



# FOS Submission

Small Business & Family Enterprise  
Ombudsman discussion paper



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# Overview of FOS

## 1. Overview of FOS

FOS provides dispute resolution services for consumers of financial services including small businesses. To provide some context to the discussion of the role we play in relation to small business disputes about financial services, we set out overview information below. This section explains the role of FOS, highlighting:

- the dispute services FOS provides
- our mission, and
- our approach.

### 1.1 Small business disputes

In this document, “small business” has the meaning that it has in the *Corporations Act 2001* (Corporations Act). A manufacturing business with fewer than 100 employees, or any other business with fewer than 20 employees, is a small business. This is the way small business is defined in our Terms of Reference, which outline our jurisdiction. We explain the types of small business disputes we can consider in section 2.

FOS and its predecessors have over 20 years’ experience of providing dispute resolution services for the financial services sector. Since FOS was established through a merger of schemes in July 2008, our jurisdiction has covered disputes between a financial services provider and a small business. For many years before the merger, the jurisdictions of our predecessors also covered certain small business disputes.

### 1.2 Our mission

We serve the community by resolving disputes between consumers and their financial services providers in a way people can trust. FOS is an independent organisation and our service is free to consumers, including small businesses, who lodge disputes with FOS about the conduct of their financial services provider.

### 1.3 External dispute resolution

FOS and other industry-based dispute resolution schemes have been developed to give the Australian community a cheaper, quicker and less formal alternative to the courts. Reforms to financial sector regulation

have recognised the importance of consumers having access to a low-cost means to resolve disputes with financial services providers. Access to an independent third party review of a complaint supports consumer confidence in Australia's financial sector.

Our perspective is informed by our unique position in the financial services sector as a non-government external dispute resolution (EDR) scheme funded by the financial sector industry and supported by industry and consumer organisations. Our jurisdiction covers the majority of financial services providers across all sectors of the financial system.

Over the last 25 years, EDR in the financial sector has developed through a commitment from the major participants – consumer organisations, financial services providers, government and the regulators – to effective mechanisms for non-court based consumer EDR.<sup>1</sup> The formal components of this commitment are the formal regulatory accountability arrangements established by the

Australian Securities and Investments Commission (ASIC), and the FOS Terms of Reference, which outline the types of disputes we can consider and act as a contract between us and our members. FOS is approved and overseen by ASIC.

#### 1.4 Our approach

Our Terms of Reference highlight our co-operative and merits-based approach to dispute resolution. As an EDR scheme, we strive to share our experience with all our stakeholders to help reduce the number of disputes that arise in the future. This collaborative approach is one of the strengths of the current arrangements for EDR which have evolved over the last 25 years in Australia.

#### 1.5 Trust

FOS only becomes involved in disputes when an individual or small business consumer feels that their financial services provider has not kept a promise about a product or service, and the consumer is unable to resolve their complaint directly with the financial services provider.

Therefore, at the heart of what FOS deals with is consumers' loss of trust in financial services. We see our role

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<sup>1</sup> Australia and New Zealand Ombudsman Association (ANZOA), *Submission into access to justice Inquiry, Productivity Commission*  
*Setting the scene: Industry-based customer dispute resolution schemes* (speech delivered by Colin Neave and John Pinnock, NADRAC conference 2003)

largely as helping restore that trust, and in doing so we:

- act as an impartial and independent third party in resolving disputes between consumers and their financial services providers
- share our experience to help prevent future disputes
- identify systemic issues and work with financial services providers to address the effect these systemic issues have beyond the consumer who brought the dispute to FOS
- play a role in the way financial services providers serve their customers.

Information about FOS is set out in full on our website at [www.fos.org.au](http://www.fos.org.au). Appendix 1 summarises key points.



# Our jurisdiction

## 2. Our jurisdiction

This section explains FOS’s current jurisdiction and draws attention to factors that determine whether we can consider small business disputes. It also provides information about anticipated changes to our jurisdiction relating to small business disputes.

### 2.1 Terms of Reference

To explain our jurisdiction in relation to small business disputes, we need to explain how our Terms of Reference operate. Consumers of financial services who are individuals or certain small businesses may be eligible to lodge disputes with FOS. The following table provides further details about the eligibility of small businesses to lodge a dispute with FOS.

For further details on the FOS Terms of Reference (paragraph 4.1) please see Appendix 2.

Small Business	FOS ToR
<p><b>Eligibility</b></p>	<p><b>Section 4.1</b></p> <p>b) a partnership comprising of individuals – if the partnership carries on a business, the business must be a Small Business</p> <p>d) a Small Business (whether a sole trader or constituted as a company, partnership, trust or otherwise)</p> <p>e) a club or incorporated association – if the club or incorporated association carries on a business, the business must be a Small Business</p> <p>f) a body corporate of a strata title or company title building which is wholly occupied for residential or Small Business purposes, or</p> <p>g) the policy holder of a group life or group general insurance policy, where the dispute relates to the payment of benefits under that policy.</p> <p><b>Paragraph 20.1</b></p> <p>“Small Business” means a business that, at the time of the act or omission by the Financial Services Provider that gave rise to the Dispute:</p> <p>a) if the business is or includes the manufacture of goods: had less than 100 employees, or</p> <p>b) otherwise: had less than 20 employees.</p>



## 2.2 Types of disputes we can consider

We can consider a dispute if it is within, and not excluded from, our jurisdiction. The following table provides the relevant paragraphs in our Terms of Reference that apply to the types of small business disputes FOS can deal with. These are further explained in this section.

Small Business	FOS ToR
Types of disputes	<p><b>Paragraphs 4.1, 5.1 &amp; 13.1</b></p> <p>All disputes that can be ordinarily lodged by consumers with FOS with the following exception:</p> <ul style="list-style-type: none"> <li>• where the Applicant is a member of a group of related bodies corporate and that group has in excess of 20 employees (or 100 employees in the case of a manufacturing group)</li> <li>• Paragraph 13.1(a)(ii) does not apply to legal proceedings relating to debt recovery against a small business where the contract provides for a credit facility of more than \$2,000,000.</li> </ul>

The main requirements that a dispute must meet to fall within our jurisdiction are:

- The dispute must arise under Australian law or relate to a particular type of collective investment offered in Australia.
- The subject of the dispute must be:
  - a financial service provided to the consumer
  - a guarantee, security or repayment provided by the consumer
  - a benefit to a person referred to in an insurance contract
  - an interest in a financial product
  - a third party motor vehicle insurance claim
  - a service provided for a mutual financial services provider
  - an investment offered under a foreign recognition scheme, or
  - a traditional trustee company service.
- The financial services provider in the dispute must be a member of FOS when the dispute is lodged.

Disputes referred to in paragraph 5.1 of the Terms of Reference are excluded from our jurisdiction. Some examples of excluded disputes are:

- certain disputes about the performance of investments
- disputes already dealt with in another forum
- certain disputes about levels of fees
- disputes about assessments of the credit risk posed by a borrower or the security required for a loan, and
- where a small business is a member of a group of related bodies corporate and that group has in excess of 20 employees (or 100 employees in the case of a manufacturing group).

We also have discretion to exclude disputes from our jurisdiction where appropriate. This is set out in paragraph 5.2. Examples of situations in which we may exercise this discretion include:

- if there is a more appropriate forum for the dispute, such as a court
- where the dispute is frivolous, vexatious or lacking in substance.

Our jurisdiction in relation to general insurance disputes is limited by paragraph 4.3. Paragraph 4.3 and

definitions of terms used in it are set out in Appendix 3.

Paragraph 13.1d) limits our jurisdiction in relation to small business disputes concerning credit. Its effect is that we will not consider a dispute between a financial services provider and a small business involved in legal proceedings where the documented amount of the credit facility exceeds \$2 million.

Paragraph 13.1d) has only applied since 1 January 2014. ASIC required us to include the limitation in our Terms of Reference after it conducted a public consultation about the jurisdiction of EDR schemes in relation to small business lending complaints.

### 2.3 Our compensation caps

Small Business	FOS ToR
<b>Compensation Caps</b>	<p><b>Schedule 2</b> Normal compensation caps apply.</p> <ul style="list-style-type: none"> <li>• \$280,000</li> <li>• \$150,000- Claim against a General Insurance Broker except where the claim solely concerns its conduct in relation to a Life Insurance Policy, or</li> <li>• \$3,000- Third party claim on a General Insurance Policy providing cover in respect of property loss or damage caused by or resulting from impact of a motor vehicle.</li> </ul> <p><b>Paragraph 5.1</b></p> <ul style="list-style-type: none"> <li>• where the value of the Applicant's claim in the Dispute exceeds \$500,000</li> </ul>

Paragraph 5.1o) of our Terms of Reference sets \$500,000 as the monetary limit of our jurisdiction. That provision states that we may not consider a dispute in which the value of the claim exceeds \$500,000. This is the figure used in the retail client test under section 761G of the Corporations Act.

RG 139 requires an EDR scheme to operate with a compensation cap. Under this approach, the scheme has jurisdiction to consider a dispute involving an amount larger than the compensation cap, but can only award compensation up to the cap.

A compensation cap must be at least \$150,000 for disputes about general insurance brokers and at least \$280,000 for other disputes. At present, our Terms of Reference set these figures as our compensation caps. We anticipate that the caps will increase shortly. They are required to be adjusted on 1 January 2015 in accordance with an indexation formula specified in paragraph 9.8 of our Terms of Reference.

## 2.4 Changes to our jurisdiction

An independent review of FOS was conducted recently. The report of the review is available on our website.<sup>2</sup>

The report makes three recommendations to change our jurisdiction in relation to small business disputes (Recommendations 9, 10 and 11). The table below shows the recommendations, our responses to them and the changes to our jurisdiction that will or may result.

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<sup>2</sup> See [www.fos.org.au](http://www.fos.org.au) under "Quick Links".

## 2.6 Independent Review Recommendations

	Recommendation 9	Recommendation 10	Recommendation 11
<b>Recommendation</b>	In the case of large, complex commercial credit disputes, FOS should be more active in exercising its discretions under the Terms of Reference to refuse to consider the dispute if FOS considers this course of action appropriate, for example, because there is a more appropriate place to deal with the dispute such as a Court.	FOS should commence the necessary consultation steps to amend the Terms of Reference to expand FOS's jurisdiction to include loss of profits/business interruption insurance and to include an 'exceptional circumstances' discretion so that FOS can, where appropriate, consider a dispute in relation to an excluded category of insurance.	FOS should commence the necessary consultation steps to amend the Terms of Reference to expand its jurisdiction to disputes between insurance brokers and small businesses about any general insurance policy other than an Excluded Policy (thereby restoring its jurisdiction to that of the antecedent scheme, the Insurance Brokers Dispute Facility).
<b>Our response</b>	FOS agrees with this recommendation and will develop further guidance on its approach to the exercise of the discretion to refuse to consider disputes.	FOS will engage with stakeholders with the view to amending its Terms of Reference and expanding its jurisdiction to deal with these disputes.	FOS will engage with stakeholders with the view to amending its Terms of Reference and expanding its jurisdiction to deal with these disputes.



# **Our Small Business Statistics**

## 3. Our Small Business Statistics

### 3.1 Disputes Accepted

In this section we set out the statistics we have on the small business disputes we handle at FOS.

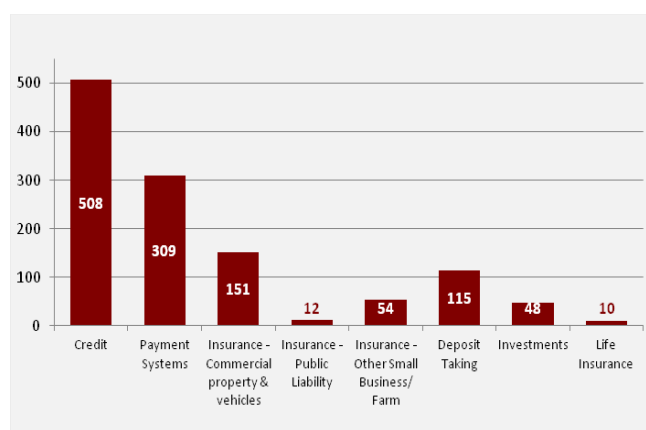
FOS accepts over 20,000 disputes every year. The following is the total number of disputes we accepted in the last three financial years:

- 2012-2013 – 24,100
- 2011-2012 – 25,298
- 2010-2011 – 20,368

Approximately 6% of the total number of disputes we accept are lodged by small businesses. This is approximately 1,200 disputes. Most of the small business disputes we accepted in 2012-2013 related to credit and payment systems products, and in particular business finance and non-cash payment products.

Our records for earlier years do not provide this level of detail for all disputes lodged. However, they indicate that small businesses lodged approximately 7% of total disputes in 2010-2011 and about 5.5% in 2011-2012.

Most small business applicants are from NSW (33%), Victoria (29%) and QLD (21%).



### 3.2 Dispute Issues

The majority of the disputes lodged by small businesses relate to decisions made by financial services providers about finance or insurance (32%). This includes, but is not limited to, denial of claims or requests for finance variations. Of all the issues raised by small businesses, 16% relate to financial difficulty.

Issue	%
Charges	10%
Financial Difficulty	16%
FSP Decision	32%
Instructions	11%
Transactions	14%
Other	17%

### 3.3 Outside Terms of Reference Small Business Disputes

During 2012-2013, FOS resolved approximately 1,170 small business disputes. Of these disputes, 20% were deemed to fall outside FOS's jurisdiction for the following reasons:

Outside Terms of Reference	%
Applicant not eligible (outside the accepted small business definition)	16%
Type of dispute outside Terms of Reference	11%
Not a current FOS member	6%
Excluded general insurance policy	21%
Credit risk assessment	4%
Previously dealt with by court/tribunal/scheme	5%
General discretion	8%
More appropriate place	13%
Other	17%



# Matters to consider



## 4. Matters to consider

We welcome the support for small business and family enterprises as outlined in the Discussion Paper. We are of the view that the Small Business and Family Enterprise Ombudsman (SBFEO) could make a valuable contribution through its advocacy and dispute resolution concierge role.

The Discussion Paper does not elaborate on whether the SBFEO will provide any dispute resolution services in the financial services area.

However, it states that the SBFEO should be complementary to, and avoid overlap with, the roles and responsibilities of other Ombudsmen.

We agree with this principle and consider the potential issues acknowledged in the Discussion Paper (such as duplication, “forum shopping”, confusion and inefficiency) are important to address.

We consider it would be useful to explicitly clarify in any final proposals that for those small business disputes within FOS jurisdiction, the SBFEO does not intend to duplicate roles and functions by directly dealing with these types of small business disputes.

Specific considerations are discussed below.

### 4.1 Referral of disputes

The Discussion Paper contemplates referrals from the SBFEO to existing dispute resolution services like FOS, but does not discuss referral arrangements in detail. FOS only considers disputes within its jurisdiction. Any referral arrangements would therefore need to be tailored to take into account the scope of our jurisdiction, which is explained in section 2 above.

We think it is important that only disputes that fall within FOS’s jurisdiction are referred to FOS by the SBFEO. This will prevent misunderstandings or frustrations for small businesses.

We would welcome the opportunity to work with the SBFEO to help ensure appropriate referrals are made. We could, for example, provide detailed information about the scope of our jurisdiction in relation to small business disputes.

## 4.2 Other forum

As illustrated above, when assessing whether a dispute falls within FOS's jurisdiction, an important factor we consider is whether there is a more appropriate place to deal with the dispute.

If there is, we may exclude the dispute from our jurisdiction under paragraph 5.2a) of our Terms of Reference. The SBFEO could be a more appropriate place to consider the dispute – depending on the decisions made about its role in relation to financial services disputes.

The decision as to whether or not the SBFEO will consider financial services disputes may impact FOS's jurisdiction. We would therefore welcome the opportunity to further discuss this with Treasury. However, we remain of the view that the role of the SBFEO should not duplicate that of FOS, as in our view this could potentially lead to confusion and inconvenience for small businesses.

A complication arises if a dispute involves a mixture of issues – one within our jurisdiction and another outside our jurisdiction. We suggest that referral arrangements be designed to, as far as possible, avoid double handling of these types of disputes.

Paragraph 5.1l) of our Terms of Reference excludes from our jurisdiction any dispute that has already been dealt with by a dispute resolution tribunal established by legislation.

An example of this is the provision of farm debt mediation pursuant to State legislation. Where the legislation applies to the debt, we follow an established approach for deciding whether a farm debt dispute falls within our jurisdiction. Our approach is outlined in the shaded section below.

Where a farmer has elected to attend a mediation pursuant to the State legislation, we will not consider the dispute because we consider it more appropriate for the mediation to resolve issues relating to both the debt and the dispute.

However, if the mediation takes place and no settlement is reached in relation to the subject of the dispute, we may consider the dispute in exceptional circumstances, such as where the farmer withdraws from the mediation process.

Provisions for mediation in the State legislation do not leave any scope for FOS to consider certain disputes.

Given this approach, we would also exclude disputes for which the SBFEO provides mediation or other dispute resolution services.

### 4.3 Handling of disputes

The Discussion Paper states that the SBFEO is to be an advocate and representative for small businesses. It does not elaborate on whether the SBFEO is expected to have any involvement in disputes that FOS handles. For example, it is not clear whether the SBFEO may represent small businesses in disputes that we consider.

In our view, there are strong arguments against the SBFEO having any involvement in disputes handled by FOS. Having both organisations involved in a dispute – for example, with FOS as the decision maker and the SBFEO as the legislated advocate or representative in a dispute at FOS – would create negative perceptions and undermine the independence and role of both organisations.

### 4.3 Systemic issues and serious misconduct

The Discussion Paper indicates, on page 20, that the SBFEO will have power to investigate allegations that practices are unfair to small

businesses. We assume this relates to commercial and competition issues rather than the issues considered by FOS as part of our dispute resolution process.

If the role goes beyond this scope it could overlap, in the financial services sector, with our role in relation to systemic issues and serious misconduct.

We have obligations, under RG139 and our Terms of Reference, to:

- identify systemic issues affecting, and serious misconduct by, members of FOS
- refer those matters to the members for response and action, and
- report systemic issues and serious misconduct to ASIC.

By dealing effectively with systemic issues and serious misconduct, FOS can, among other things, raise industry standards and help consumers to obtain fair compensation for financial losses.

Our website provides detailed information about how we handle systemic issues and serious misconduct. This information includes:

- paragraph 11.2 of our Terms of Reference
- the Operational Guidelines for paragraph 11.2<sup>3</sup>
- the outline of our systemic issues process in Issue 4 of our quarterly publication, The Circular, and regular updates in later issues, and
- the reports on systemic issues, with case studies, in our annual reviews.<sup>4</sup>

#### 4.4 Codes of conduct

The Discussion Paper states that the SBFEO could play a role in delivering dispute resolution services under industry codes of conduct. To help ensure there is no overlap between the roles of the SBFEO and FOS, we draw attention to the work we perform in relation to industry codes of conduct in the financial services sector.

A code of practice sets standards of good industry practice for financial services providers to follow when dealing with people who are, or who may become, individual or business customers. FOS provides support

arrangements for a number of codes in the financial sector, with a separate business unit supporting the work of independent code compliance committees<sup>5</sup> whose role is to monitor compliance with these standards.

The committees comprise an independent chair, a consumer representative and an industry representative. In our experience this composition facilitates transparency and accountability in the code monitoring and governance frameworks.

Each of the contractual arrangements with the committees is the subject of a separate funding and service level agreement with the relevant industry body or code committee.

The codes involved are:

- the Code of Banking Practice
- the Customer Owned Banking Code of Practice
- the General Insurance Code of Practice, and
- the Insurance Brokers Code of Practice.

<sup>3</sup> The Terms of Reference and Operational Guidelines are on [www.fos.org.au](http://www.fos.org.au) under "About Us".

<sup>4</sup> The Circular and our annual reviews are on [www.fos.org.au](http://www.fos.org.au) under "Publications".

<sup>5</sup> FOS Annual Review 2012-2013-  
<http://www.fos.org.au/publications/annual-review/>

Each code subscriber has made a commitment to:

- work to improve the standards of practice and service in their industry
- promote informed decisions about their services, and
- act fairly and reasonably in delivering those services.

Industry codes can play an important role in enhancing the relationship of trust between consumers and financial services providers. They are means by which industry bodies and their members can complement formal law and regulation in areas relating to service issues for consumers, standards of professional conduct, practice standards and ethical behaviour.

#### 4.5 Internal dispute resolution

ASIC's Regulatory Guide 165 *Licensing: Internal and external dispute resolution*<sup>6</sup> requires members of EDR schemes such as FOS to notify a consumer of their right to EDR when their complaint reaches a particular stage. If the SBFEO is to be an alternative avenue for the escalation of complaints about

financial services made by small businesses, notices to those businesses may need to reflect this.

This affects Regulatory Guide 165 and is a matter for ASIC to consider. Notices providing details about two alternative EDR services may confuse consumers. Also, altering requirements only for notices to small businesses may increase compliance risks for financial services providers.

#### 4.6 Complaints about FOS decisions

From time to time, FOS receives communications from consumers or their advocates about the outcomes of FOS Determinations.

It is possible that the SBFEO could also receive communications from small businesses about FOS decisions or process. Systems are already in place to deal with such matters. We are required to resolve disputes with finality. Our work to achieve final resolutions would in our opinion be undermined if the SBFEO were to have a role that included reviewing our decisions or the process by which we make decisions.

We have an established Complaints and Feedback Process to deal with these matters. Our website explains

<sup>6</sup> See "Regulatory Documents" on [www.asic.gov.au](http://www.asic.gov.au).

how feedback can be provided through this process and how we will address the feedback.<sup>7</sup> The process is user-friendly and set out in clear, simple terms. Feedback can be given electronically, by post or by telephone. Our Complaints and Feedback Process is designed to ensure that we directly respond to any complaint about our service.

A further consideration is that FOS is overseen by, and accountable to, ASIC. Giving the SBFEO any role in considering and responding to concerns raised about FOS decisions or process would create duplication. This could lead to adverse results such as confusion, inefficiency and unnecessary additional costs for financial services providers.

ASIC, however, can consider concerns about our ongoing compliance with their regulatory requirements.

Further, while our decisions are binding on financial services providers, they are not binding on consumers (including small businesses). If a consumer rejects a FOS Determination, the consumer retains the right he/she otherwise has to pursue the dispute in the courts.

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<sup>7</sup> See [www.fos.org.au](http://www.fos.org.au) - "Feedback about our service" under "Contact Us".

#### **4.7 Arrangements for complaints under financial services legislation**

As explained above, the proposal to establish the SBFEO may affect existing arrangements for complaints under the financial services legislation. For example, the SBFEO could:

- provide a new avenue for escalation of complaints about financial services made by small businesses
- alter the jurisdiction of FOS
- undertake work on systemic issues and serious misconduct that FOS currently undertakes, and
- necessitate changes to financial services providers' internal dispute resolution processes.

The arrangements for complaints under the financial services legislation, which is administered by ASIC, are explained fully in RG 139. We anticipate that ASIC may also have feedback to provide on the role of the SBFEO in regard to financial services, and how this role could be shaped.

#### **4.8 Use of the title "Ombudsman"**

The Discussion Paper acknowledges on page 7 that, according to ANZOA, an office should only use the title

“Ombudsman” if it satisfies certain “essential criteria”. The first criterion is that the office is independent as opposed to an advocate for a group. We note that the SBFEO would be an advocate for small businesses and therefore would not satisfy the criteria for use of the title “Ombudsman”.

The ANZOA submission addresses this issue in more detail. FOS supports the position set out in the ANZOA submission. We share the concerns that using the term “Ombudsman” in the title of the SBFEO will cause confusion about its role and the roles of long-established Ombudsmen schemes including FOS.

## Appendix 1

### Information about FOS

FOS is an ASIC-approved independent external dispute resolution scheme that handles disputes across the financial sector. FOS provides services to resolve disputes between financial services providers (that are FOS members) and consumers, including certain small businesses. FOS considers disputes about financial services such as:

- banking
- credit
- loans
- general insurance
- life insurance
- financial planning
- investments
- stock broking
- managed funds and
- pooled superannuation trusts.

FOS was formed in 2008 from the merger of three predecessor schemes. The original participants were:

- the Banking and Financial Services Ombudsman
- the Financial Industry Complaints Service, and
- the Insurance Ombudsman Service.

On 1 January 2009, two other schemes joined FOS:

- the Credit Union Dispute Resolution Centre, and
- Insurance Brokers Disputes Ltd.

FOS and its predecessor schemes have over 20 years' experience providing dispute resolution services in the financial services sector.

FOS is a not-for-profit organisation that provides services free to consumers. FOS is funded by its members. A significant proportion of its funding comes from case fees, and the fees paid by a member reflect the number of disputes in which it is involved and the stages of our process to which they progress.



FOS is governed by a board with an independent chair and:

- four industry directors appointed based on their expertise in and knowledge of the financial services industry, their independence and capacity and willingness to consult with the industry, and
- four consumer directors appointed based on their expertise in consumer affairs, knowledge of issues pertaining to the industry, their independence and capacity and willingness to consult with consumer organisations.

FOS operates in accordance with its Terms of Reference<sup>8</sup>. When deciding a dispute and whether a remedy should be provided, paragraph 8.2 of the Terms of Reference requires FOS to do what is fair in all the circumstances, having regard to each of the following:

- legal principles
- applicable industry codes or guidance as to practice
- good industry practice and
- previous relevant decisions of FOS or a predecessor

scheme (although FOS will not be bound by these).

As well as its functions in relation to dispute resolution, FOS has responsibilities to identify and resolve systemic issues and obligations to make certain reports to ASIC. FOS also monitors compliance with a number of industry codes of practice.

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<sup>8</sup> See Terms of Reference in "About Us" on our website, [www.fos.org.au](http://www.fos.org.au).

## Appendix 2

### Terms of Reference – paragraph 4.1

Paragraph 4.1 of our Terms of Reference is set out below.

### Eligibility to lodge a Dispute with FOS

FOS may only consider a Dispute if the Dispute is between a Financial Services Provider and:

- a) an individual or individuals (including those acting as a trustee, legal personal representative or otherwise)
- b) a partnership comprising of individuals – if the partnership carries on a business, the business must be a Small Business
- c) the corporate trustee of a self managed superannuation fund or a family trust – if the trust carries on a business, the business must be a Small Business
- d) a Small Business (whether a sole trader or constituted as a company, partnership, trust or otherwise)
- e) a club or incorporated association – if the club or incorporated association carries on a business, the business must be a Small Business
- f) a body corporate of a strata title or company title building which is wholly occupied for residential or Small Business purposes, or
- g) the policy holder of a group life or group general insurance policy, where the dispute relates to the payment of benefits under that policy.

## Appendix 3

### **Terms of Reference – paragraph 4.3**

Paragraph 4.3 of our Terms of Reference is set out below.

#### **General insurance product limitation**

FOS may only consider a Dispute in relation to a General Insurance Policy that is a:

- a) Retail General Insurance Policy;
- b) Residential Strata Title Insurance Product;
- c) Small Business Insurance Product;
- d) Medical indemnity insurance product.