor	122	205	106	87	111	116	231	123
Credit file listing corrected/removed	3,116	2,666	526	389	367	296	61	4
Finalised by EDR award in favour of debtor	12	6	26	68				
Internal processes reviewed/amended	22	43	39	67	88	113	32	11
Outcome not reported	1,322	1,331	920	1,657	611	1,043	771	303
Unresolved	1,464	1,081	2,149	136	396	445	257	79
<b>Total</b>	<b>12,191</b>	<b>12,938</b>	<b>8,838</b>	<b>5,426</b>	<b>4,986</b>	<b>3,656</b>	<b>2,719</b>	<b>1,096</b>
<b>Outcome of Complaints by percentage</b>								
Account paid	0.9%	3.0%	1.1%	1.7%	19.4%	0.5%	0.3%	0.0%
Arrangement made/settlement accepted	7.5%	5.8%	4.8%	7.5%	10.4%	4.9%	5.3%	0.2%
No basis &/or insufficient detail to investigate	28.1%	33.0%	39.8%	38.6%	29.7%	36.9%	41.2%	51.6%
Withdrawn by debtor	11.3%	10.2%	8.9%	2.5%	3.4%	0.8%	2.0%	0.3%
Matter referred back to client for resolution	2.5%	6.8%	2.7%	5.3%	5.6%	1.8%	1.6%	0.5%
Apology letter issued to debtor	1.0%	1.6%	1.2%	1.6%	2.2%	3.2%	8.5%	11.2%
Credit file listing corrected/removed	25.6%	20.6%	6.0%	7.2%	7.4%	8.1%	2.2%	0.4%
Finalised by EDR award in favour of debtor	0.1%	0.0%	0.3%	1.3%				
Internal processes reviewed/amended	0.2%	0.3%	0.4%	1.2%	1.8%	3.1%	1.2%	1.0%
Outcome not reported	10.8%	10.3%	10.4%	30.5%	12.3%	28.5%	28.4%	27.6%
Unresolved	12.0%	8.4%	24.3%	2.5%	7.9%	12.2%	9.5%	7.2%
<b>Total</b>	<b>100.0%</b>							

The above Table 3 is specifically informative in illustrating:

- There has been a marked increase in the lodgement of complaints relating to credit file listing corrections over the past 2 years moving from between 6.0% and 8.1% for FY2011 to FY2014 to a high of 25.6% in FY2016 and 20.6% in FY2015
- A significant proportion of consumer complaints (for example, 47.8% in FY2016) do not proceed to resolution by way of FSP action to apologise or amend processes, EDR determinations or referral to the originating FSP but instead being resolved by:
  - The consumer paying the account in full or offering a settlement which is accepted for payment either immediately or by instalments (8.4%)
  - The consumer withdrawing the complaint (11.3%)

- There being no basis to the complaint or insufficient detail to investigate the complaint (28.1%)

In response to how to best address issues relating to the current dispute resolution and complaints management processes we respectfully submit consideration be given to:

- Amending the terms of reference for the two industry EDR Schemes such that “for profit” credit repairers/debt mediators are not entitled to lodge or assist in the lodgement of complaints on behalf of consumers given their vested interests in generating fees to the detriment of consumers
- Amending the powers of the EDR Schemes so to allow where the outcome of a complaint is determined as being invalid, vexatious or alternatively instigated as a means to avoid the obligation as the responsible account holder or to delay/thwart legitimate debt collection activities including enforcement proceedings by the FSP then the EDR’s determination shall include that the member FSP be entitled to recover from the consumer all costs charged to the member FSP by the EDR Scheme for the complaint, in addition to any other monies alleged to be outstanding from the consumer to the member FSP

### **31. Does having multiple dispute resolution schemes lead to better outcomes for users?**

A benefit of multiple EDR Schemes is that it allows providers to develop specialties and deep understanding of specific industry types.

To illustrate this, in recent years CIO has developed a reputation of understanding debt collection and debt buying processes and issues and as a consequence almost all debt buyers have chosen to subscribe to CIO as their EDR Scheme provider. Similarly, FOS has developed and enjoyed the reputation of special knowledge and interest in the complaint processes relevant to banks and insurers.

These specialisations have a number of benefits for the schemes and the users:

- To deliver expertise in understanding and interrogating unique issues of an industry sector to effectively resolve complaints for the benefit of all users (consumers and industry alike)
- To drive consistency in determination outcomes for industry sectors for all users – although it is acknowledged like all judicial functions there is always scope for inconsistency which can equally occur between schemes or between individual case managers in the one scheme
- To achieve efficiencies of scale and process for the schemes
- To facilitate appropriate benchmarking of FSPs in the various industry sectors

### **32. Do the current arrangements result in consumer confusion? If so, how could this be reduced?**

Survey respondents<sup>20</sup> were divided on whether consumers were confused by the existence of multiple EDR Schemes: 50% regarded there was no confusion, 40% regarded there was some consumer confusion and 10% had no view on this aspect.

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<sup>20</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

It is difficult to reconcile a reasonable basis for consumer confusion as to the EDR Scheme related to a specific FSP as in all dealings of each consumer account, ACDBA members as FSPs routinely bring to the attention of consumers not only details of their IDR Scheme but the identity of and how to make a complaint with the member's EDR Scheme provider, in the following ways:

- In written communications from members – letters sent to consumers include details of and how to access the member's IDR processes and also its EDR Scheme
- On their company websites – details of and how to access the member's IDR processes and also its EDR Scheme are set out

Realistically, it is unlikely a better alternative exists to such methodology of providing clear and unambiguous advice to consumers.

The reality is most likely consumers pay little or no attention to the existence of an EDR scheme until such time that circumstances suggest a need to make a complaint in relation to specific dealings with an FSP and in such circumstances, any simple review by the consumer or the consumer's advocate of past correspondence from the FSP and the FSP's website will quickly identify the identity of the FSP's EDR Scheme provider as well as how to lodge a complaint with that EDR Scheme.

Even if the two industry EDR Schemes (CIO and FOS) were reduced to a sole provider, Australian consumers will continue to be required to potentially deal with a myriad of other EDR and Ombudsman schemes involving differing jurisdictions: whether at state, territory and commonwealth level or relevant to specific industries or services (telecommunications, energy & water etc) as demonstrated by this indicative list of examples below:

- Commonwealth Ombudsman
- Energy And Water Ombudsman Queensland
- Energy And Water Ombudsman South Australia
- Energy And Water Ombudsman Western Australia
- Independent Commission Against Corruption (SA)
- Legal Services Commissioner (Vic)
- Office Of The Ombudsman Tasmania
- Ombudsman South Australia
- Telecommunications Industry Ombudsman
- Victorian Ombudsman

The concern about and extent of confusion and resulting detriment to consumers is possibly somewhat overstated as there is no clear evidence that consumers do not ultimately arrive at the relevant EDR Scheme to lodge their complaints about their dealings with specific FSPs.

Additionally, it is appropriate to note each of the two industry EDR Schemes have arrangements in place to redirect/refer consumers if attempting to lodge a complaint wrongly to their scheme to the appropriate scheme.

### **33. How could concerns about insufficient jurisdiction with respect to small business lending (including farming) disputes be best addressed?**

No response.

**34. What impact will the extension of the unfair contracts legislation to small business contracts (once operational), or other recent or proposed reforms, have on the existing EDR schemes and complaints arrangements?**

No response.

## **Triage service**

**35. Would a triage service improve user outcomes?**

A triage system, as noted in the Issues Paper has potential merit for what we believe to be a relatively small proportion of consumers confused as to which EDR Scheme to lodge their complaint. This would preserve the operations of each scheme, but allow consumers a 'one-stop-shop' in terms of complaint lodgement.

**36. If a 'one-stop shop' in the form of a new triage service were desirable:**

- **who should run the service?**
- **how should it be funded?**
- **should it provide referrals for issues other than that related to the financial firm?**

ACDBA has no view as to who should run this service and instead regard this is a matter for the EDR Schemes to determine.

Conceivably the question of how to fund a 'one-stop shop' is most likely as simple as being on the basis of a fee charged to the relevant EDR Scheme provider upon receipt of a complaint referred to that provider for resolution.

It is difficult to conceive that a 'one-stop shop' should do anything other than to accept complaints from consumers in relation to FSPs for on-referral to the relevant EDR Scheme provider – this is particularly so as even though funding in the first instance for the service provided via the 'one-stop shop' would be a fee charged to the relevant EDR Scheme provider, ultimately each provider being funded by their member FSPs would no doubt look to pass such costs on to their members. On this likely funding basis it would be unreasonable and unfair to expect industry to fund purposes not directly related to the activities of the industry members.

## **One body**

**37. Should it be left for industry to determine the number and form of the financial services ombudsman schemes?**

Yes.

### 38. Is integration of the existing arrangements desirable? What would be the merits and limitations of further integration?

As we do not know what actual changes might ultimately be proposed (if any) and whether or not such changes would be better or worse for the debt buying sector than what currently exists, throughout this document we have attempted to include commentary from our members on those things about the industry EDR Scheme arrangements they like as well as those they don't like, and what could possibly be done to improve arrangements for overall better outcomes for all users (consumers and industry).

Having observed this we note 89% of survey respondents<sup>21</sup> answered in the negative to the proposition that the two industry EDR Schemes should be merged. The reasons given for not supporting any merger included:

- Concern that if dissatisfied with service levels, outcomes or costs of their EDR Scheme, in the absence of a second EDR Scheme, they would no longer have the opportunity to “vote with their feet” and change to the other scheme – it is appropriate to note 50% of respondents had previously taken such option so as to change EDR provider from FOS to CIO for reasons of dissatisfaction on some level
- Concerns that a merger of the two industry EDR Schemes may lead to a degradation in the service delivery of the EDR Scheme as well as inflexible responses to stakeholder feedback
- Concerns that differences in demographics create different needs, expectations and demands which ultimately may affect the overall service delivery by a single scheme to specific industry sectors particularly those which involve specialty or unique activities such as debt buying
- Similar concerns exist around the differences in corporate structure and governance of small to medium businesses (which most debt buyers are) compared to larger institutional businesses such as banks and insurers – it may be difficult for a single EDR scheme to accommodate the entire spectrum of corporate structure, governance and size
- As larger institutional players in the financial services area attract the vast majority of EDR complaints, again there was concern that issues relating to complaints directed to the smaller players may well be marginalised when handled within the confines of a single EDR scheme
- The existence of two industry EDR schemes allows benchmarking of performance between the schemes and facilitates better outcomes for all users (industry and consumers)
- Although it might be argued that as consumers don't currently get to choose which EDR Scheme should receive and resolve a complaint about an FSP then neither should the FSPs have the option of choice as to which provider shall deliver the EDR Scheme service for them, in fact if an FSP is a member of an inefficient and expensive scheme, the FSP's delivery to the consumer would no doubt be affected and the consumer may then well “vote with his/her feet” given that consumers will make decisions on the basis of cost and availability
- The situation of a single scheme may give rise to problems in relation to turnaround times, service levels, innovation and continuous improvement and similarly there may be less incentive to keep costs in check and run the scheme efficiently
- Some concern that the creation of a mega statutory scheme might lead to a large bureaucracy with less specialisation, and consequently being less flexible or capable of responding quickly to changes in the market and this may adversely affect turnaround times, service levels and innovation

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<sup>21</sup> Refer Annexure C: Member Survey by ACDBA to gather input to the Issues Paper

Some perspectives to consider should the two industry EDR Schemes be merged into a single entity include:

- In relation to earlier observations specifically at question 30 above, we respectfully submit an imperative in the interest of fairness and equity for whatever shape the EDR framework follows post the Review, that all opportunities for misuse of the EDR processes whether by commercial interests (credit repairers and debt mediators) or for reasons not related to genuine complaints (by consumers and their advocates) but rather to delay/thwart legitimate debt collection activities including enforcement actions should be shut down
- There would be a need to ensure there is adequate transparency and reporting by the single entity and more critically for the single scheme to be effective and equitable, the standards of required accountability of all parties (the EDR Scheme, the member FSPs and consumers) should be strengthened
- Additionally any decision to merge the two industry EDR Schemes into a single entity should be prefaced strictly on the basis of ensuring that any such consolidation shall provide efficiencies and synergy benefits for the complaints resolution process and for all users (industry and consumers) and further shall deliver actual reduction of the costs which are directly borne by the member FSPs who fund the entire complaints resolution process

**39. How could a ‘one-stop shop’ most effectively deal with the unique features of the different sectors and products of the financial system (for example, compulsory superannuation)?**

ACDBA is not convinced there is a need for a ‘one-stop shop’ to be for more than just the two industry EDR Schemes.

**40. What form should a ‘one stop shop’ take?**

We refer the Panel to our response to question 36 above.

**41. If a ‘one-stop shop’ in the form of a new single dispute resolution body were desirable:**

- **should it be an ombudsman or statutory tribunal or a combination of both?**
- **what should its jurisdictional limits be?**
- **how should it be funded?**
- **what powers should it possess?**
- **what regulatory oversight and governance arrangements would be required?**

We refer the Panel to our response to question 36 above.

**An additional forum for dispute resolution**

**42. Would the introduction of an additional forum, in the form of a tribunal, improve user outcomes?**

Issues in support of any argument for the creation of a further forum for dispute resolution do not relate in any significant way to the activities of debt buyers in Australia and so no further commentary on this aspect is provided.

**43. If a tribunal were desirable:**

- should it replace or complement existing EDR and complaints arrangements?
- should it be more like a court (judicial powers, compulsory jurisdiction, adversarial processes and legal representation)?
- should it be more like current EDR schemes (relatively more flexible, informal decision-making and processes)?
- how should the jurisdiction of the tribunal be defined?
- should its jurisdiction only extend to small business disputes or other disputes?
- should its jurisdiction only be available in the case of disputes with providers of banking products?
- should monetary limits and compensation caps apply?
- should its decisions be binding on one or both parties and what avenues of appeal should apply?
- should it be publicly (taxpayer) or privately (industry) funded?
- should its focus only be on providing redress or should it take on a role to prevent future disputes, for example, by advocating for changes to the regulatory framework, seeking to improve industry behaviour?
- what type of representation and other support should be available for persons accessing the tribunal?

No response.

**44. Is there an enhanced role for the Small Business and Family Enterprise Ombudsman in relation to small business disputes? How would this interact with current decision-making processes?**

No response.

## **Developments in overseas jurisdictions and other sectors**

**45. What developments in overseas jurisdictions or other sectors should guide this review?**

No response.

**46. Are there any particular features of other schemes or approaches that would improve user outcomes from EDR and complaints arrangements in the financial system?**

No response.

## **Uncompensated consumer losses**

**47. How many consumers have been left uncompensated after being awarded a determination and what amount of money are they still owed?**

No response – such information is outside the knowledge of ACDBA.

**48. In what ways could uncompensated consumer losses (for example, unpaid FOS determinations) be addressed? What are the advantages and limitations of different approaches?**

No response.

**49. Should a statutory compensation scheme of last resort be established? What features should form part of such a scheme? Should it only operate prospectively or also retrospectively? How should the scheme be funded?**

Based on the material detailed in the Issues Paper at paragraph 87 the issue clearly relates to a small number of complainants and more specifically to a small subset of the entities making up Australia's financial services and credit licensees: the Issues Paper details in the period from 1 January 2010 only 32 FSPs were involved in relation to FOS determinations and since 1 December 2014 only 4 FSPs in relation to CIO determinations relates to FSPs.

Those 36 FSPs apparently having failed to meet the obligations to be solvent and to hold adequate professional indemnity insurance: the non-detection of such obligation failures prior to consumers being placed in a situation where losses have gone uncompensated, suggests a failure in the monitoring of those FSPs by ASIC as the regulator responsible for the grant and renewal of and the ongoing oversight of ACLs.

We respectfully submit a systemic or potentially systemic failure by the regulator warrants review and rectification to ensure FSPs are required to show evidence of both ongoing solvency for their operations and having adequate professional indemnity insurance arrangements in place.

ACDBA does not support that a statutory compensation scheme of last resort is warranted but rather the regulator should be held responsible to meet its statutory obligations relating to the issue and oversight of licences to FSPs.

It would be inequitable to impose the burden to fund a statutory compensation scheme of last resort on the wider industry of fully compliant FSPs (in respect to ongoing operating solvency and holding adequate professional indemnity insurance).

**50. What impact would such a scheme have on other parts of the system, such as professional indemnity insurance?**

No response.

## Contact

Enquiries in respect to this submission should be directed in the first instance to:

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## **ANNEXURE A - Listing of Members of Australian Debt Buyers & Collectors Association**

- ACM Group Ltd
- Australian Receivables Ltd
- Axxess Australia Pty Ltd
- Baycorp (Aust) Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd
- Charter Mercantile Pty Ltd
- Collection House Limited
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited
- Credit Four Pty Ltd
- Dun & Bradstreet (Australia) Pty Ltd
- National Credit Management Limited
- Panthera Finance Pty Ltd
- Pioneer Credit Limited
- Shield Mercantile Pty Ltd

## **ANNEXURE B - ACDBA Member Data Survey FY2016 with annual comparatives to FY2009**

See following 8 pages



<b>PART 1 (cont'd)</b>	<b>Snapshot at 30/06/2016</b>	<b>Snapshot at 30/06/2015</b>	<b>Snapshot at 30/06/2014</b>	<b>Snapshot at 30/06/2013</b>
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#### Number of accounts under payment arrangements

Number of Respondents	17	18	17	13
	<b>\$</b>	<b>No. of files</b>	<b>\$</b>	<b>No. of files</b>
<b>Total</b>	<b>\$2,323,037,124</b>	<b>454,570</b>	<b>\$2,251,776,633</b>	<b>420,715</b>
			<b>\$2,073,754,539</b>	<b>375,705</b>
				<b>\$1,874,684,571</b>
				<b>348,579</b>

#### Number of employees in terms of

Number of Respondents	17	18	17	13
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Contingent collections</b>	987	894	982	803
<b>Debt purchase collections</b>	2,415	2,351	1,815	1,634
<b>Unspecified</b>	29	0	0	0
<b>Total</b>	<b>3,431</b>	<b>3,245</b>	<b>2,797</b>	<b>2,437</b>

#### Gender of employees

Number of Respondents	15			
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Male employees</b>	1,083			
<b>Female employees</b>	1,460			
<b>Total</b>	<b>2,543</b>			

#### Number of compliance officers

Number of Respondents	16	18	17	13
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Total</b>	<b>61</b>	<b>60</b>	<b>68</b>	<b>52</b>

#### Number of collection offices

Number of Respondents	17	18	17	13
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Total</b>	<b>52</b>	<b>57</b>	<b>50</b>	<b>42</b>

## **PART 2**

12 month period to  
30/06/2016

12 month period to  
30/06/2015

12 month period to  
30/06/2014

12 month period to  
30/06/2013

#### Total value collected from accounts

Number of Respondents	17	18	17	13
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Total</b>	<b>\$2,001,344,575</b>	<b>\$2,394,036,993</b>	<b>\$2,192,891,819</b>	<b>\$2,175,948,596</b>

#### Total value of debt written off in response to genuine long term hardship situations

Number of Respondents	11	14	10	7
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Total</b>	<b>\$11,283,201</b>	<b>\$21,749,535</b>	<b>\$13,563,178</b>	<b>\$13,862,225</b>

<b>PART 2 (cont'd)</b>	<b>12 month period to 30/06/2016</b>	<b>12 month period to 30/06/2015</b>	<b>12 month period to 30/06/2014</b>	<b>12 month period to 30/06/2013</b>
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**Total number of contacts made with debtors and/or their representatives**

Number of Respondents	17	18	17	13
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
Telephone calls to debtors	31,632,937	32,996,593	42,053,103	30,738,560
SMS/text messages to debtors	13,522,261	9,758,390	8,522,086	5,658,719
Letters to debtors	12,574,831	13,678,250	13,371,698	12,435,455
Emails to debtors	5,487,693	3,080,797	1,479,616	950,820
<b>Total</b>	<b>63,217,722</b>	<b>59,514,030</b>	<b>65,426,503</b>	<b>49,783,554</b>

**On a percentage breakdown contacts made with debtors and/or their representatives were**

Number of Respondents	17	18	17	13
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
Telephone calls to debtors	53.2%	55.4%	64.3%	61.7%
SMS/text messages to debtors	22.7%	16.4%	13.0%	11.4%
Letters to debtors	21.1%	23.0%	20.4%	25.0%
Emails to debtors	9.2%	5.2%	2.3%	1.9%
<b>Total</b>	<b>106.2%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Incidents recorded as part of each members IDR process are considered to be any matter relating to alleged unsatisfactory professional conduct lodged as requiring investigation and exclude genuine requests made by debtors for additional information to understand the terms of an account, the balance outstanding or the history of payments made.

**Number of incidents received from debtors and logged via:**

Number of Respondents	16	18	17	13
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
Via IDR	10,557	10,171	6,925	4,045
Via EDR	1,810	1,864	1,811	1,364
Via regulators	26	20	14	17
<b>Total</b>	<b>12,393</b>	<b>12,055</b>	<b>8,750</b>	<b>5,426</b>

**Incidents received from debtors as a ratio of debtor contacts:**

Number of Respondents	16	18	17	13
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
Via IDR	0.0167%	0.0171%	0.0106%	0.0081%
Via EDR	0.0029%	0.0031%	0.0028%	0.0027%
Via regulators	0.0000%	0.0000%	0.0000%	0.0000%
<b>Total incident rate</b>	<b>0.0196%</b>	<b>0.0203%</b>	<b>0.0134%</b>	<b>0.0109%</b>

<b>PART 2 (cont'd)</b>	<b>12 month period to 30/06/2016</b>	<b>12 month period to 30/06/2015</b>	<b>12 month period to 30/06/2014</b>	<b>12 month period to 30/06/2013</b>
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#### Outcome of incidents received from debtors

Number of Respondents	16		18		17		13	
	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>%</b>
Account paid	107	0.9%	388	3.0%	101	1.1%	93	1.7%
Apology letter issued to debtor	122	1.0%	205	1.6%	106	1.2%	87	1.6%
Arrangement made/settlement accepted	918	7.5%	753	5.8%	426	4.8%	409	7.5%
Withdrawn by debtor	1,375	11.3%	1,325	10.2%	789	8.9%	137	2.5%
Internal processes reviewed/amended	22	0.2%	43	0.3%	39	0.4%	67	1.2%
Matter referred back to client for resolution	305	2.5%	875	6.8%	237	2.7%	290	5.3%
No basis &/or insufficient detail to investigate	3,428	28.1%	4,265	33.0%	3,519	39.8%	2,093	38.6%
Credit file listing corrected/removed	3,116	25.6%	2,666	20.6%	526	6.0%	389	7.2%
Finalised by EDR award in favour of debtor	12	0.1%	6	0.0%	26	0.3%	68	1.3%
Other or not dissected	1,322	10.8%	1,331	10.3%	920	10.4%	86	1.6%
Unresolved	1,464	12.0%	1,081	8.4%	2,149	24.3%	136	2.5%
Outcome not advised		0.0%		0.0%	0	0.0%	1,571	29.0%
<b>Total</b>	<b>12,191</b>	<b>100.0%</b>	<b>12,938</b>	<b>100.0%</b>	<b>8,838</b>	<b>100.0%</b>	<b>5,426</b>	<b>100.0%</b>

#### Number of notifications during period by regulators of alleged breaches

Number of Respondents	16	18	16	13
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Total</b>	<b>25</b>	<b>21</b>	<b>4</b>	<b>18</b>

#### Notifications from regulators as a ratio of debtor contacts:

	%	%	%	%
	<b>0.000040%</b>	<b>0.000035%</b>	<b>0.000006%</b>	<b>0.000036%</b>

#### Outcome of notifications during period from regulators

Number of Respondents	16	18	16	13
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
No finding of breach/dismissed	26	19	4	16
Apology offered to customer	0	0	0	1
Written warning	0	0	0	0
Enforceable undertaking	0	0	0	0
Court decision pending	0	0	0	1
Other - unspecified	1	0	0	0
Unresolved	0	2	0	0
<b>Total</b>	<b>27</b>	<b>21</b>	<b>4</b>	<b>18</b>

**Note:** Number of notifications by regulators of alleged breaches will not always reconcile to Outcomes of notifications from regulators due to timing issues. For example in 2012 one respondent reported 1 notification and 8 outcomes and one respondent reported 1 notification but no outcomes, while in 2011 one respondent reported 8 notifications and 4 outcomes.

<b>PARTICIPATION</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>
Member Respondents	14	13	14	13
Members who failed to respond at all	0	3	1	1

For each survey question the number of respondents who provided data for the question is listed

Orange highlighted results indicate figures are not finalised as auditor is awaiting responses from individual members to anomalies in their data and blank responses.

Part 1 of the survey records values as at a single day (ie on 30/06/16) whereas Part 2 of the survey seeks out values for the whole year ended (ie y/e 30/06/16).

<b>PART 1</b>	<b>Snapshot at 30/06/2012</b>	<b>Snapshot at 30/06/2011</b>	<b>Snapshot at 30/06/2010</b>	<b>Snapshot at 30/06/2009</b>
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#### Total value of debts under collection in terms of

Number of Respondents	14		13		14		13	
	\$	No. of files	\$	No. of files	\$	No. of files	\$	No. of files
Contingent collections	\$2,935,602,104	1,291,998	\$4,399,697,664	1,905,874	\$5,129,189,577	2,440,329	\$2,067,940,423	1,525,452
Debt purchase collections	\$8,432,581,639	1,897,916	\$6,983,150,862	1,556,708	\$6,260,930,992	1,622,975	\$4,715,998,715	1,495,054
Not specified	\$0	0	\$452,721,002	131,508	\$0	0	\$0	0
<b>Total</b>	<b>\$11,368,183,743</b>	<b>3,189,914</b>	<b>\$11,835,569,528</b>	<b>3,594,090</b>	<b>\$11,390,120,569</b>	<b>4,063,304</b>	<b>\$6,783,939,138</b>	<b>3,020,506</b>

#### On a percentage breakdown the value of debts under collection by type of debt are

Number of Respondents	14		13		14		13	
	\$	No. of files						
Contingent collections	25.8%	40.5%	37.2%	53.0%	45.0%	60.1%	30.5%	50.5%
Debt purchase collections	74.2%	59.5%	59.0%	43.3%	55.0%	39.9%	69.5%	49.5%
Not specified	0.0%	0.0%	3.8%	3.7%	0.0%	0.0%	0.0%	0.0%
<b>Total</b>	<b>100.0%</b>							

#### Breakdown of debts under collection by type of debt

Number of Respondents			13		14		13	
	\$	No. of files	\$	No. of files	\$	No. of files	\$	No. of files
Finance			\$6,972,768,450	941,926	\$6,697,611,222	1,432,457	\$4,933,308,019	1,216,583
Utilities			\$893,245,329	1,062,991	\$267,880,956	429,205	\$301,040,919	495,244
Government			\$1,546,019,359	665,746	\$2,266,431,510	724,416	\$572,769,981	290,620
Commercial			\$396,293,230	167,747	\$290,540,055	138,295	\$244,433,315	130,349
Other			\$2,027,243,160	1,398,780	\$1,867,656,826	1,338,931	\$732,386,904	887,710
<b>Total</b>			<b>\$11,835,569,528</b>	<b>4,237,190</b>	<b>\$11,390,120,569</b>	<b>4,063,304</b>	<b>\$6,783,939,138</b>	<b>3,020,506</b>

<b>PART 1 (cont'd)</b>	<b>Snapshot at 30/06/2012</b>	<b>Snapshot at 30/06/2011</b>	<b>Snapshot at 30/06/2010</b>	<b>Snapshot at 30/06/2009</b>
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<b>Number of accounts under payment arrangements</b>				
Number of Respondents	14	13	10	9
	<b>\$</b>	<b>No. of files</b>	<b>\$</b>	<b>No. of files</b>
<b>Total</b>	<b>\$1,930,814,246</b>	<b>333,187</b>	<b>288,802</b>	<b>256,389</b>

<b>Number of employees in terms of</b>				
Number of Respondents	14	13	13	12
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Contingent collections</b>	939	1,081	1,104	817
<b>Debt purchase collections</b>	1,516	1,344	1,176	786
<b>Unspecified</b>	0	0	0	0
<b>Total</b>	<b>2,455</b>	<b>2,425</b>	<b>2,280</b>	<b>1,603</b>

<b>Gender of employees</b>				
Number of Respondents				
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Male employees</b>				
<b>Female employees</b>				
<b>Total</b>				

<b>Number of compliance officers</b>				
Number of Respondents				
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Total</b>				

<b>Number of collection offices</b>				
Number of Respondents		13	14	12
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Total</b>		<b>60</b>	<b>48</b>	<b>37</b>

<b>PART 2</b>	<b>12 month period to 30/06/2012</b>	<b>12 month period to 30/06/2011</b>	<b>12 month period to 30/06/2010</b>	<b>12 month period to 30/06/2009</b>
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<b>Total value collected from accounts</b>				
Number of Respondents	13			
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Total</b>	<b>\$2,570,789,772</b>			

<b>Total value of debt written off in response to genuine long term hardship situations</b>				
Number of Respondents				
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Total</b>				

<b>PART 2 (cont'd)</b>	<b>12 month period to 30/06/2012</b>	<b>12 month period to 30/06/2011</b>	<b>12 month period to 30/06/2010</b>	<b>12 month period to 30/06/2009</b>
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**Total number of contacts made with debtors and/or their representatives**

Number of Respondents	12	11	10	9
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Telephone calls to debtors</b>	17,641,393	31,720,918	19,188,564	12,775,134
<b>SMS/text messages to debtors</b>	5,349,034	3,754,392	1,734,835	950,514
<b>Letters to debtors</b>	12,395,970	11,053,603	12,054,114	9,347,225
<b>Emails to debtors</b>	486,681	299,406	291,464	100,166
<b>Total</b>	<b>35,873,078</b>	<b>46,828,319</b>	<b>33,268,977</b>	<b>23,173,039</b>

**On a percentage breakdown contacts made with debtors and/or their representatives were**

Number of Respondents	12	11	10	9
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
<b>Telephone calls to debtors</b>	49.2%	67.7%	57.7%	55.1%
<b>SMS/text messages to debtors</b>	14.9%	8.0%	5.2%	4.1%
<b>Letters to debtors</b>	34.6%	23.6%	36.2%	40.3%
<b>Emails to debtors</b>	1.4%	0.6%	0.9%	0.4%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Incidents recorded as part of each members IDR process are considered to be any matter relating to alleged unsatisfactory professional conduct lodged as requiring investigation and exclude genuine requests made by debtors for additional information to understand the terms of an account, the balance outstanding or the history of payments made.

**Number of incidents received from debtors and logged via:**

Number of Respondents	12	9	9	8
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Via IDR</b>	3,638	2,763	2,270	954
<b>Via EDR</b>	1,305	872	381	87
<b>Via regulators</b>	43	21	68	55
<b>Total</b>	<b>4,986</b>	<b>3,656</b>	<b>2,719</b>	<b>1,096</b>

**Incidents received from debtors as a ratio of debtor contacts:**

Number of Respondents	12	9	9	8
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
<b>Via IDR</b>	0.0101%	0.0059%	0.0068%	0.0041%
<b>Via EDR</b>	0.0036%	0.0019%	0.0011%	0.0004%
<b>Via regulators</b>	0.0001%	0.0000%	0.0002%	0.0002%
<b>Total incident rate</b>	<b>0.0139%</b>	<b>0.0078%</b>	<b>0.0082%</b>	<b>0.0047%</b>

<b>PART 2 (cont'd)</b>	<b>12 month period to 30/06/2012</b>	<b>12 month period to 30/06/2011</b>	<b>12 month period to 30/06/2010</b>	<b>12 month period to 30/06/2009</b>
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<b>Outcome of incidents received from debtors</b>				
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Number of Respondents	12		9		9		8	
	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>%</b>
Account paid	966	19.4%	19	0.5%	7	0.3%	0	0.0%
Apology letter issued to debtor	111	2.2%	116	3.2%	231	8.5%	123	11.2%
Arrangement made/settlement accepted	518	10.4%	179	4.9%	143	5.3%	2	0.2%
Withdrawn by debtor	169	3.4%	29	0.8%	54	2.0%	3	0.3%
Internal processes reviewed/amended	88	1.8%	113	3.1%	32	1.2%	11	1.0%
Matter referred back to client for resolution	278	5.6%	66	1.8%	44	1.6%	5	0.5%
No basis &/or insufficient detail to investigate	1,482	29.7%	1,350	36.9%	1,119	41.2%	566	51.6%
Credit file listing corrected/removed	367	7.4%	296	8.1%	61	2.2%	4	0.4%
Finalised by EDR award in favour of debtor								
Other or not dissected	92	1.8%	113	3.1%	600	22.1%	234	21.4%
Unresolved	396	7.9%	445	12.2%	257	9.5%	79	7.2%
Outcome not advised	519	10.4%	930	25.4%	171	6.3%	69	6.3%
<b>Total</b>	<b>4,986</b>	<b>100.0%</b>	<b>3,656</b>	<b>100.0%</b>	<b>2,719</b>	<b>100.0%</b>	<b>1,096</b>	<b>100.0%</b>

<b>Number of notifications during period by regulators of alleged breaches</b>				
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Number of Respondents	14	9	9	8
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>Total</b>	<b>24</b>	<b>15</b>	<b>37</b>	<b>15</b>

<b>Notifications from regulators as a ratio of debtor contacts:</b>				
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	%	%	%	%
	<b>0.000067%</b>	<b>0.000032%</b>	<b>0.000111%</b>	<b>0.000065%</b>

<b>Outcome of notifications during period from regulators</b>				
---	--	--	--	--

Number of Respondents	14	9	9	8
	<b>Number</b>	<b>Number</b>	<b>Number</b>	<b>Number</b>
No finding of breach/dismissed	20	7	36	15
Apology offered to customer	1	0	0	0
Written warning	0	3	1	0
Enforceable undertaking	0	1	0	0
Court decision pending	8	0	0	0
Other - unspecified	0	0	0	0
Unresolved	1	0	0	0
<b>Total</b>	<b>30</b>	<b>11</b>	<b>37</b>	<b>15</b>

**Note:** Number of notifications by regulators of alleged breaches will not always reconcile to Outcomes of notifications from regulators due to timing issues. For example in 2012 one respondent reported 1 notification and 8 outcomes and one respondent reported 1 notification but no outcomes, while in 2011 one respondent reported 8 notifications and 4 outcomes.

## **ANNEXURE C - Member Survey by ACDBA to gather input to the Issues Paper**

See following 17 pages

## ANNEXURE C -

### Member Survey by ACDBA to gather input to the Issues Paper

This document lists the actual survey framework which ACDBA members were invited to provide perspectives in relation to aspects of the Issues Paper and additionally a summary of the quantitative responses.

#### Introduction for Respondents to Survey

The Australian Government has appointed a Panel comprised of Professor Ian Ramsay, Ms Julie Abramson and Mr Alan Kirkland to undertake a Review of the Financial System External Dispute Resolution Framework.

An Issues Paper has been released seeking information from interested stakeholders on the issues discussed in the paper and any other issues identified by stakeholders. The Panel's interim report is to be released at the end of November 2016 with a final report to Government by 31 March 2017.

Australian Collectors & Debt Buyers Association is planning to make a submission in response to the Issues Paper - to this end, this survey is an invitation to submit your company's views on a number of issues so as to inform ACDBA on what should be detailed on behalf of members in its submission.

**1. Please indicate which EDR Scheme your company is a member of. Please rate your overall satisfaction with the EDR Scheme of which your company is currently a member.**

#### Member Responses

1. CIO Very satisfied
2. CIO Somewhat dissatisfied
3. CIO Somewhat satisfied
4. CIO Somewhat dissatisfied
5. CIO Somewhat satisfied
6. CIO Very satisfied
7. CIO Very satisfied
8. CIO Somewhat satisfied
9. CIO Neither satisfied nor dissatisfied
10. CIO Very satisfied

#### Summary Statistics of Responses

Overall satisfaction with EDR Scheme of which company is a member:

Very satisfied	40%
Somewhat satisfied	30%
Neither satisfied nor dissatisfied	10%
Somewhat dissatisfied	20%
Very dissatisfied	0%

2. Has your company ever changed EDR Schemes? If yes, select as many as apply as to the past history of EDR Schemes for your company.

### Member Responses

1. Yes From FOS to CIO
2. No
3. Yes From FOS to CIO
4. No
5. Yes From FOS to CIO
6. Yes From FOS to CIO
7. No
8. Yes From FOS to CIO
9. No
10. No

### Summary Statistics of Responses

Has your company changed EDR Scheme:

Yes	50%
No	50%

Of those who have changed EDR Schemes:

Changed from FOS to CIO	100%
Changed from CIO to FOS	0%

### 3. Select the applicable reasons why your company changed Schemes

#### Member Responses

	Dissatisfaction with service and/or process followed	Dissatisfaction with determinations made	Dissatisfaction with time frames for resolution of complaints	Concerns about Scheme's fees
1.	Yes	Yes	Yes	Yes
2.	Not applicable			
3.	Yes	Yes	No	Yes
4.	Not applicable			
5.	Yes	No	Yes	Yes
6.	Yes	No	Yes	No
7.	Not applicable			
8.	No	No	No	Yes
9.	Not applicable			
10.	Not applicable			

#### Summary Statistics of Responses

Of those who have changed EDR Schemes - reasons for changing:

Dissatisfaction with service and/or process followed	80%
Dissatisfaction with determinations made	40%
Dissatisfaction with time frames for resolution of complaints	60%
Concerns about Scheme's fees	80%

#### 4. How do consumers learn of your company's IDR processes?

##### Member Responses

	Advised by your collectors	Correspondence from your company	Information detailed on your website	Referred back by EDR Scheme	Referred by financial counsellor
1.	Yes	Yes	Yes	Yes	Yes
2.	Yes	Yes	Yes	Yes	Yes
3.	Yes	Yes	Yes	Yes	Yes
4.	Yes	Yes	Yes	Yes	Yes
5.	Yes	Yes	Yes	Yes	Yes
6.	Yes	Yes	Yes	Yes	Yes
7.	Yes	No	No	No	No
8.	Yes	Yes	Yes	Yes	Yes
9.	Yes	Yes	Yes	Yes	No
10.	Yes	Yes	Yes	No	No

##### Summary Statistics of Responses

Ways consumers learn of your company's IDR processes:

Advised by your collectors	100%
Correspondence from your company	90%
Information detailed on your website	90%
Referred back by EDR Scheme	80%
Referred by financial counsellor/consumer advocate	70%

## 5. Overall how effective is IDR in resolving consumer disputes?

### Member Responses

1. Very effective
2. Very effective
3. Somewhat effective
4. Somewhat effective
5. Somewhat effective
6. Very effective
7. Very effective
8. Somewhat effective
9. Somewhat effective
10. Somewhat effective

### Summary Statistics of Responses

Effectiveness of IDR in resolving disputes:

Very effective	40%
Somewhat effective	60%
Neither effective nor ineffective	0%
Somewhat ineffective	0%
Very ineffective	0%

**6. In respect to your company's IDR processes, do you regard there to be any significant barriers for consumers around?**

**Member Responses**

	Time limits	Information provision	Other barriers
1.	No	No	Yes
2.	No	No	No
3.	No	No	No
4.	Yes	Yes	Yes
5.	No	Yes	No
6.	No	No	No
7.	Yes	No	No
8.	No	Yes	No
9.	Yes	Yes	Yes
10.	No	No	No

**Summary Statistics of Responses**

Significant barriers to your company's IDR for consumers might be:

Time limits	30%
Information provision	40%
Other barriers	30%

**7. How easy is it for consumers to escalate a complaint from your company's IDR processes to the EDR scheme?**

**Member Responses**

1. Very easy
2. Very easy
3. Somewhat easy
4. Very easy
5. Very easy
6. Very easy
7. Very easy
8. Very easy
9. Very easy

**Summary Statistics of Responses**

Level of ease for a consumer to escalate a complaint from IDR to EDR:

Very easy	89%
Somewhat easy	11%
Neither easy nor difficult	0%
Somewhat difficult	0%
Very difficult	0%

**8. How common is it for disputes to move between your company's IDR processes and its EDR scheme?**

**Member Responses**

1. Neither common nor uncommon
2. Neither common nor uncommon
3. Neither common nor uncommon
4. Common
5. Neither common nor uncommon
6. Neither common nor uncommon
7. Uncommon
8. Common
9. Common

**Summary Statistics of Responses**

Movement of complaints between IDR and EDR is:

Common	33%
Neither common nor uncommon	56%
Uncommon	11%

9. How easy is it to use your company's EDR scheme? For example, is it easy to communicate with the scheme?

### Member Responses

1. Very easy
2. Somewhat difficult
3. Somewhat easy
4. Somewhat difficult
5. Somewhat easy
6. Somewhat easy
7. Very easy
8. Somewhat difficult
9. Somewhat easy

### Summary Statistics of Responses

Ease of communication with EDR Scheme for your company

Very easy	22%
Somewhat easy	45%
Neither easy nor difficult	0%
Somewhat difficult	33%
Very difficult	0%

**10. To what extent do you regard the EDR scheme provides an effective avenue for resolving complaints from consumers?**

**Member Responses**

1. Very effective
2. Neither effective nor ineffective
3. Somewhat effective
4. Somewhat effective
5. Very effective
6. Very effective
7. Very effective
8. Somewhat effective
9. Somewhat ineffective

**Summary Statistics of Responses**

Effectiveness of EDR Schemes for resolving complaints from consumers:

Very effective	45%
Somewhat effective	33%
Neither effective nor ineffective	11%
Somewhat ineffective	11%
Very ineffective	0%

## 11. Are the jurisdictions of the existing EDR schemes appropriate?

### Member Responses

1. No
2. Yes
3. Yes
4. No
5. Yes
6. Yes
7. Yes
8. No
9. Yes

### Summary Statistics of Responses

Jurisdictions of EDR Schemes are appropriate:

Yes	67%
No	33%

## 12. Do the current EDR schemes provide consistent or comparable outcomes for users?

### Member Responses

1. Yes
2. Yes
3. Yes
4. No answer
5. No answer
6. Yes
7. Yes
8. No
9. Yes

### Summary Statistics of Responses

Consistent and comparable outcomes for consumers:

Yes	67%
No	11%
No answer	22%

### 13. Do the EDR schemes possess sufficient powers to settle disputes?

#### Member Responses

1. Yes
2. Yes
3. Yes
4. No
5. Yes
6. Yes
7. Yes
8. Yes
9. Yes

#### Summary Statistics of Responses

EDR schemes possess sufficient powers to settle disputes:

Yes	89%
No	11%

14. According to the Issues Paper the funding arrangements for the EDR Schemes are:  
CIO - No upfront payment by complainants. Funded by industry, via a combination of membership fees and case fees. Membership fees comprise around 70 per cent of funding.  
FOS - No upfront payment by complainants. Funded by industry, via a combination of membership fees, user charges and dispute fees. Dispute fees comprise about 75 per cent of funding.

Do you regard these current funding levels/models are adequate?

### Member Responses

1. Yes
2. No
3. No
4. Yes
5. No
6. Yes
7. Yes
8. No
9. No

### Summary Statistics of Responses

Current funding models/levels are adequate:

Yes	44%
No	56%

**15. How transparent do you regard the current funding arrangements for your company's EDR Scheme to be?**

**Member Responses**

1. Somewhat transparent
2. Very non-transparent
3. Neither transparent nor non-transparent
4. Somewhat transparent
5. Somewhat non-transparent
6. Somewhat transparent
7. Very transparent
8. Somewhat transparent
9. Very non-transparent

**Summary Statistics of Responses**

Transparency of EDR Scheme funding arrangements:

Very transparent	11%
Somewhat transparent	45%
Neither transparent nor non-transparent	11%
Somewhat non-transparent	11%
Very non-transparent	22%

16. To what extent if any in your experience does the existence of multiple EDR Schemes create consumer confusion about which EDR scheme to contact?

### Member Responses

1. There is no consumer confusion
2. There is some consumer confusion
3. There is no consumer confusion
4. There is some consumer confusion
5. There is no consumer confusion
6. There is no consumer confusion
7. There is no consumer confusion
8. There is some consumer confusion
9. There is some consumer confusion

### Summary Statistics of Responses

Level of consumer confusion due to existence of multiple EDR Schemes:

No consumer confusion	56%
Some consumer confusion	44%
A lot of consumer confusion	0%

17. The Review Panel is to advise on, among other things, the possible consolidation of the two existing EDR schemes (CIO and FOS) or the establishment of a statutory scheme, both of which will be funded by industry.

Do you believe the two industry EDR Schemes (CIO and FOS) should be merged? Why?

### Member Responses

1. No
2. No
3. No
4. No
5. Yes
6. No
7. No
8. No
9. No

### Summary Statistics of Responses

The two industry EDR Schemes should be merged:

Yes	11%
No	89%

# **Australian Collectors & Debt Buyers Association**

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