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Financial dispute referee has become a political football

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The Turnbull government's proposal to create a one-stop-shop ombudsman for financial disputes is in strife after politics got in the way.

The mega ombudsman was part of a suite of policies rolled out by the Coalition to try and show it was doing something to fix the system, protect customers and rebuild trust after refusing to back the ALP's calls for a royal commission into the banks.

It should never have been an either or situation, but that's what it has become.

Legislation for the new body, the Australian Financial Complaints Authority (AFCA), was unveiled in September to replace the three current external dispute resolution schemes, the Financial Ombudsman Service (FOS), the Superannuation Complaints Tribunal (SCT) and the Credit and Investments Ombudsman (CIO).

There are thousands of victims of financial advice scams who have not been paid, including Timbercorp and Great Southern. JOSH ROBENSTONE

Each of the schemes had their own problems, including resourcing issues, low caps on the size of disputes, and a backlog of complaints. The average time to close disputes lodged with FOS is 54 days but complex cases are 154 days, for CIO it is 118 days and the SCT takes an average 796 days to resolve disputes by determination.

But it has attracted a dissenting report from Labor senators which says the new body is nothing more than a rebranding exercise. It argues that the SCT should remain separate.

"Labor senators maintain their position that the Turnbull government should establish a royal commission into Australia's banking and financial services sector. This bill is no substitute for a royal commission," the report said.

Given the latest development, the legislation was listed then pulled until the next sitting of parliament this month. It might be pulled again until next year given the timing of the by-election in Barnaby Joyce's seat.

Its success will now depend on winning the support of crossbenchers.

In the meantime, a consultation paper was released on Friday with a deadline for submissions of November 20. The consultation paper looks at what matters should be addressed in the terms of reference, including monetary limits, accountability, funding model and the types of disputes to be heard.

But the clock is ticking on many levels. AFCA was supposed to be open for business on July 1, but it looks almost impossible given the bill hasn't been passed, a board needs to be appointed, terms of reference agreed, staff employed and premises found.

Consumer Action Law Centre (CALC) boss Gerard Brody believes time is of the essence.

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Brody said on average it took 976 days to get a determination at the SCT in 2015-16. "This is simply too long, especially given that these disputes can involve people with serious or terminal illnesses. Although the super fund can afford to wait it out, delays of even a few weeks can cause devastating financial hardship for the person affected."

He said unlike a statutory tribunal, AFCA would be able to engage in a process of continual improvement, with regular independent reviews. "AFCA will be required to identity and respond to systemic issues in the superannuation industry, which should prevent scandals earlier," he said.

But it will come down to politics.

When the mega merger was first announced, FOS and the SCT accepted their fate, but the Credit and Investments Ombudsman described AFCA as "a rebadging exercise that achieves nothing" and "a pitiful attempt to fend off calls for a royal commission".

But the new external dispute resolution scheme is much more than that. AFCA will have the power to compel documents and the power to compel third parties involved in individual disputes with banks, financial advisers, superannuation funds and others.

The legislation also gives an enhanced role to the corporate regulator, the Australian Securities and Investments Commission, to issue directions and publish aggregate and firm-level data on internal dispute resolution activity, which will give the industry some much-needed transparency and accountability. Naming and shaming organisations is one of the most powerful ways to get organisations to lift their game.

Victims in limbo

One glaring amendment it needs to make is the caps it has placed on the size of a dispute, which it sets at $1 million, and a cap on compensation at $500,000, which is not enough.

The bill follows a review of external dispute resolution schemes by Professor Ian Ramsay, which recommended replacing the three current schemes, with one ombudsman.

But the all-important last resort compensation scheme is still waiting in the wings. Professor Ramsay was asked by the government to review and make recommendations for such a scheme, including whether it should be retrospective.

The review was born from the alarming statistic out of FOS that 18 per cent of its rulings against financial advisers and financial services providers totalling more than $13 million were unpaid, with many more consumers not able to proceed to FOS because their advisers had disappeared.

There are thousands of other victims of financial advice scams who have not been paid, including Timbercorp and Great Southern.

The last resort report by Prof Ramsay is completed and with the Minister for Financial Services Kelly O'Dwyer, who is yet to take it to Cabinet for discussion.

But like AFCA, a scheme of last resort should not be delayed.

But like AFCA, it will be steeped in politics.

Last resort

Not surprisingly, there is a lot of push back from industry because it could cost some serious money if it is done properly. A report commissioned by Cadence Economics estimates the cost to the industry would be $105 million a year if it was limited to financial advice. If the scheme included product failures, costs would blow out to $310 million a year.

In its submission, the Financial Services Council rejects a last resort scheme on the basis it would be costly, "does not represent good public policy" and inherently promotes moral hazard. "For instance, smaller, less-capitalised licensees could adopt less risk-averse approaches and behaviours in the expectation that if something goes wrong, the scheme will pick up the tab," it says.

The Australian Bankers Association backs a scheme of last resort but says it must be prospective and be restricted to retail clients of poor financial advice.

In a joint submission, consumer groups call for a broad, retrospective scheme with an application window of at least two years to ensure an end date for past disputes and a cap on the size of disputes.

Like most things, including the fate of AFCA and the scheme of last resort, it will boil down to politics. In the meantime, customers will continue to battle disputes in a flawed external dispute resolution system and those who fall through the cracks, such as the Timbercorp victims, will wait to see just how much stomach the Coalition has to make the financial system right past wrongs.

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