

10 October 2016

Professor Ian Ramsey
EDR Review Panel
Financial System Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Professor Ramsey

**Review of the financial system external dispute resolution framework
Issues paper dated 9 September 2016**

The submission by the Financial Ombudsman Service (FOS) Australia in response to the issues paper for the Review is attached. The submission has two parts: part 1 addresses matters raised in the Review's issues paper and part 2 illustrates how FOS delivers effective outcomes to users.

We would be happy to discuss or clarify any aspects of our submission or any other information we have supplied.

Please do not hesitate to contact me if you have any queries or Jenny Peachey, Executive General Manager - Strategic Review on (03) 9099 2211 or at jpeachey@FOS.org.au.

Yours sincerely



Shane Tregillis
Chief Ombudsman
Financial Ombudsman Service Australia

Review of the financial system external dispute resolution framework

FOS Submission – Part 2

October 2016



Delivering effective
outcomes

FOS – Delivering effective outcomes for users

This document provides insights into FOS: who we are, what we do, how we have changed over the years, and how we continue to stay relevant and responsive to consumer and member needs in a rapidly changing and dynamic financial services environment.

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The EDR Panel requested information about how FOS delivers fair outcomes for users, against the EDR Review Principles: efficiency, equity, complexity, transparency, accountability, comparability of outcomes and regulatory costs

Clear purpose

With a minimum of formality, the Financial Ombudsman resolves disputes in a cooperative, efficient, timely and fair manner

FOS is a not-for-profit, non-government organisation that helps resolve disputes about financial services. Our service is free to consumers.

FOS covers



Banking and finance



Mortgage and finance broking



Superannuation



General insurance and life insurance



Financial planning



Estate planning and management



Insurance broking



Managed investments



Traditional trustee services

Not-for-profit &
non government
FOS is not a regulator

In one year 2015-16

214,439 people contacted us

600,000 visits to our website

34,095 disputes received

43% of all disputes resolved within one month

62 days the average time to resolve a dispute (down from 95 days in 2014-15)

What FOS does

FOS resolves disputes between consumers and financial services providers up to a maximum of **\$500,000** in value and can award compensation up to **\$309,000.***

For disputes relating to general insurance broking (\$166,000), income stream life insurance (\$8,300 per month) and uninsured third party motor vehicle claims (\$5,000).

*Different limits apply in our small business jurisdiction

When

Contact us any time, but remember, in general, disputes must be lodged with us by a consumer or small business within **6 years** of first becoming aware of suffering a loss.

Where

Australia-wide, online and by phone
Call us on 1800 367 287 or visit www.fos.org.au

What FOS doesn't do

- » Disputes relating to a business that is not a member of FOS
- » Matters that have already been dealt with by a court, tribunal or other external dispute resolution scheme
- » Some commercial general insurance products, decisions of trustees of approved deposit funds and regulated superannuation funds
- » Disputes about fees, charges, commissions or interest rates unless they relate to miscalculation or incorrect application, non-disclosure or misrepresentation; or that the charging of the fee is unlawful or unconscionable
- » Some matters that are subject to legal proceedings.

Clear resolve

The Financial Ombudsman in 2015-16

Disputes

34,095
total disputes received
7% from the previous year

214,439
phone enquiries
1.9% from the previous year

2,875
financial difficulty disputes accepted
30% from the previous year

64 systemic issues resolved
245 investigations of alleged breaches of industry codes of practice

32,871
total disputes closed
61% resolved by agreement
16% resolved by FOS decision or assessment
23% discontinued or outside Terms of Reference

2,436
disputes closed with a panel, ombudsman or adjudicator decision

Resolution times

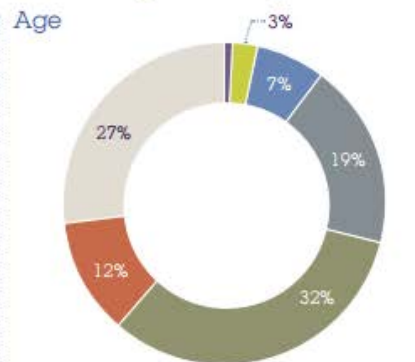
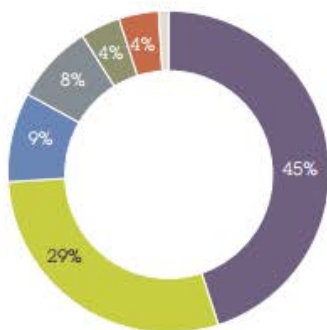
43% resolved within a month
62 average days to resolution

Top ways to lodge a dispute



What the disputes were about

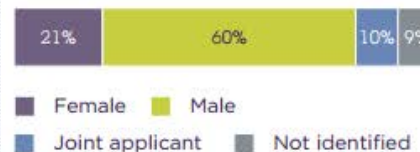
Who lodged a dispute



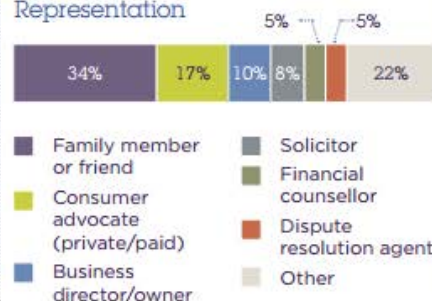
- Credit
- General insurance
- Deposit taking
- Payment systems
- Investments and advice
- Life insurance
- Other

- ≤17
- 18-24
- 25-29
- 30-39
- 40-59
- 60+
- Other/not specified

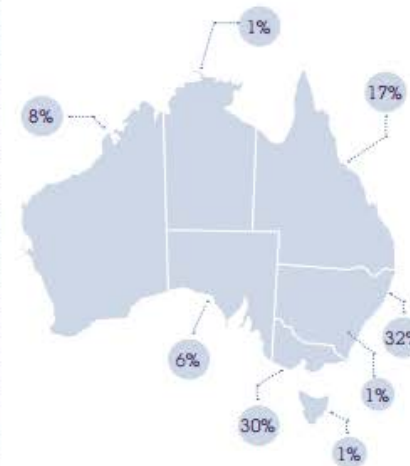
Gender



Representation



Location



The Financial Ombudsman Service was established in 2008

FOS was established in 2008 as a result of a merger of three other industry-based schemes: the Banking and Financial Ombudsman Service, Insurance Ombudsman Service and the Financial Industry Complaints Service. Later two other schemes also merged with FOS: the Credit Union Dispute Resolution Centre and the Insurance Brokers Disputes Ltd.

The purpose of the consolidation was to simplify the structure of the financial services EDR; develop greater operational capacity; increase consumer awareness and accessibility to dispute resolution; improve costs to industry and in line with international trends. The then Government stated:

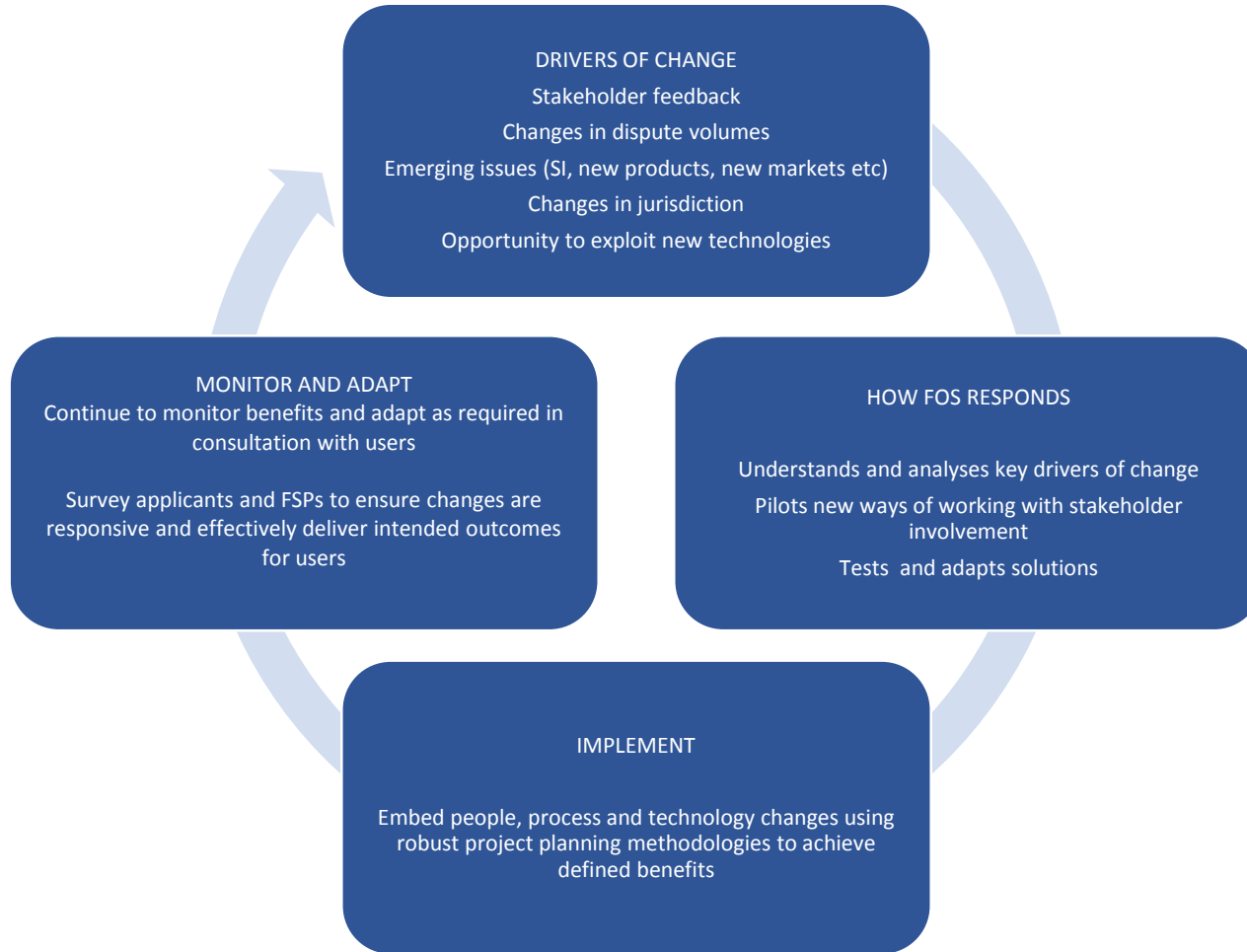
“This Government believes the new Financial Ombudsman Service is good news for consumers and the financial services industry alike. A single entry point for consumers allows for easier access to dispute resolution services and will increase public awareness of the availability of this free service.”

Senator the Hon. Nick Sherry, Minister for Superannuation and Corporate Law

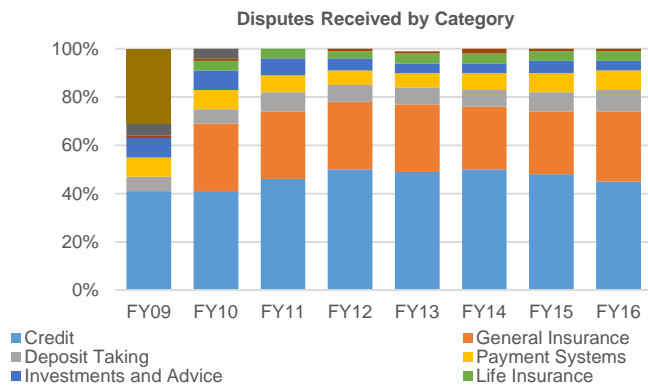
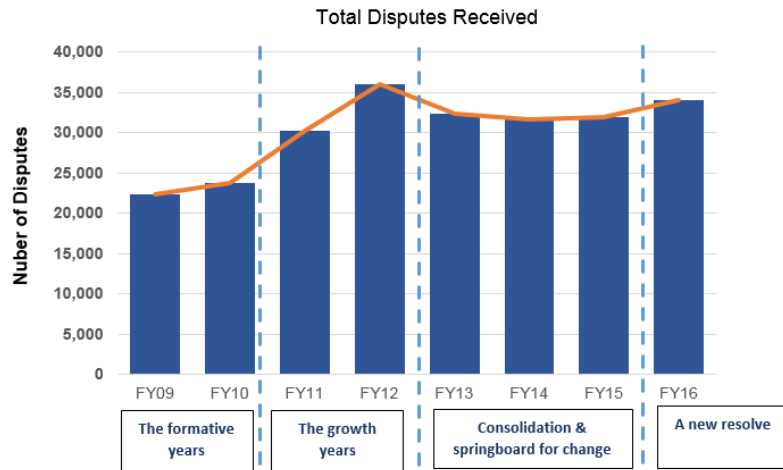
The benefits of consolidation identified at the time included:

- Greater sophistication in infrastructure, dispute resolution, better learning and training and better ability to identify industry-wide systemic issues
- Specialisation in dispute resolution by product rather than by financial services providers
- Greater consistency in approaches and outcomes for consumers, including adoption of best practice
- Easier for consumers to know which scheme to use in the event that they have a dispute
- Efficiency benefits from sharing resources or from economies of scale and scope.

Over the past eight years, we have adapted to respond to changes in the financial services environment

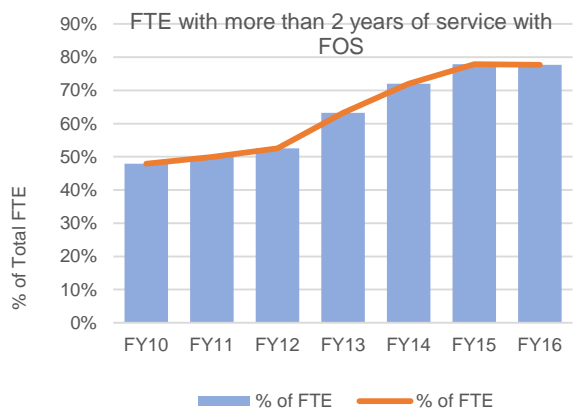
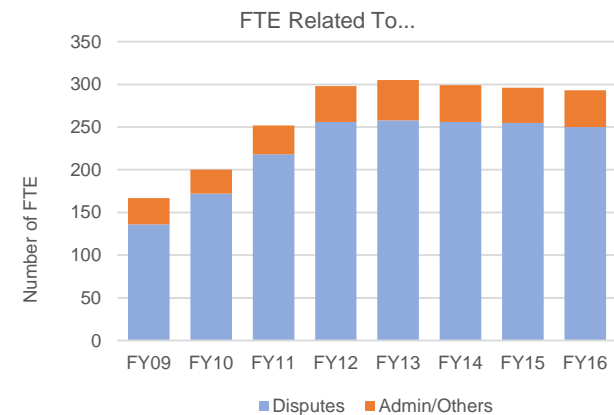
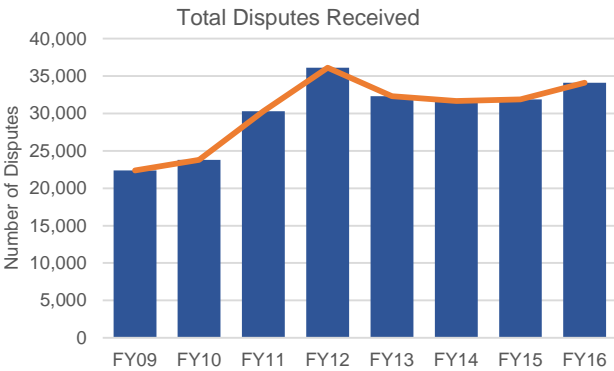


And there have been many changes, impacting on dispute volumes and the types of disputes that FOS handles



FY	Event
FY08	<ul style="list-style-type: none"> Global Financial Crisis (GFC) Merger of the Banking and Financial Services Ombudsman, Industry Ombudsman Service and Financial Industry Complaints Service into the Financial Ombudsman Service
FY09	<ul style="list-style-type: none"> Disputes up by 33% from previous year - 68% increase in investments disputes Disputes continue to be dealt with according to predecessor schemes terms of reference Collapse of Storm Financial, Great Southern Group and Timbercorp Merger of Credit Union Dispute Resolution Centre and Insurance Brokers Disputes Ltd with FOS Victorian bushfires
FY10	<ul style="list-style-type: none"> Disputes up by 6% from previous year - 27% increase in investments disputes 24% increase in general insurance disputes Queensland floods FOS operates under new terms of reference - January 2010
FY11	<ul style="list-style-type: none"> Disputes up by 27% from previous year - steep increase (130%) in financial difficulty disputes from previous year - 44% increase in credit disputes and 25% in insurance disputes from previous year Amendments to the National Consumer Credit Code Expanded financial difficulty jurisdiction Queensland floods, Victorian floods, Cyclone Yasi
FY12	<ul style="list-style-type: none"> Disputes up by 19% from previous year 42% increase in financial difficulty disputes from previous year Rise in numbers of households in financial difficulty Rising cost of living and falling house prices Growing awareness of FOS Introduction of new jurisdiction - Traditional Trustee Service disputes Melbourne Christmas day storms
FY13	<ul style="list-style-type: none"> Disputes down by 11% from previous year - 22% drop in financial difficulty disputes accepted 24% drop in investments disputes as the effects of the GFC diminish Drop in natural disaster-related disputes, due to a much higher prevalence of flood cover, greater consumer awareness about cover and improved industry practice
FY14	<ul style="list-style-type: none"> Disputes down by 2% from previous year - 9% drop in financial difficulty disputes accepted Reduction of dispute queues across all process areas at FOS Fast track pilot - new process for dealing with simpler, low value disputes Financial difficulty pilot to streamline process for dealing with financial difficulty disputes
FY15	<ul style="list-style-type: none"> Disputes up by 1% from previous year - 12% drop in financial difficulty disputes accepted Brisbane hailstorms, South Australian bushfires, NSW storm, Cyclone Marcia, South-East Queensland and Northern NSW severe weather, ANZAC day hailstorms (NSW) Swiss Franc de-pegging from the Euro Establishment of review and remediation programs by financial institutions
FY16	<ul style="list-style-type: none"> Disputes up by 7% from previous year - steep increase in the number of disputes not resolved through internal dispute resolution by general insurers; 30% drop in financial difficulty disputes accepted South Australia bushfires, Southern Sydney storm, Great Ocean Road bushfire (VIC), Yarloop bushfire (WA), East Coast flooding Establishment of review and remediation programs by financial institutions

We have responded by changing our processes and our resource capacity and capability



FY	Significant process and technology changes
FY08 and 09	<ul style="list-style-type: none"> 1 July 2008 merger of the Banking and Financial Services Ombudsman, Industry Ombudsman Service and Financial Industry Complaints Service into the Financial Ombudsman Service 1 January 2009 merger of Credit Union Dispute Resolution Centre and Insurance Brokers Disputes Ltd with FOS
FY10	<ul style="list-style-type: none"> New Terms of Reference (TOR) and operational guidelines New dispute resolution process and case management system (FOSSIC) Review of early resolution processes and establishment of early resolution team New online dispute form – first version New financial difficulty specialist team established Online case handling library (first version) established FSP comparative reporting commenced
FY11	<ul style="list-style-type: none"> Complaints and feedback process established to deal with complaints about FOS Launch of knowledge management strategy Appointment of external contractors to assist with emerging queues Induction process for new dispute resolution staff
FY12	<ul style="list-style-type: none"> New interactive voice response system (IVR) and process Review of case load management Enhancement of conciliation survey Release of FOS style guide Staff cross-skilling program
FY13	<ul style="list-style-type: none"> Specialist resolution group and general resolution group established Launch of workflow process for profiling and handling of disputes based on complexity Rollout of organisation-wide quality assurance framework New information and management reporting framework Development of cost to serve model Project 500 to reduce backlog of disputes awaiting recommendation/decision Significant event response plan to deal with disputes arising from significant natural disasters, financial or other events
FY14	<ul style="list-style-type: none"> Introduction of regular quarterly applicant surveys for matters closed and registered Independent review conducted by Cameron Ralph Navigator Dispute Process Reform Program (DPR) established to address independent review findings and stakeholder feedback. DPR covered TOR changes, process enhancements, team configurations, technology upgrades
FY15	<ul style="list-style-type: none"> Fast Track Pilot commences TOR changes implemented - January 15 Financial difficulty process enhancements piloted Electronic/online statement of financial position implemented
FY16	<ul style="list-style-type: none"> DPR changes implemented – July 2015 New online dispute form implemented New case management system (FOSSIC 2.0) implemented – October 2015 Dispute file document management system implemented (SharePoint)

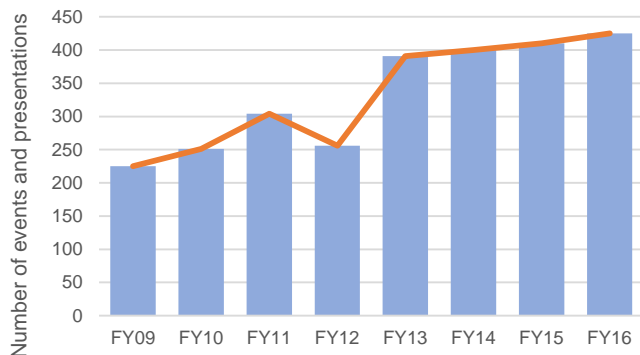
Investment in technology has been critical to improve accessibility and efficiency

FY	Technology enhancement
FY08	<ul style="list-style-type: none"> • Launched FOS Membership Database (MIDAS) • Launched FOS website • Launched case handling library • Launched FOS e-News (member newsletter)
FY09	<ul style="list-style-type: none"> • Major network database upgrade
FY10	<ul style="list-style-type: none"> • Released new case management system (FOSSIC) • Launched online dispute form • Launched online case handling library (first version)
FY11	<ul style="list-style-type: none"> • Released e-learning materials around the new TOR and process • Launched new complaints and feedback system (to deal with disputes about FOS) • Online comparative member performance reporting
FY12	<ul style="list-style-type: none"> • Implemented knowledge management initiatives (migration of predecessor scheme file structures) • Released Secure Services Portal (first version) • Implemented Mail Manifest (internal mail system) • Online training module for systemic issues (internal and external) • Implemented IVR System • Online conciliation survey • Released Consumer Liaison Group portal
FY13	<ul style="list-style-type: none"> • Developed IT structures and capabilities to support the three-year strategic plan • Identified and implemented eEnablement opportunities • Audited IT architecture • Company risk profile benchmarking • PCI compliance and penetration testing • Secure Services Portal: pilot case management online tool (document logement) • Secure Services: dispute activity dashboard

FY	Technology enhancement
FY14	<ul style="list-style-type: none"> • Implemented IT Governance Framework and IT Steering Committee • Launched Secure Services document upload capability for members • Built disaster recovery and business continuity site on Amazon Web Services (AWS) • Deployed wireless across all FOS workspaces, mobility, and paperless mail processing
FY15	<ul style="list-style-type: none"> • Launched electronic statement of financial position • Built 1Gb link to AWS and increased internet speed from 10Mbps to 100Mbps • Implemented 24/7 server monitoring and alerting service • Implemented 'password self service' for staff • Migrated all staff to Office 365 • Moved reporting from the FOSSIC production environment to a dedicated database
FY 16	<ul style="list-style-type: none"> • Implemented new online dispute form • Implemented new case management system (FOSSIC 2.0) • Dispute file document management system implemented (SharePoint) • Implemented SharePoint for case-related document management • Implemented file sharing capability in Secure Services linked to FOSSIC 2.0 • Implemented 'follow-me' printing for all staff • Expanded FOSSIC dashboards and pilot of reporting self-service capabilities • Virtualised telephone system and moved from ISDN to SIP services • Replaced end-of-life core and edge networks • Developed and tested business continuity plan

So too has been engagement with our stakeholders and the community

FOS events and formal engagement/presentations



FY	Event
FY09	<ul style="list-style-type: none"> • Launch of FOS e-News • Established bushfire and flooding relief telephone hotline • Published eNews, bulletins, brochures and information sheets • First Member National Conference • IDR member workshops – managing complaints • 5 submissions on reforms to legislation and policy • FOS merger roadshows
FY10	<ul style="list-style-type: none"> • Launch of FOS Circular • Release of first Member Performance Comparative Tables • 6 submissions on reforms to legislation and policy
FY11	<ul style="list-style-type: none"> • Member satisfaction and community awareness survey • New complaints and feedback process for dealing with disputes about FOS • Organised external dispute resolution forum • Published accessibility guidelines and fact sheets
FY12	<ul style="list-style-type: none"> • Systemic Issues online training module for FSPs and consumer organisations • Launched Consumer Engagement Survey • Established Consumer Liaison Group • Launched Consumer Liaison Group portal
FY13	<ul style="list-style-type: none"> • Continued liaison activity (industry forums, GI open forums, interbank meetings) • Significant event response plan approved (released July 13) • Stakeholder research report • SMS trial for applicants

FY	Event
FY14	<ul style="list-style-type: none"> • Independent review consultation • Funding model review and consultation • 8 submissions on reforms to legislation and policy • Collaborated with SBS radio to develop advertisements in 11 languages other than English • Quarterly applicant survey – how satisfied consumers are with the FOS service, what FOS is doing well and areas where it can improve • Published a number of FOS Approach documents • Redeveloped the FOS website • SMS communication for all case workers • FOS industry forums • E-learning module for consumer representatives
FY15	<ul style="list-style-type: none"> • Funding review consultation continues • FOS National Conference • Industry forums • Webinars on new process and industry-specific issues such as loss calculation and responsible lending • 6 submissions on reforms to legislation and policy • Quarterly applicant survey • Updated proposal to compensation scheme of last resort • Expanded outreach program to include financial capability workers, community and legal aid lawyers and collaborated with other organisations to better understand the needs of indigenous consumers • First consumer roundtable
FY16	<ul style="list-style-type: none"> • Stakeholder survey (members, industry and consumer representatives) • Rolling applicant surveys • 10 submissions on reforms to legislation and policy • FOS Approach documents • Improved accessibility of website and other communications for people with visual impairment • Introduction of free call number • Launched the first FOS Reconciliation Action Plan

Delivering effective outcomes for users – operating efficiently

Efficiency: schemes should have adequate coverage, powers and remedies for complaints to be resolved in a timely manner



Our Terms of Reference set out in detail our jurisdiction, the types and nature of disputes we can accept and the powers and remedies that are available.



Terms of Reference

1 January 2010 (as amended 1 January 2015)

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Disputes outside our Terms of Reference (OTR)

The proportion of disputes outside our Terms of Reference was 17% in 2015-16, the same as last year.

This year, a total of 5,692 disputes were found to be outside our jurisdiction. The most common reasons were more appropriate place (19%), type of dispute outside our Terms of Reference (16%) and general discretion – investigation not warranted (14%).

A more appropriate place to deal with a dispute may be, for example, a court, tribunal or another dispute resolution scheme.

A type of dispute outside our Terms of Reference may, for example, be one that does not arise from the provision of a financial service by an FSP to an applicant.

If FOS determines that an investigation is not warranted, it is usually our view that the dispute is without merit. Generally this is because we consider the FSP has made no error, the applicant has suffered no loss or the loss has been compensated.

Having analysed the categories of excluded matters, we are not greatly concerned by the increase over the last couple of years in the percentage of disputes closed as Outside Terms of Reference. Two of the largest categories of exclusions “Not a current FOS Member” and “More Appropriate Place” have increased because of the movement of several debt buyer FSPs from FOS to the Credit Ombudsman Service and the increase in disputes about assigned or securitised debts.

We also note that as FOS's public profile continues to increase, there will inevitably be attempts by Applicants to use FOS for disputes that are not appropriate for FOS.

Independent Review of FOS Report 2014

Timeliness – our 2015-16 results

The average time to resolve a dispute at FOS is 62 days (down from 95 days in 2014-15)

43% of all disputes were resolved within 30 days (up from 22% in 2014-15)

Reduction in the average time taken to resolve disputes at registration and referral from 45 days in 2014-15 to 29 days in 2015-16

What FOS does ✓

FOS resolves disputes between consumers and financial services providers up to a maximum of **\$500,000** in value and can award compensation up to **\$309,000.***

For disputes relating to general insurance broking (\$166,000), income stream life insurance (\$8,300 per month) and uninsured third party motor vehicle claims (\$5,000).

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Contact us any time, but remember, in general, disputes must be lodged with us by a consumer or small business within **6 years** of first becoming aware of suffering a loss.

Where

Australia-wide, online and by phone
Call us on 1800 367 287 or visit www.fos.org.au

What FOS doesn't do ✗

- » Disputes relating to a business that is not a member of FOS
- » Matters that have already been dealt with by a court, tribunal or other external dispute resolution scheme
- » Some commercial general insurance products, decisions of trustees of approved deposit funds and regulated superannuation funds
- » Disputes about fees, charges, commissions or interest rates unless they relate to miscalculation or incorrect application, non-disclosure or misrepresentation; or that the charging of the fee is unlawful or unconscionable
- » Some matters that are subject to legal proceedings.

Minimising barriers to access our services

Equity: users should face minimal cost barriers and be able to easily access the system

Our service is free to consumers

We discourage the use of paid agents to assist applicants to bring a dispute to FOS

About authorised agents or representatives



If you haven't completed a Dispute form you can appoint an authorised agent to represent you at the same time you lodge your dispute by completing the agent authority section in the Dispute form. Alternatively, an agent can be authorised by you at a later date using the Agent Authority form.

Can advocates complain on behalf of Applicants?

Our processes are designed so that Applicants can bring disputes to the Financial Ombudsman Service without the need for assistance. We recognise however that, in some circumstances, Applicants seek, or prefer to obtain, assistance from an outside source. Hence we accept disputes lodged on behalf of Applicants by consumer advocates, such as financial counsellors or community workers. This requires the Applicant to give written authority for the authorised agent to act on their behalf.

Can relatives or friends complain on behalf of Applicants?

Applicants may ask a relative or friend to act as their authorised agent or representative. The relative or friend must act in the best interests of the Applicant and should not have a financial interest in the dispute, as this may create a conflict of interest. If the Applicant is concerned about the ability of a relative or friend to act in their best interests, an independent agent or representative may be more appropriate.

Commercial fee-charging representatives

There are some specialised businesses which put their services out to the public to represent them with their disputes against their financial services provider for a fee. It is open to an Applicant to use the services of such a representative in lodging a dispute at FOS, however, we have a higher standard that we expect these fee-charging representatives to meet if they wish to use our service. This is because they are generally frequent users of our service for certain types of disputes.

FOS provides guidance to parties detailing the information and documentation which we require to consider Disputes, including useful resources available on our website. For this reason, FOS believes fee-charging representatives, even more than other representatives, should be familiar with the information and documentation which will be required to support their client's Dispute, and should ensure it is provided at the time the Dispute is lodged.

If a fee-charging representative does not comply with our requirements to provide the information when the dispute is lodged, FOS may refuse to consider the dispute. The following links will assist fee-charging representatives with the information we require (this list will continue to be updated over time):

1. General information required for all disputes lodged
2. Information required for Credit Listing disputes
3. Information Required for a dispute relating to a Financial Difficulty request

More information about our approach in dealing with fee-charging representatives is available in our operational guidelines, under paragraph 6.1, which you can access [here](#).

We focus on ensuring that people can lodge a dispute easily, no matter who they are, where they live or what technology they use to connect

- 77% of all disputes that come to FOS are lodged online. Our online dispute form has an intelligent design that guides users through the lodgement process and provides information about issues FOS may be able and not be able to deal with
- Our guides and brochures are available in 13 languages in addition to English
- We actively encourage and use translation services to assist applicants

In 2015-16 we received 852 requests from applicants requiring additional assistance which we were able to facilitate.

Received disputes by type of additional assistance

	Total
Mental health	337
Hearing	106
Cognitive condition	99
Physical impairment	93
Other help needed	84
Literacy	79
Sight/vision	32
Text telephone	22
Total	852

625 applicants requested a translator service to assist in discussions with FOS. We have a range of accessibility guides for our staff to assist them in helping applicants with special needs

Accessibility guides



Family violence



Aboriginal & Torres Strait Islanders



Literacy



Hearing & Speech



Sight/Vision



Mental health



Brain injury, dementia & cognitive conditions



Suicide threat



Translation services



Referral agencies

Keeping it simple – minimising complexity

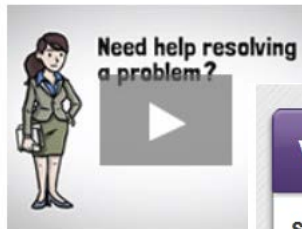
Complexity: schemes should be easy to use

FOS continues to use innovative ways to make it easier for consumers to connect with us. This slide shows a sample of initiatives

Our approach in 2015-16

- 27 community events
- 10 accessibility guides
- 13 foreign language brochures
- 625 requests for translators
- 13 translated web pages
- 20 translated animations
- 196 requests for Accessibility specific advice
- 918 views of "FOS presents Sarah's story in Auslan"

How we can help



[View transcript](#)

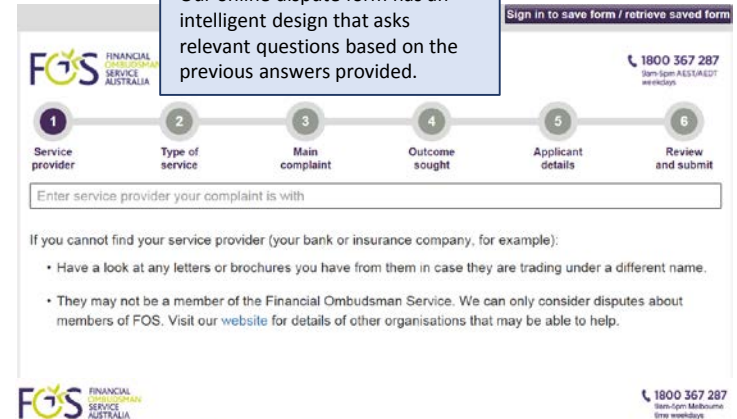
Video

Sarah's story in Auslan



If you are deaf you can just call via the National Relay Service on TTY

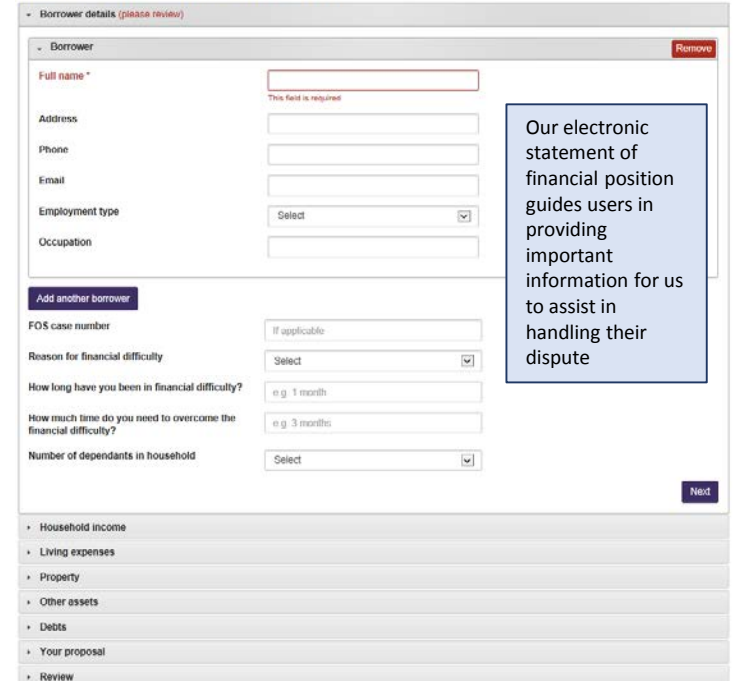
Our online dispute form has an intelligent design that asks relevant questions based on the previous answers provided.



1800 367 287
Sign in to save form / retrieve saved form

1800 367 287
Sign in to save form / retrieve saved form

Statement of Financial Position E-form



1800 367 287
Sign in to save form / retrieve saved form

1800 367 287
Sign in to save form / retrieve saved form

Remove

Next

Our electronic statement of financial position guides users in providing important information for us to assist in handling their dispute

Special Assistance

- Accessibility help
- Interpreter and National Relay Service
- العربية (Arabic), فارسی (Farsi)
- 简体中文, 中文 - 繁體 (Chinese S/T)
- Ελληνικά (Greek)
- हिन्दी (Hindi), ਪੰਜਾਬੀ (Punjabi)
- Italiano (Italian)
- 한국어 (Korean)
- Español (Spanish)
- Filipino - Tagalog
- Türkçe (Turkish)
- Tiếng Việt (Vietnamese)

Consumer engagement – use of SMS

FOS uses SMS communication to contact many applicants who are in financial difficulty. In the experience of our case-handling staff, people in financial difficulty are often difficult to contact by phone. This may be due to a reluctance to answer calls from private numbers because of collections calls from creditors. It may also be the result of not having a voicemail service due to socio-economic factors. Consumer organisations and people who lodge disputes with FOS have welcomed this initiative.

FOS's focus on transparency

Transparency: decisions and processes of the schemes should be easily observable

FOS publishes extensive information about what we do on our website. This includes detailed data and statistics, decisions we have made, FOS Approach documents, case studies, details of legal cases involving FOS, our business plans and targets. Here is a sample:

The screenshot shows the top of the FOS website. It includes the FOS logo (Financial Ombudsman Service Australia), a contact number (1800 367 287), a search bar, and a navigation menu with items like 'About Us', 'News & Events', 'Publications', 'Resolving Disputes', 'Consumers', 'Small Business', and 'Members'.

Resolving Disputes

New dispute resolution process

Learn about FOS's process for resolving disputes. Key information for both consumers and financial services providers.

Find a financial services provider

For us to be able to consider disputes, the financial services provider needs to be a member of our service. This search tool will help you find out if your financial services provider is a FOS member.

Dispute resolution process in detail

Processes and procedures for resolving a dispute.

Legal cases

This page contains legal cases involving FOS and its predecessor schemes. In these cases, the courts have considered various aspects of the external dispute resolution service that was provided at the time.

Significant event response plan

FOS has a Significant Event Response Plan in place to ensure that we respond effectively to significant external events that could result in an increase in potential disputes.

How to lodge a dispute

Before you lodge a dispute with FOS, read about the types of disputes we can consider. If your dispute remains unresolved even after you have complained directly to your financial services provider, learn how you can lodge a dispute with us.

Decisions

Use this page to search for decisions made by the Financial Ombudsman Service.

Before you lodge a dispute

Before you lodge a dispute please read some simple steps you can follow to resolve your dispute as quickly as possible.

Our dispute resolution process

There are several steps we take to resolve a dispute. Learn more about our dispute resolution process.

Case studies

Our library of case studies highlighting dispute areas and trends that appear to be affecting consumers and financial services providers, and how FOS deals with them.

A second screenshot of the FOS website navigation menu, showing the same structure as the first screenshot.

Publications

We offer a range of publications. All our publications are available to view here on our website, and you can convert them to PDF documents if you need to print them. You can order brochures and our dispute form online. If the publication you require is not listed, please call 1300 78 05 05 or email us at info@fos.org.au. You can also join the email list for our online publication *The Circular* and our *Annual Review*.

Annual Review

Our 2015-16 Annual Review is now available.

Business Plan

Read FOS's 2015-2016 Business Plan.

Brochures

Brochures for consumers and consumer advocates, including 'How to resolve a dispute', 'A guide to conciliation conferences', and more.

Our approach

This series of documents explains how we reach decisions about key issues. Read about some common issues and dispute types that we see at FOS.

The FOS Circular

The FOS Circular is our online magazine. Published every three months, it is designed to facilitate dispute resolution by providing practical information and explaining our approach on substantive issues. It also keeps you up-to-date with FOS news and initiatives.

Code Compliance publications

Annual compliance reviews, inquiry reports and guidance notes offer in-depth analysis of code compliance within the Australian financial services industry.

Comparative Tables

The Comparative Tables present dispute statistics about financial services providers that are members of FOS. For each financial services provider listed, the tables show the likelihood of a dispute coming to FOS, the average time it took to reach a resolution, and the outcomes achieved through our resolution process.

Fact sheets

Fact sheets on a range of topics including dispute resolution, natural disasters, privacy, insurance, and more.

Submissions

We make written submissions to consultations, reviews and inquiries that relate to financial services policy and regulation. Through our submissions we aim to reduce future disputes and strengthen the arrangements for dispute resolution.

Bulletins

The final Banking & Finance Quarterly Bulletin was published in March 2009. Our publication *The Circular* has replaced the Bulletin, but you can still read old editions of the Bulletin.

Practice Notes

Practice Notes outline how we approach certain types of disputes. The FOS Approach is our new way of presenting this information, so please also visit www.fos.org.au/ourapproach to see our most recent documents.

Publication order form

Use this page to order FOS publications online. If a publication you require is not listed, or you live outside of Australia, please email your request to info@fos.org.au or call us on 1800 367 287.

A third screenshot of the FOS website header and navigation menu, showing the same structure as the previous screenshots.

Our approach

About FOS

The Financial Ombudsman Service (FOS) provides free, fair and independent dispute resolution assistance to consumers (individuals and small business owners) who are unable to resolve complaints with businesses that provide financial services. These businesses include banks, insurers, financial planners, mortgage brokers and others. We refer to these businesses as financial services providers (FSPs).

What is the FOS Approach?

The FOS Approach is a series of documents that outlines the way we look at different types of disputes. We have published similar documents before as articles in *The Circular*, and as bulletins and practice notes through our predecessor schemes. The aim of these documents has always been to provide practical information and explain our approach on substantive issues, but we hope you'll find *The FOS Approach* easier to read and use. However, it's important to understand that each dispute that comes to us is unique in nature, so this information is a guide only. No Determination (decision) can be seen as a precedent for future cases, and no approach document can cover everything you might want to know about key issues.

How can the FOS Approach help me?

We have created a series of documents that we hope will assist individuals, small business owners and financial services providers alike, better understand how we reach decisions about key issues involving certain topics.

Our aim is that more disputes are resolved earlier directly between the parties, with only the more complex and difficult making their way to FOS. If a dispute does come to FOS, we want to do everything we can to help the dispute resolve as quickly as possible.

A fourth screenshot of the FOS website navigation menu, showing the same structure as the previous screenshots.

Brochures

The Financial Ombudsman Service provides a range of informative brochures.

For consumers

- How to resolve a dispute (PDF 200KB) (WORD 363KB) (pocket brochure)
- Guide for dealing with financial difficulty (PDF 320KB) (WORD 277KB)
- Guide to conciliation conferences (PDF 425KB) (WORD 367KB)

For consumer advocates

- Guide to assessing a client who has a financial services dispute (PDF 490KB) (WORD 274KB)
- Guide to responsible lending and credit cards (PDF 238KB) (WORD 222KB)
- Guide to income protection (PDF 305KB) (WORD 334KB)
- Guide to insurance excesses (PDF 307KB) (WORD 260KB)

For accountants

- Guide to assisting a client who has a financial services dispute (PDF 280KB) (WORD 642KB)
- Top 10 tips for getting financial advice right (PDF 37KB) (WORD 340KB)

A screenshot of a yellow button with a document icon and the text 'Lodge a dispute'.

Quick links

The FOS Approach to...

- The 2013 Code of Banking Practice
- Adequacy of Statements of Advice
- Assessing Special Circumstances
- Awarding Interest in Insurance
- Calculating Loss in Financial Advice
- Cancellation of Instalment Contracts
- Disputes Lodged by Guarantors
- Excluding Disputes
- Financial Difficulty
- Fixed Interest Investments
- Insurance Broker Disputes
- Misleading Conduct
- Mortgage Sales
- Motor Vehicle Insurance Claim Delays
- Non-financial Loss Claims
- Responsible Lending
- Section 47
- Terms of Settlement

A fifth screenshot of the FOS website navigation menu, showing the same structure as the previous screenshots.

A second screenshot of a yellow button with a document icon and the text 'Lodge a dispute'.

A screenshot of a section titled 'Document formats' which explains that publications are available in PDF format and provides instructions on how to view them.

A screenshot of a section titled 'Publication order form' which includes a note about ordering printed brochures and a button labeled 'Order here'.

A screenshot of a section titled 'Translated brochures'.

FOS is accountable for the delivery of effective outcomes for users

Accountability: schemes' final determinations and complaints information should be publicly available, detailed information about schemes should be publicly available, and schemes have a role in reporting systemic issues and misconduct.

- All FOS decisions are published (de-identified) on our website.

The screenshot shows the FOS website interface. At the top, there is a navigation menu with links for 'About Us', 'News & Events', 'Publications', 'Resolving Disputes', 'Consumers', 'Small Business', and 'Members'. Below the navigation is a search bar and a 'Lodge a dispute' button. The main content area is titled 'Decisions' and includes a search form with fields for 'Keyword search', 'Advanced keyword search', 'Case number', and 'Date of decision'. There are also filters for 'Product line', 'Product category', 'Product name', 'Issue type', and 'Issue'. The search results section shows a list of search results, including details like 'Case No: 210963 Determination Page 1 of 16' and 'Case No: 222857 Determination Page 1 of 9'.

- Detailed dispute data is released in our Annual Review and Comparative Tables. Quarterly dispute trends are published in the FOS Circular.

The screenshot shows the FOS Circular website. The main heading is 'Annual Review 2015-16'. Below this, there is a section for 'Comparative Tables' with a list of links for various periods: 'Comparative Tables 2015-2016', 'Comparative Tables 2014-2015', 'Comparative Tables 2013-2014', 'Comparative Tables 2012-2013', 'Comparative Tables 2011-2012', 'Comparative Tables 2010-2011', and 'Comparative Tables 2009-2010'. A 'click to view' button is present. The page also features a 'Chief Ombudsman's Message' section with a photo of the Chief Ombudsman and a 'FOS Forum' section with a photo of a group of people. The footer includes the FOS logo and the text 'THE FINANCIAL OMBUDSMAN SERVICE'.

FOS investigates and reports systemic issues and misconduct

In the past five years FOS has worked with FSPs and ASIC to achieve



Our Systemic Issues Process



How FOS ensures comparability of outcomes for users

Comparability of outcomes: users who have similar complaints (for example, in relation to similar financial products) should receive similar outcomes

Review of approach

- FOS publishes Approach documents in an easy-to-read format to explain our approach to different types of disputes.
- We also have informal and formal review mechanisms that FSPs, industry bodies and consumer organisations can use to raise any significant concerns about the underlying approach taken by FOS in one or more determinations. The review mechanisms are intended to enable review of FOS's approach in determinations to assess whether FOS should continue to take that approach or modify it for future disputes.

Quality Review Process

- FOS conducts regular audits of closed disputes against the FOS quality objectives of fairness/accuracy, timeliness, efficiency and engagement. Each dispute is reviewed in detail, and the reviews are collated into a quarterly report for the FOS Board and Senior Leadership Group. The reports detail on how FOS is performing against the quality objectives to guide process improvements and skilling of staff.

Knowledge Management

Current knowledge management practices include but are not limited to:

- Case Handling Library – an extensive online resource library that our case workers refer to when handling disputes
- Significant Decisions Program – examples of our most current approach to any given issue, including jurisdictional issues
- Online subscriptions – access to legal cases and industry information
- FOS Hacks – hints and tips for dealing with common dispute issues.

Quick links

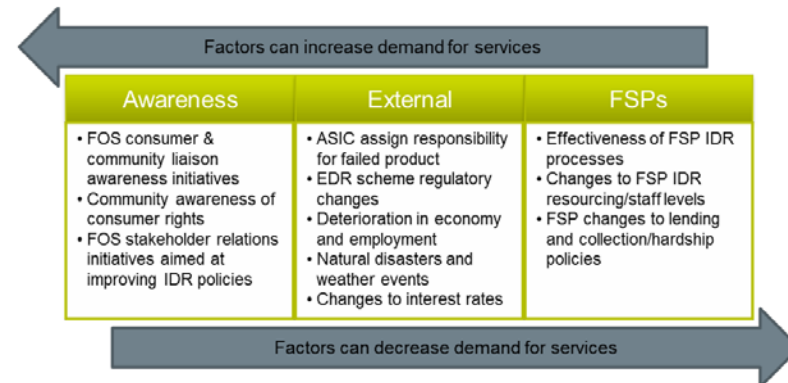
The FOS Approach to...

- › The 2013 Code of Banking Practice
- › Adequacy of Statements of Advice
- › Assessing Special Circumstances
- › Awarding Interest in Insurance
- › Calculating Loss in Financial Advice
- › Cancellation of Instalment Contracts
- › Disputes Lodged by Guarantors
- › Excluding Disputes
- › Financial Difficulty
- › Fixed Interest Investments
- › Insurance Broker Disputes
- › Misleading Conduct
- › Mortgagee Sales
- › Motor Vehicle Insurance Claim Delays
- › Non-financial Loss Claims
- › Responsible Lending
- › Section 47
- › Terms of Settlement

Strong financial governance

Regulatory Costs: the framework governing the schemes should impose the minimum amount of necessary costs to ensure effective user outcomes.

- FOS is governed by an independent board of consumer representatives and financial services industry representatives. The role of the Board is to monitor the performance of FOS, provide direction to the Chief Ombudsman on policy matters, set the budget and review from time to time the Terms of References including jurisdictional limits. The Board has two committees: Finance and Risk Management. Detailed financial reports form part of each FOS Annual General Meeting.
- Our internal auditors (Pitcher Partners) and our external auditors (Deloitte) have audit programs that provide assurance to the Board and management around the systems and processes for financial reporting and good financial practice.
- Cost containment and improving efficiency are front and centre in the considerations the Board makes about budget decisions. So too is a focus on adequate resourcing to deliver effective dispute resolution systems and processes including the skilling of staff and investing in technology in order to streamline the exchange of information.
- The principles underpinning the fee model at FOS have remained unchanged since the FOS fees and charges were introduced in 2010. These principles are:
 - To build a ‘user pays’ system that recognises the level of use of FOS services
 - To recognise the varied size and resources of members
 - To reward members who have low or no disputes
 - To ensure revenue adequately meets FOS costs but does not generate excessive accumulated funds.
- Details of our fees and charges are available to our members through the secure member portal. The fees and charges are underpinned by a detailed cost-to-serve (CTS) model to ensure that the user-pays principle is applied to our funding framework. The CTS model also allows for predicative analysis of revenue and costs when forecasting future dispute volumes in a volatile environment. This modelling capability supports budget setting and review.



How do we know that we are delivering effective outcomes for users?

FOS is benefits focused and data driven

- Our strategic goals are published and we report progress against our KPIs
 - All our dispute staff have KPIs which are monitored monthly to ensure that they have support to achieve objectives. We use this feedback to guide and improve our training programs and for the early identification of workload trends so that we can adjust resourcing to tackle any bottlenecks or introduce specific expertise.
- Every three years we conduct comprehensive surveys of our stakeholders
- We survey applicants on a rolling basis and report results to staff every month, and the Board every quarter
- We have a robust quality assurance program and analyse results on an individual, team and organisation-wide basis
- We are focused on ensuring that the planned benefits of the significant changes to our dispute process in 2015 are being delivered.

Strategic goals and KPI reporting

FOS publishes information relating to our strategic plan, annual plans and targets in our Annual Review. This include initiatives achieved during the year and performance against strategic targets. This information is also reported in our annual business plans.

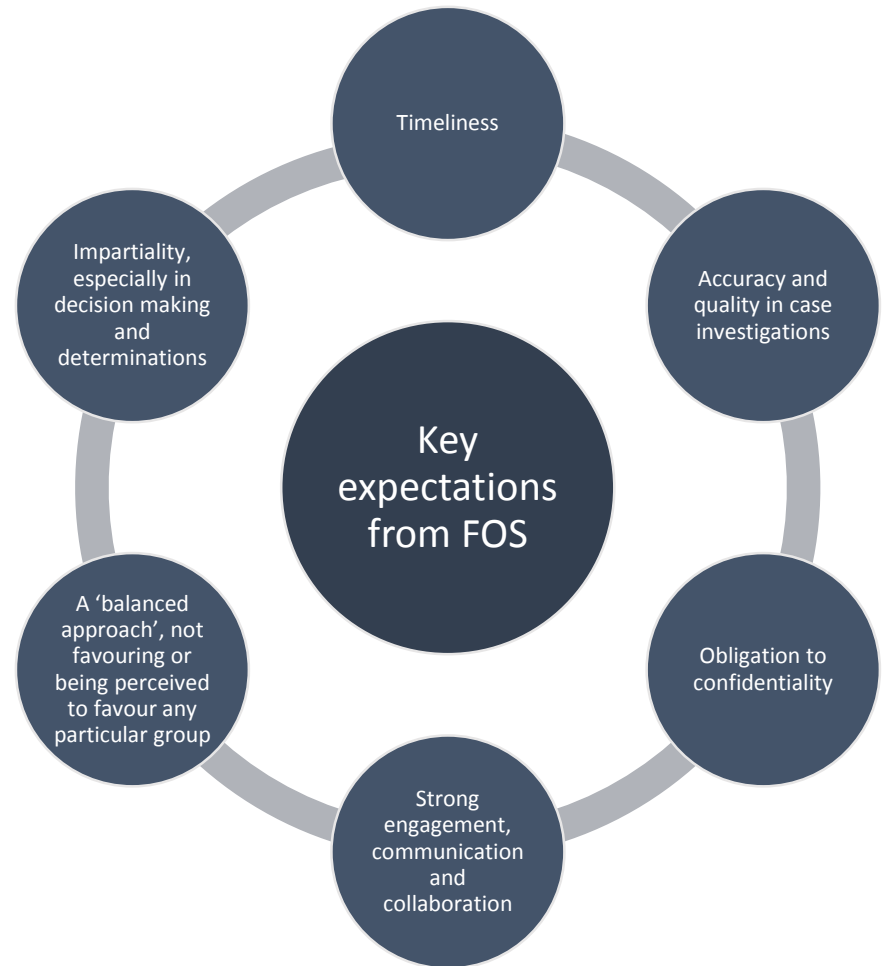
Strategic focus	Success measures	2015-16 targets	2015-16 performance	2016-17 targets
 <p>Delivering a more efficient and effective dispute resolution service</p>	<p>Applicant satisfaction</p> <p>Percentage of applicants who report a satisfactory or better dispute resolution experience at FOS.</p>	<p>Implement measures to evaluate and improve the experience of applicants and FSPs in our new dispute process. Our aim is to lift overall applicant satisfaction levels as follows.</p> <p>Registered disputes: 95% satisfied</p> <p>Closed disputes: 80% satisfied</p> <p>Discontinued disputes: 70% satisfied</p>	<p>Registered disputes: 87% satisfied</p> <p>Closed disputes: 69% satisfied</p> <p>Discontinued disputes: 52% satisfied</p>	<p>New single measure for closed disputes (excluding matters that fall outside FOS's jurisdiction and discontinued disputes). 70% of applicants are satisfied with how FOS handled their dispute.</p>
	<p>Clearance ratio</p> <p>A retrospective indicator that compares how many disputes we closed with how many we received.</p>	<p>≥103%</p>	<p>Clearance ratio of 103%</p>	<p>≥103%</p>
	<p>Age profile of open disputes</p> <p>2015-16 – Percentage of open disputes that are less than or equal to 180 days old.</p>	<p>≥95% are less than or equal to 180 days old.</p>	<p>90% are less than or equal to 180 days old.</p>	<p>95% are less than or equal to 180 days old.</p>
	<p>Time to close disputes</p> <p>The age profile of closed disputes.</p>	<p>For disputes received after 30 June 2015, 95% ≤180 days. For disputes received before 1 July 2015, 100% closed by 30 June 2016.</p>	<p>98% of disputes accepted after 30 June 2015 closed ≤180 days. 99.6% of disputes accepted before 1 July 2015 were closed by 30 June 2016.</p>	<p>95% of accepted disputes closed ≤180 days. This target will no longer be required.</p>
	<p>Disputes closed per quarter per dispute FTE</p> <p>This provides a measure of the dispute handling process at FOS. It does not account for changes in product type or dispute complexity.</p>	<p>≥26</p>	<p>22.38 disputes closed per quarter per FTE</p>	<p>≥26</p>
	<p>Measure overall satisfaction that FOS is meeting the needs of stakeholders.</p>	<p>≥7.0 on a scale of 0 (extremely dissatisfied) to 10 (extremely satisfied) are satisfied that FOS is meeting their needs.</p>	<p>For consumers, 7.7 on a scale of 0 (extremely dissatisfied) to 10 (extremely satisfied) are satisfied that FOS is meeting their needs, and for FSPs 6.3.</p>	<p>≥7.0 on a scale of 0 (extremely dissatisfied) to 10 (extremely satisfied) are satisfied that FOS is meeting their needs.</p>
 <p>Enhancing our public role and stakeholder engagement</p>	<p>Staff engagement score</p> <p>Survey responses measuring the level of staff engagement and alignment with our values and behaviours.</p>	<p>≥10% increase in the number of FOS staff who report feeling engaged in the workplace.</p>	<p>2.1% increase in the number of staff who report feeling engaged in the workplace.</p>	<p>≥10% increase in the number of FOS staff who report feeling engaged in the workplace.</p>
	<p>Environment audit rating</p> <p>The National Australian Built Environment Rating System (NABERS) rating of the organisation's impact on the environment.</p>	<p>≥5 star rating</p>	<p>NABERS 5 star rating</p>	<p>≥5 star rating</p>
	<p>Corporate Full Time Equivalent (FTE) to total FTE</p> <p>The percentage of support staff (corporate) to staff directly involved win dispute resolution ≤15%.</p>	<p>≤15%</p>	<p>14.8% corporate FTE to total FTE</p>	<p>≤15%</p>
 <p>Ensuring organisational development and sustainability</p>				

We conduct comprehensive surveys of our stakeholders

- In 2013 and in 2016 we undertook detailed surveys of our stakeholders (through DBM Australia) – financial services providers and authorised credit representatives, industry associations and consumer representatives.
- In 2016, we were particularly interested in hearing from our stakeholders whether they were satisfied with the changes we had implemented to our processes.

More than 1 in 5 (22%) stakeholders say that their satisfaction with how well FOS is meeting their needs has increased over the past 12 months, and an additional 64% say that their satisfaction has remained the same

Almost three-quarters (71%) of stakeholders say that FOS is meeting their expectations, and an additional 5% say FOS is exceeding expectations



Impartiality and timeliness were considered particularly important by a broad range of participants.

As well as meeting these key expectations, it was important to stakeholders that these are delivered consistently across the organisation and different cases.

And ongoing engagement with our stakeholders is regular

Clear engagement

As the Financial Ombudsman we develop relationships that are built on shared values and trust



FOS works closely with stakeholders and consults on many aspects of our work.

Some of our key activities are:



listening to the views of our applicants and other stakeholders to ensure our service meets their needs and is simple and quick to use as possible



holding face-to-face meetings with members with high dispute numbers



sharing our knowledge in public submissions to inquiries, reviews and consultations



attending a range of community outreach forums, events and engagements



strengthening relationships and partnerships with consumer representative organisations, and with agencies including government departments providing support services for vulnerable and disadvantaged consumers



organising open forums and participating in educational events and conferences in all capital cities for industry and consumer groups to explain our role and approach to important and topical issues



participating in industry conferences, panel discussions, seminars, training, meetings and workshops for industry associations, members and specialist financial services groups

FOS has a broad range of stakeholders:

- » financial services providers (members of FOS)
- » consumer representatives including financial counsellors, community and legal aid lawyers, and financial capability workers
- » ASIC and other government bodies
- » peak industry bodies
- » and the Australian community

FOS shares our experience in a range of ways to help financial services providers and the community understand our service through face-to-face events, webinars, publications, the media and the home of FOS online, www.fos.org.au

In one year
2015-16



24

industry forums held in major cities



27

community outreach events nationally



467

participants in new dispute resolution webinar



1000

LinkedIn followers in first 12 months



14

information available in range of languages spoken in Australia



10

submissions to inquiries, reviews and consultations


We survey applicants who have disputes at FOS

We care about the views of people who bring disputes to FOS.

Working with CSBA, applicants are surveyed about their satisfaction with the way FOS handles their dispute, and how easy it is to deal with us.

High level results of the applicant satisfaction surveys are reported publicly in the FOS Annual Review.

We use detailed survey results to identify key drivers of applicant satisfaction which in turn are fed into our quality reviews and staff key performance indicators.

Strategic focus	Success measures	2015-16 targets
 Delivering a more efficient and effective dispute resolution service	Applicant satisfaction Percentage of applicants who report a satisfactory or better dispute resolution experience at FOS.	Implement measures to evaluate and improve the experience of applicants and FSPs in our new dispute process. Our aim is to lift overall applicant satisfaction levels as follows. Registered disputes: 95% satisfied Closed disputes: 80% satisfied Discontinued disputes: 70% satisfied

2015-16 performance
Registered disputes: 87% satisfied Closed disputes: 69% satisfied Discontinued disputes: 52% satisfied

And conduct robust quality assurance of our dispute handling

We have internal KPIs for all our staff which are reviewed by team leaders with individual staff members on a monthly basis.

Key Performance Indicators (KPIs)

KPIs ensure we remain focused on the things that will help us achieve the quality of service we aspire to. They help us meet our strategic goals and identify how well we are going, where we need to improve, and how we can better support all staff to achieve our objective of resolving disputes in a way that feels fair to both parties to a dispute. Applicants and FSPs are central to everything we do at FOS, and we have reflected this in our new KPIs by increasing our focus on their perspective and experience.

Overview

- KPIs Questions & Answers
- KPI Reporting Overview

Guidelines (ARG)

- Guideline to Fast Track KPIs
- Guideline to Financial Difficulty KPIs
- Guideline to Terms of Reference KPIs

Guidelines (IRG)

- Guideline to IRG Case Analyst & Case Manager KPIs
- Guideline to Support and Allocation Conciliator KPIs
- Guideline to Support and Allocation CSO and OSA KPIs
- Guideline to Support and Allocation Industry Advisers KPIs
- Guideline to Support and Allocation Legal Counsel KPIs

Our quality assurance program has evolved over the past three years and is well entrenched. We conduct regular audits of closed disputes (about 900 per quarter) against the FOS quality objectives – see checklist below.

Quality Review Checklist (effective February 2016)		FOS FINANCIAL OMBUDSMAN SERVICE AUSTRALIA
1. Timeliness		
1.1	Once allocated, were there delays outside the control of the case owner? (Caused by external parties)	
1.2	Once allocated, did internal advice/QA providers meet timeframes?	
1.3	If there were delays by external or internal parties, did the case owner manage these proactively?	
1.4	Did the case owner meet FOS timeframes, including for extension requests?	
1.5	Were phone calls and emails responded to within timeframe?	
1.6	Were any jurisdictional issues identified and dealt with appropriately?	
2. Efficiency		
2.1	Was a suitable dispute pathway chosen (assessment, conciliation, negotiation, decision, OTR)?	
2.2	Did the case owner follow FOS process?	
2.3	Did the case owner demonstrate a good understanding of the issues?	
2.4	Did the case owner correctly identify the issues at the appropriate stage of the dispute?	
2.5	Was the right information requested from the right source, at the right time?	
2.6	Did the case owner use good judgement about how to progress the dispute?	
3. Fairness		
3.1	Does the outcome appear fair?	
3.2	Were reasons for the outcome provided to both parties?	
3.3	If an assessment was made, or a Preliminary View or guidance given, was it correct?	
3.4	If FOS conducted negotiations, were they conducted appropriately?	
3.5	Was impartial language used in written and verbal communication?	
3.6	Was balanced consideration given to all information provided by both parties?	
3.7	Did the case owner acknowledge the arguments put forward by both parties?	
3.8	Were the necessary documents exchanged with both parties?	
3.9	Were the parties given opportunities to respond to any information exchanged?	

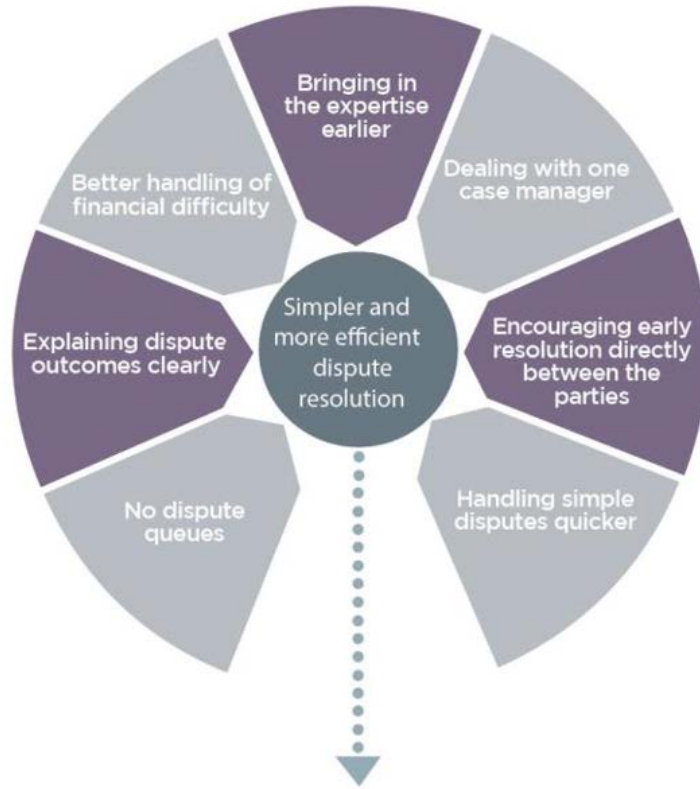
4. Accuracy

- 4.1 Were all FOSSIC fields and case actions correct?
- 4.2 Were file notes in FOSSIC thorough, accurate, neutral and contemporaneous?
- 4.3 Were the correct templates used?
- 4.4 Was written work free of errors (grammar, punctuation, typos etc) and in line with the FOS Style Guide?
- 4.5 Was the FOS privacy policy adhered to?
- 4.6 Was QA and legal/TOR advice used appropriately?
- 4.7 Were any possible systemic issues or serious misconduct referred to the SI team?
- 4.8 If the parties provided feedback or a complaint, was this logged in FOSSIC?

5. Engagement

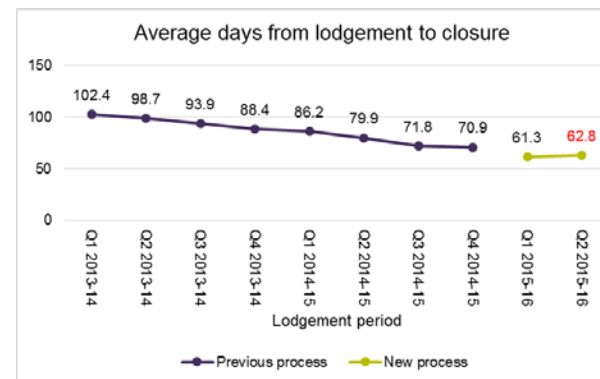
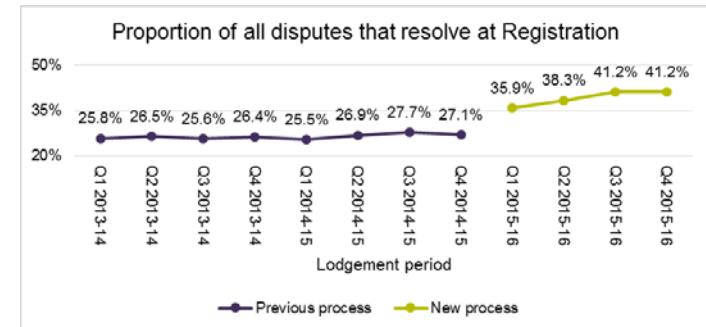
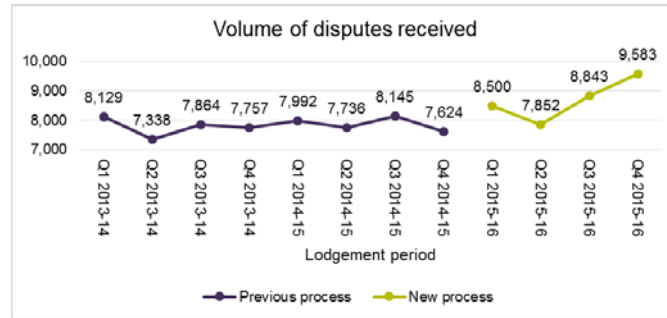
- 5.1 Did the case owner listen to the parties?
- 5.2 Did the case owner contact the parties to discuss the issues?
- 5.3 Was the outcome sought discussed and expectations appropriately managed, at the appropriate stage?
- 5.4 Were FOS role and process adequately explained to the parties?
- 5.5 Was the Applicant regularly updated?
- 5.6 Did the case handler keep their word (eg: call when they said they would)?
- 5.7 Were any special needs / vulnerabilities identified in FOSSIC, and accommodated?
- 5.8 Was the tone of communication with the parties respectful and courteous?
- 5.9 Was written communication in plain English, easy to follow and tailored to the recipient's needs?
- 5.10 Was there appropriate use of phone during the dispute?
- 5.11 Did FOS provide a good experience to the Applicant?
- 5.12 Did FOS provide a good experience to the FSP?
- 5.13 Did the file handling bring to light any broader inconsistencies of process or approach?

We are focused on ensuring that the planned benefits of the significant changes to our dispute process in 2015 are being delivered



The enhanced process


Introduced from 1 July 2015



The above chart shows average days from lodgement to closure for all disputes by lodgement period. NB: because 3.6% of disputes lodged in Q2 2015-16 remain open, the figure for this quarter will increase slightly as the remaining disputes close.

We acknowledge that there is more to be done and areas where we can improve

Our 2016-17 Business Plan has the following areas of focus



Delivering a more efficient and effective dispute resolution

Improve user experience and quality of our dispute resolution

- » Continue to review and refine our new dispute resolution process.
- » Enhance the experience of consumer interaction with FOS, particularly for vulnerable and disadvantaged consumers.
- » Enhance the quality of our dispute quality assurance framework and decision making.

Monitor time and service standards for dispute resolution and enhance our analytics

- » Enhance the way we identify and respond to dispute trends and volatility of dispute inflows.
- » Monitor and review service standards for efficient and effective dispute resolution.
- » Review and enhance our process for responding to complaints about FOS.

Review and amend our Terms of Reference to support FOS's augmented small business jurisdiction

Enhance our systemic issues function and approach

- » Continue to develop the early identification, management and reporting of systemic issues and serious misconduct.

Code: Further develop the Code Compliance and Monitoring function and processes

- » Enhance timeframes and processes for identifying and investigating code breaches.
- » Continue to improve code subscribers' interaction with compliance monitoring.

We are currently developing our next five-year strategic plan (2017-2022). While still in development, we know that if we are guided by our sense of fairness, it is essential we understand both the needs and barriers to access of the community we serve.

- We will implement stronger measures to ensure FOS is accessible to all consumers, particularly those that are vulnerable and disadvantaged.
- We need a well articulated and visible social responsibility strategy that is based on diversity, equality, inclusion and community engagement.
- A member engagement strategy that both leverages off the results of our recent stakeholder research and articulates the features of a 'good' engagement model and targeted to the relevant sectors, will be key.
- We want the community to know us and what we do. We recognise that general awareness and outreach campaigns can be costly, so we will find innovative ways to partner with and leverage off other organisations to build awareness.

We will also look to develop an online dispute resolution capability for low value claims



Ensuring organisational development & sustainability

Continue to attract and develop highly skilled and engaged people

- » Ensure technical and soft skills training is delivered effectively to support the delivery of efficient and effective dispute resolution.
- » Embed, review and refine our workforce planning and talent management strategies to ensure a more flexible and adaptable workforce.

Embed our new ways of working, as part of the FOS desired behaviours and culture

- » Continue to implement strategies to improve staff engagement, and conduct a new staff survey.
- » Implement a new performance management framework.

Develop, maintain and enhance e-enabled solutions that improve performance and operational efficiencies

- » Review and improve our information management practices and current IT infrastructure in line with our e-enablement strategy.
- » Finalise the implementation of the Human Resources Information system and capitalise on its features.
- » Perform a needs analysis for future requirements of our accounting systems.

Code: Develop internal capabilities and deliver training programs

- » Ensure resourcing capabilities for current work plans and develop capabilities for monitoring future codes of practice.
- » Deliver training programs for FOS dispute resolution staff to support referrals of alleged code breaches to the code compliance and monitoring team.



Enhancing our public role and stakeholder engagement

Review and enhance our stakeholder engagement

- » Promote the important role of FOS through the delivery of outreach events, enhanced communications and engagement with the consumer sector, and the expansion of our outreach via digital platforms.
- » Enhance our engagement strategy for our smaller members.
- » Enhance the experience of members with our digital portal.

Improve awareness of and accessibility to FOS

- » Continue to raise consumer awareness of FOS, in particular with vulnerable and disadvantaged consumers and culturally and linguistically diverse communities.
- » Plan for significant improvements/replacement of our website to be implemented in 2017-18.
- » Improve accessibility of communications including expanding the number of publications translated into community languages.

Enhance the way we respond to external developments

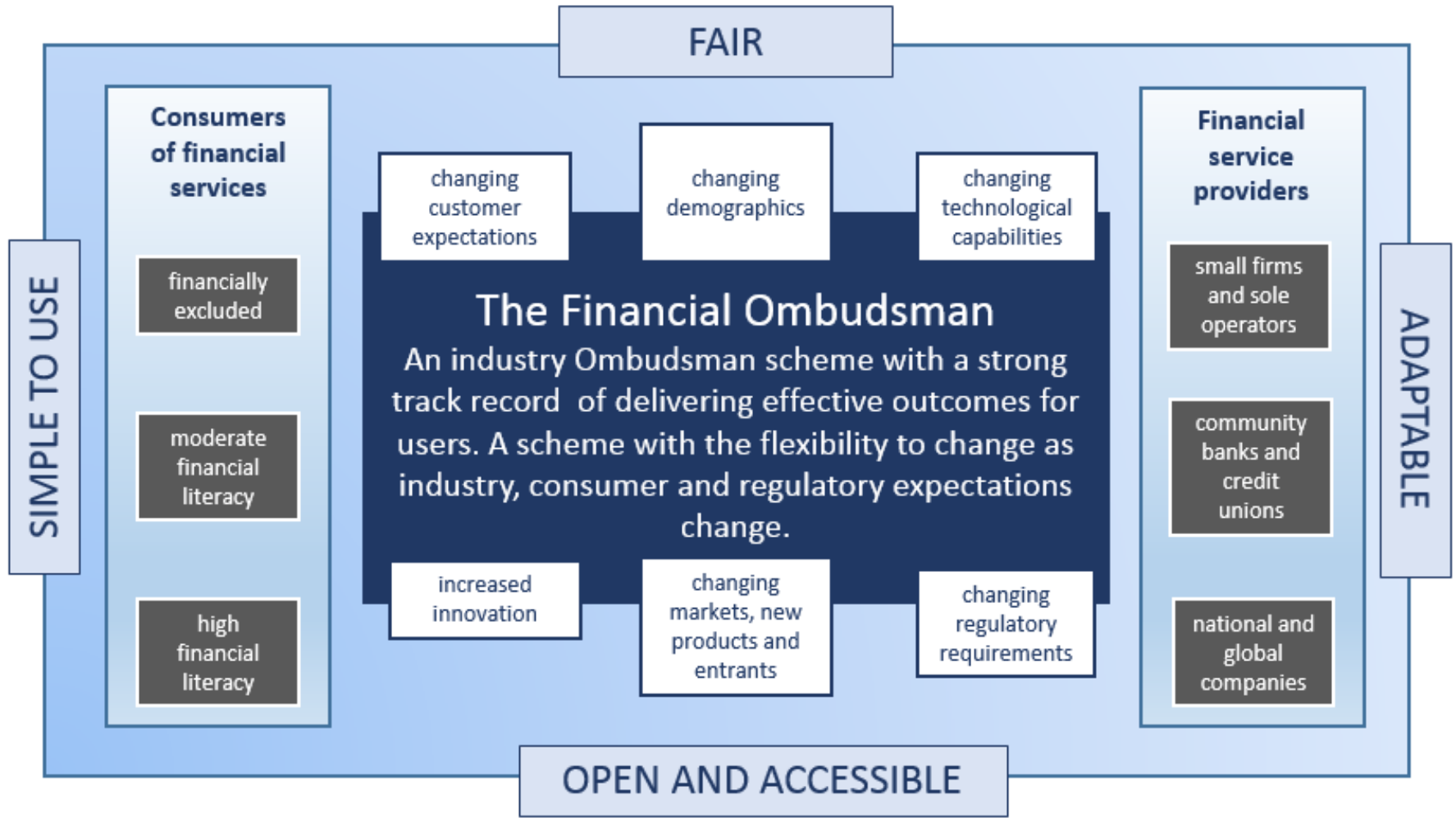
- » Develop an engagement strategy to proactively respond to changes and developments in the financial and external dispute resolution environments.

Code: Promote stakeholder understanding of Code Compliance

- » Enhance the knowledge of Codes of Practice and their relationship with other regulatory frameworks, including developing an e-learning module for external stakeholders.
- » Continue to share insights from code compliance activities.

The Financial Ombudsman

Delivering effective outcomes for users in a rapidly changing environment





Review of the financial system external dispute resolution framework

FOS Submission

October 2016



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Glossary

FOS	Financial Ombudsman Service
CIO	Credit and Investments Ombudsman
SCT	Superannuation Complaints Tribunal
EDR	external dispute resolution (FOS is an EDR scheme)
IDR	internal dispute resolution

The industry Ombudsman model is well tested

FOS handles 81 per cent of all disputes in the sector

The current system is fair, simple to use, open, accessible and adaptable.

Executive summary

The Australian Government's review of external dispute resolution (EDR) in the financial system provides an important and timely opportunity to examine the effectiveness of the way consumer disputes are handled in the sector.

The industry Ombudsman¹ model of EDR is well tested and capable of delivering effective outcomes for users in a rapidly changing and dynamic financial system into the future.

FOS's views² are based on our experience of dealing with the overwhelming majority of disputes in the sector. We handle 81 per cent of all disputes received by the three EDR bodies (FOS, the CIO and the SCT). Of the two ASIC-approved EDR schemes (FOS and the CIO), we handle 87 per cent of all disputes received.

The dispute resolution service we provide, and the enhancements we have made in the past five years, have broad support from our stakeholders: both consumer and industry.

What is working well

- The financial sector EDR framework based on an industry Ombudsman model, as an alternative to courts for consumer redress, has largely delivered fair outcomes for consumers and value for money for industry within the scope of the current jurisdiction of the schemes.
- The industry Ombudsman model:
 - promotes and fosters **fair** outcomes for consumers
 - is **simple** to use – it is easy for consumers to explain their problems and seek a solution without having to engage expensive and unnecessary representation. People can lodge disputes easily, no matter who they are, where they live or what technology they use
 - is **open and accessible** – stakeholder engagement to address barriers to access and consumer redress, including community outreach, is valued
 - is **adaptable** – responsive to changes in the financial system, changing consumer behaviour and changing products and services.

¹ The characteristics of an industry Ombudsman model are outlined in a table at page 12 of this submission

² This submission has been prepared by the Office of the Chief Ombudsman and does not necessarily represent the views of individual FOS directors. It draws on the experience of FOS and its predecessors in the resolution of disputes about financial services.

Compensation scheme of last resort is needed now

Duplication and overlaps between schemes are problematic

A merger of CIO into FOS would solve most of these issues

Opportunities also exist for FOS and the SCT to work together more effectively

Where we see opportunities for system-wide improvement

- The missing structural element of the existing dispute resolution framework is a compensation scheme of last resort, and this must be established now.
- Other structural changes to consolidate the current three schemes would help overcome overlaps and duplication between schemes that currently:
 - increase complexity for consumers in accessing effective, non-court based redress
 - undermine achieving fair outcomes for consumers
 - increase overall system costs for industry
 - limit the ability to deal with systemic issues and improve customer service across industry sectors.
- A very large proportion of these issues would be solved by the merger of the CIO into FOS, creating one industry Ombudsman scheme, and this could be achieved relatively easily.
- Opportunities also exist for more effective operating arrangements between FOS and the SCT as it currently exists. Innovative options include FOS:
 - extending our systemic issues functions to SCT disputes
 - collaborating with the SCT on stakeholder engagement and outreach programs relating to superannuation issues
 - co-locating the SCT with FOS to enable the provision of shared back office IT and corporate services.
- An expansion of FOS's small business jurisdiction, based on feedback on our consultation so far received, would address the gaps that currently exist limiting small business access to alternative dispute resolution options for credit facility disputes.
- The provision of increased powers, backed by statute subject to review of legal issues involved, would enable more effective dispute resolution. In particular, a power covering fair compensation for loss or damage, enforceable by an injunction, would ensure that a financial firm abides by a decision of the Ombudsman. A breach could then be the trigger for redress for the consumer through a last resort compensation fund.

A new stand-alone statutory tribunal would be counter-productive

- An overall review of the current compensation caps and claim limits would ensure that caps and limits are better aligned to prevailing economic parameters.

What would add unnecessary complexity

- A new stand-alone statutory tribunal for small business and/or banking disputes would result in more overlaps in the system, create greater complexities for consumers and financial firms and lead to a more legalistic approach to resolving consumer and small business financial sector disputes.
- A stand-alone statutory tribunal could see a return to the fragmentation and overlap of schemes on a sectoral basis that operated prior to 2008. There would be diminished stakeholder engagement and systemic issue investigation and reporting.
- Establishing a non-court based statutory tribunal under Commonwealth law with the jurisdiction to make binding decisions on the range of financial sector disputes contemplated, could face legal impediments and potential challenge for the improper exercise of judicial power under the Constitution.
- There is no cost-benefit case for the creation of a triage/concierge service, with or without the structural changes outlined above.

Why the Financial Ombudsman model should be retained

The issues paper seeks views on the relative merits of different models of dispute resolution. As outlined above, we are strong proponents of retaining an industry Ombudsman model based on current statutory underpinnings and oversight by ASIC, as broadly operates today, as the basis for future arrangements.

Our submission sets out the risks we see in moving away from an industry Ombudsman model of EDR in the financial sector.

These include more complex, legalistic processes that will create barriers to access; less agility to respond to a rapidly changing financial services sector; higher regulatory costs; and a reluctance for industry-funded innovation and investment to improve outcomes for consumers and financial firms.

There are significant risks in moving away from an industry Ombudsman model

The changes proposed will lead to a strengthening of current EDR without the legal complexities and disadvantages of a more formal stand-alone statutory tribunal

We recognise there are opportunities to improve and strengthen current EDR arrangements in the interests of rebuilding trust in the financial industry.

One of the issues canvassed in the issues paper, and in the public debate, is the creation of a new tribunal for banking, or a broader range of financial sector disputes.

A non-court based tribunal under Commonwealth Legislation that can make binding decisions on the range of financial sector disputes raises complex legal issues and could face the risk of legal challenge for the improper exercise of judicial power under the Constitution.³ The panel will need to review these legal issues carefully. Now is not the time to introduce unnecessary complexities and uncertainties in the system

The term 'tribunal' has been used to refer to a body that is accessible to consumers and small business, has sufficient powers to properly review disputes and is able to make binding decisions on matters within its jurisdiction. There are a number of workable legal mechanisms through which this might be achieved.

In the exercise of its binding decision making powers, FOS is operating what is referred to legally as a 'domestic tribunal' created by the contractual arrangements with its members. This has been confirmed by the courts in reviews of FOS's jurisdiction.⁴

But as the Financial Ombudsman we also have broader functions. Engagement and outreach are critical elements of the way we work, to ensure we remain easy for applicants to use and to promote improvements in industry practice.

The changes proposed in this submission:

- consolidation of the existing schemes
- expansion of our small business jurisdiction
- a review of other monetary limits and
- enhancing FOS's powers

³ See <http://www.aat.gov.au/about-the-aat/engagement/speeches-and-papers/the-honourable-justice-garry-downes-am-former-pre-tribunals-in-australia-their-roles-and-responsib>

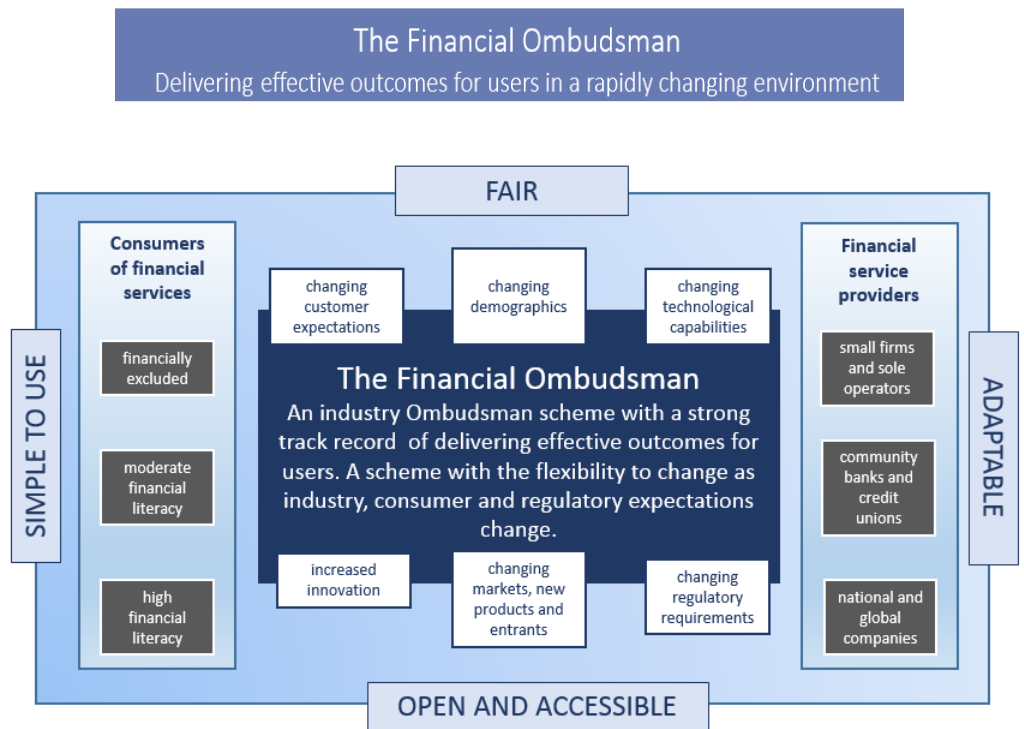
⁴ Mickovski v FOS & Anor [2011] VSC 257; Mickovski v FOS & Anor [2012] VSCA 185; Cromwell Property Securities Limited v FOS and Radford [2013] VSC 333 at 60; Cromwell Property Securities Limited v FOS and Radford [2014] VSCA 179 at 63 and 67; Patersons Securities Ltd v FOS [2015] WASC 321

FOS welcomes the opportunity to work with the review panel and stakeholders to achieve the common goals of improving consumer redress and industry standards in the financial sector

will lead to a strengthening of current EDR without the legal complexities and disadvantages of a more formal statutory tribunal.

A feature of the industry Ombudsman model over its 25 plus year history has been its ability to evolve, adapt and innovate in response to the demands and challenges of its external environment. FOS has demonstrated our capacity to do so since we were formed in 2008 as a result of the merger of our predecessor schemes.

We are confident that FOS is well placed to respond to the current challenges and we very much welcome the opportunity to work with the review panel, government, the parliament and all our stakeholders to achieve the common goals of improving consumer redress and industry standards in the financial sector.



The system as a whole and the principles guiding the review

The panel should be clearer about the criteria most relevant to consumers in delivering fair outcomes, and those most relevant to industry in terms of value for money

Fairness and independence should be included as key principles guiding the panel's work

The review of the financial system's EDR framework provides an important and timely opportunity to examine the effectiveness of the way consumer disputes are handled across the sector.

FOS accounts for 81 per cent of disputes received by the three EDR bodies (FOS, the CIO and the SCT) in the financial sector. Of the two ASIC-approved EDR schemes (FOS and the CIO), FOS accounts for 87 per cent of all disputes received.⁵

Accordingly, our views are based on our experience in dealing with the overwhelming majority of disputes in the sector.

We have addressed the issues and questions based on the key sections of the review. To avoid undue complexity, we have set out our views generally rather than answer each and every question in the issues paper.

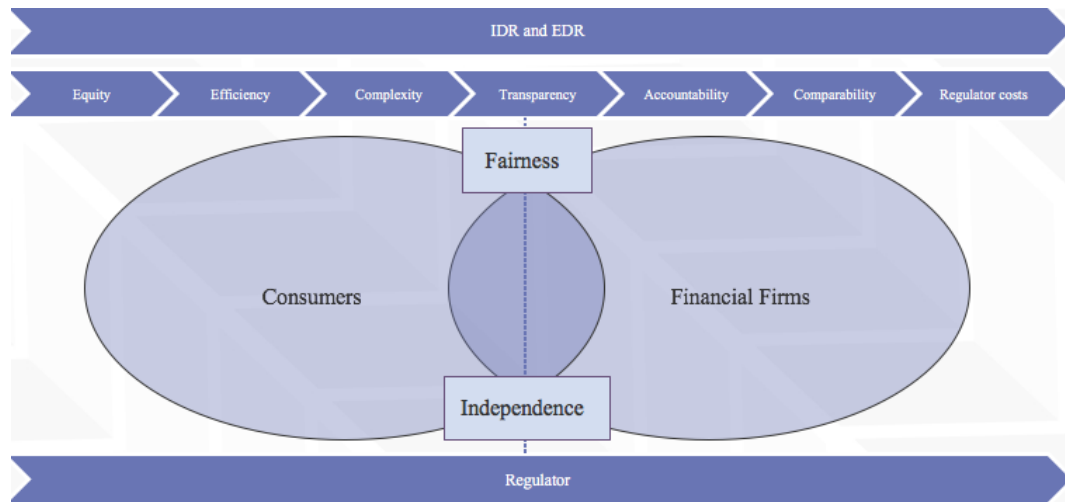
Further information is contained in our responses to the data request from the panel and an overview of the outcomes and effectiveness of the scheme against the key assessment criteria.

We broadly agree with the principles and outcomes that will guide the review and strongly support the importance the panel has placed on ensuring that the regulatory framework strikes the right balance between providing adequate protection to consumers and reducing regulatory compliance costs.

We consider that it would be useful for the panel to be clearer about the criteria most relevant to consumers in delivering fair outcomes, and those most relevant for industry in terms of value for money. To focus on keeping the right balance in perspective, we have grouped the review's principles broadly as follows:

⁵ Using 2014-15 data, 39,431 disputes were received across FOS, CIO and SCT. FOS received 80.9% of these. Of the disputes received by FOS and CIO, FOS received 86.8%.

Fairness and Independence



While the principles and outcomes are broad and align well with the key practices for industry-based dispute resolution, fairness and independence should also be included as key principles guiding the panel's work.

An effective system for dispute resolution is one guided by the important principle of being fair and being seen to be fair. Hand in hand with fairness is independence – that decisions made within the system are objective and unbiased. These two principles are in the interests of all users of the dispute resolution services and are necessary elements of a trusted financial services sector.

*Industry
Ombudsman
schemes deal with
systemic issues and
drive improved
customer
experience*

*The Australian
system is regarded
as a leading example
of an industry
Ombudsman model*

The EDR framework based on an industry Ombudsman model is a proven one

The financial sector's EDR framework based on an industry Ombudsman model has largely delivered fair outcomes for consumers and value for money for industry. It has also provided important support for the regulator (ASIC) in dealing with systemic issues and helping to drive improved customer experience.

This view is supported by the Productivity Commission⁶, the Financial System Inquiry (FSI)⁷, various parliamentary committees and consumer representatives who, as recently as August 2016⁸ advised Government that:

Our organisations have supported and represented thousands of consumers in disputes with banks and financial services providers over many years. One of the greatest advances in consumer protection in the past 20 years is the establishment of mandatory external dispute resolution (EDR) schemes in many industry sectors. EDR in financial services has provided access to justice for hundreds of thousands of consumers that would have been unable to resolve disputes if they had to rely on existing courts and tribunals.

Internationally, the industry Ombudsman model is increasingly seen as the preferred alternative to courts, and the Australian system is regarded as a leading example.⁹

⁶ [Final report](#) on the Productivity Commission's *Inquiry into Access to Justice Arrangements*, December 2014

⁷ Final report of the [Financial System Inquiry](#), November 2014, p193-194

⁸ Letter to the Prime Minister from the Consumer Action Law Centre, the Financial Rights Legal Centre and Financial Counselling Australia, 24 August 2016

⁹ Senate Economics References Committee [Inquiry into Forestry Managed Investment Schemes](#), p41 of Submission 34 (by ASIC), September 2014

Industry Ombudsman models operating in Europe and Australia can be characterised by:

- Providing independent, impartial and fair resolution of disputes arising from contracts and transactions between consumers and private businesses
- Providing an alternative to the use of courts, and additionally providing an equitable jurisdiction to provide additional consumer protection
- Being accessible and free for consumers, with no requirement for them to be represented by legal advisers
- Equalising the balance of power between parties and identifying, and providing special assistance to, the most vulnerable consumers to facilitate their access to redress
- Helping consumers whose complaints are not valid understand why that is the case and help them move on from their dispute
- Raising standards amongst bodies subject to investigation by feeding back lessons that arise in decisions
- Enhancing consumer confidence and trust in the sector subject to investigation

The governance characteristics of financial sector industry Ombudsman schemes in Australia include:

- A mandated self-regulatory model approved by the regulator
- Independent Board to ensure independence from industries and businesses under the scheme's jurisdiction
- Funding coming from the industry through case fees and/or levies

An important element of the industry Ombudsman governance model has been the collaborative approach that current scheme governance arrangements have fostered between consumer and industry interests.

The fact that industry and consumer representatives work together on the Boards of EDR schemes has led to a much more productive, more open and less adversarial relationship than might otherwise have been the case.

Combined with robust oversight from the regulator and strong support from governments over many years, this has been an important underpinning of the independence and fairness of EDR jurisdictions, enabling schemes to adapt, and retain a balance between appropriate consumer protection and regulatory compliance cost.

While the regulatory and governance model supporting dispute resolution in financial services is generally sound, we consider there are opportunities to enhance the current arrangements on a system-wide basis, retaining the core elements of an industry Ombudsman model. The regulatory framework at present is, and in future should be, one that:

The industry Ombudsman model has worked well in the financial services sector in Australia, but the existing framework has some limitations and there are opportunities for enhancements.

- promotes and fosters **fair** outcomes for consumers
- is **simple** to use – one that makes it easy for consumers to explain their problem and seek a solution without having to engage expensive and unnecessary representation. People can lodge disputes easily, no matter who they are, where they live or what technology they use to connect
- is **open and accessible** – stakeholder engagement to address barriers to access and consumer redress, including community outreach, is valued
- is **adaptable** – responsive, adapting to changes in the financial system, changing consumer behaviour and changing products and services.

We also support measures that reduce current complexity for consumers in being able to access effective non-court based resolution of their disputes.

Although the current model sets a benchmark in many ways for international developments in EDR, there are opportunities for enhancements. Between existing schemes there are gaps and overlaps, different jurisdictional limits, different funding arrangements and limited comparability. These issues are discussed in this submission.

No comprehensive comparative data is publicly available across the whole financial sector that would enable an assessment of complaint trends addressing IDR by sector, firms and types of disputes.

The existence of multiple schemes with different dispute registration systems and processes is a contributor to this gap.

The importance of effective IDR to the system as a whole

EDR schemes are not the primary ‘resolver’ of customer complaints in the financial sector. This is the role of financial firms dealing directly with their customers. ASIC has set out the standards it expects of licensed firms for their internal dispute resolution in Regulatory Guide 165 (RG165).

FOS holds the view that it is better for both parties if firms can resolve problems directly with their customers. We have embedded this view in our dispute process by ensuring that all complaints we register are referred back to the firm for another chance to sort out directly with its customer.

Accordingly, any assessment of how well the current system is working and what enhancements are required needs to include a strong focus on the quality of IDR by firms, not only on the role of EDR schemes.

This is because the quality of how firms directly deal with complaints by their customers has the greatest potential to improve customer outcomes across the financial system.

The lack of consistent publicly available IDR data hampers a proper system-wide assessment of financial sector dispute resolution – how effective the current system is and whether it is improving over time. While the annual reports of the various financial sector Codes of Practice provide details of IDR complaints, this only covers organisations that subscribe to the Codes.¹⁰ Other jurisdictions, such as the UK, collect and publish consistent, comparable industry data on IDR on a regular basis.¹¹

This level of information would enable ASIC as the regulator to better monitor trends, identify emerging issues and assess the effectiveness of firms meeting the standards it has set for IDR in RG 165 on a periodic basis. It would also help policymakers, industry and consumer organisations monitor the effectiveness of arrangements and inform any improvements required.

This would also be consistent with ASIC’s move to develop and use predictive data analytic capabilities to underpin a more preventative and proactive approach to dealing with emerging regulatory issues.

¹⁰ There are 704 financial services providers that subscribe to these four Codes: 95 mutual banks and credit unions, 444 insurance brokers, 18 banks and 147 general insurers, cover holders and claims administrators.

¹¹ <https://www.fca.org.uk/firms/complaints-data>

EDR schemes have a role to play in influencing the standard of IDR in firms, sectors and across the financial system

EDR schemes also have a role to play in influencing the standard of IDR handling in individual firms, in specific industry sectors and across financial services as a whole. FOS does this through data capture and analysis about the registration and referral of disputes it receives. The analysis is shared with major and mid-tier firms (both individually and through benchmarking reports), industry associations and, when required, with ASIC. The analysis is evidence-based and specific in nature so that firms can act upon it to improve their IDR processes.

We also publish Comparative Tables annually. These tables present statistics about financial firms that are members of FOS – what are the chances of a dispute involving a particular firm coming to FOS, and the duration and outcome of that dispute. The tables cover 18 product groups and can be used by consumers and financial firms to compare dispute data for firms and products.

FOS has made significant investment in systems and analytical capacity and we use this to draw industry-wide observations about the effectiveness of the IDR-EDR intersection, but only for our members. Because we have the details of 87 per cent all disputes received in financial services EDR¹², our observations and insights are broadly reliable.

Disputes do move between IDR and EDR and between schemes. When they do, there are different systems and processes for registration and referral of disputes and different timeframes for IDR processes (21, 45 or 90 days for different categories of disputes). This adds complexity, and impedes comparability of outcomes.

Gaining a complete and consistently derived picture of the IDR-EDR relationship across the sector is hampered by the existence of multiple schemes, inhibiting potential system-wide or industry-specific improvements in dispute resolution for financial services consumers. We address these issues and proposed solutions in more detail below.

¹² Using 2014-15 data, FOS received 31,895 disputes, CIO received 4,848 disputes and SCT received 2,688 disputes

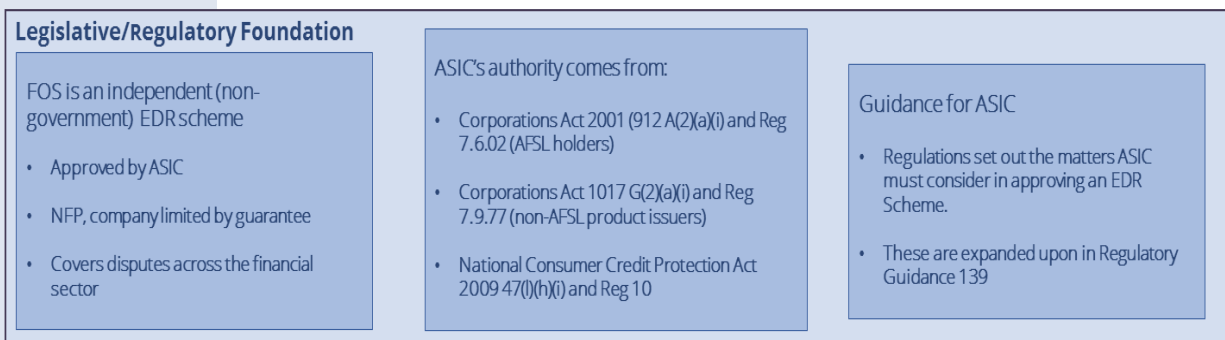
FOS strongly supports retaining the mandated model for an industry-based scheme regulated by ASIC

The current regulatory environment for EDR is generally effective

The framework, appropriate standards and oversight arrangements for the current EDR schemes are set out by ASIC in Regulatory Guide 139 (RG 139). This regulatory framework has been able to adapt as the environment in the financial sector has changed.

We propose three key areas where the current regulatory oversight arrangements could be enhanced.

The current regulatory framework is summarised in the diagram below.



The current regulatory framework applies only to schemes approved by ASIC.

This means there is not a consistent set of guiding objectives, principles and desired outcomes for all non-court based dispute resolution in the financial sector.

Flexibility

The current regulatory framework, while providing robust regulatory oversight, provides sufficient flexibility for the current regime to adapt to a dynamic and changing environment.

RG 139 has been updated several times in recent years¹³ to deal with new products or to address problems that arise in the industry. It also contains mechanisms to ensure schemes remain up to date – for instance, the requirement for compensation caps of schemes to be indexed.

RG 139 also provides ASIC with the discretion to introduce any further approval criteria for EDR schemes that it considers relevant, after consultation with stakeholders.

Style of regulatory oversight

While ASIC's oversight focuses on high level issues, it extends to matters of detail where necessary. Key changes to a scheme's

¹³ RG 139 was reviewed in 2009 and has since been reissued in May 2010, July 2010, February 2011, April 2011 and June 2013

Regulatory oversight can be enhanced by clear EDR objectives, policies preventing competition among schemes, and greater powers for ASIC to manage remediation matters

jurisdiction, appointment of directors and other significant changes require consultation with, or approval by, ASIC.

RG 139 requires a scheme to commission independent periodic reviews of the scheme's operations and procedures. The scheme's Board must consult ASIC about the terms of the independent review and on the appointment of the independent reviewer.

These reviews must be conducted every five years, or more frequently, if required by ASIC or considered appropriate by the Board of the scheme. Independent reviews include intensive and comprehensive examinations of whether a scheme complies with all the relevant EDR benchmarks and whether it is meeting regulatory obligations.

Details of the most recent independent review of FOS and response by the FOS Board, completed in 2013, are available on the FOS website. The review's recommendations concentrated on improving the timeliness of dispute resolution and our recent statistics demonstrate that this has improved markedly as a result of the major changes we have made to our dispute process.¹⁴

As well as working with a scheme to address matters arising from an independent review, ASIC oversight includes detailed quarterly reporting and liaison meetings that focus on dispute trends, systemic issues and emerging policy issues.

Areas for improvement

We consider the current regulatory oversight regime can be enhanced in the following areas:

- Articulation of system-wide objectives, principles and outcomes for complaint handling and EDR for the financial system
- ASIC approval and oversight to include a clear policy preventing competition among EDR schemes to limit overlap and duplication
- Enhanced powers for ASIC to deal with general remediation matters where failings in a firm (or across an industry) result in widespread consumer detriment that requires systemic redress.

¹⁴ Reduction in the average time taken to resolve disputes from 95 days in 2014-15 to 62 days in 2015-16. Almost double the proportion of disputes resolved within 30 days from 22% in 2014-15 to 43% in 2015-16. Reduction in the average time taken to resolve disputes at registration and referral from 45 days in 2014-15 to 29 days in 2015-16.

Despite ASIC not being supportive of competition in EDR and clear evidence that competition is detrimental to the effectiveness of the overall dispute resolution system, ASIC considers the current legislative underpinning of RG 139 limits its ability to prevent or limit duplication and overlap between approved schemes.

System-wide objectives

The current ASIC approval regime applies only to ASIC-approved schemes. This means there is not a consistent set of guiding objectives, principles and desired outcomes for all non-court based dispute resolution in the financial sector.

We consider the panel should recommend a single set of clear system-wide objectives, principles and outcomes for complaint handling and dispute resolution in the financial sector.

These should be based on the broad consumer outcomes articulated FSI based on ensuring fair outcomes for consumers in order to support trust in financial services.¹⁵

We also consider ASIC should have a clear responsibility for oversight of all IDR and EDR across all sectors of the financial industry, while ensuring that the schemes remain independent of the regulator.

Clear ASIC policy to prevent overlap and duplication

ASIC has interpreted the current legislative underpinning of RG 139 (which still permits multiple and even overlapping schemes) as restricting its ability to prevent or limit duplication and overlap between approved schemes, even where it has itself expressed strong views that competition between schemes is highly undesirable.

In its second submission to the FSI, ASIC set out its views on competition in EDR as follows:

“ASIC does not consider that competition between different schemes enhances consumer outcomes. ASIC has worked with industry to reduce the number of schemes, with resulting improvement in economies of scale and efficiency, the removal of uncertainty for consumers and financial investors, and the reduction in jurisdictional boundary issues. Following the merger of five EDR schemes into the Financial Ombudsman Service (FOS) in 2008 and 2009, there are now two ASIC-approved EDR schemes in Australia.”

ASIC has for years maintained that competition between EDR schemes is not productive. ASIC explained this view in its submission to the Inquiry into Industry Self-regulation in 2000.¹⁶

¹⁵ The [Productivity Commission study](#) to develop criteria to review the superannuation system could be used as a model to guide this work.

¹⁶ [ASIC submission](#) to the Inquiry into Industry Self-regulation, p27-28, January 2000.

FOS does not support competition among Ombudsman schemes. This is in accordance with the clear policy position of the Australian and New Zealand Ombudsman Association (ANZOA).¹⁷

ASIC powers to deal with widespread consumer detriment

In our submissions to both the FSI and ASIC's consultation on its guidelines for remediation programs, we have supported ASIC having more direct powers to deal with general remediation matters where systemic failings in a firm (or across an industry) result in widespread consumer detriment that requires redress.

FOS as an independent dispute resolution scheme plays a key part in any such arrangement. We consider that there are lessons to be learned from recent Australian and UK experience, including the emergence of commercial claims handling firms and impact on the UK Financial Ombudsman Service of the huge number of Payment Protection Insurance (PPI) claims in that jurisdiction.

¹⁷ See ANZOA's policy statement [Competition among Ombudsman Offices](#)

We do not support adding another layer of cost and complexity to dispute resolution.

FOS decision making is based on clear processes and is subject to robust quality assurance.

FOS is open and transparent

The issues paper, although not asking a direct question, comments that 'another potential role for a tribunal would be as an alternative to court action for a complainant who is not satisfied with a determination made by one of the existing EDR schemes'. We do not support adding another layer of checks and balances to the EDR framework.

We consider this is inconsistent with the operation of the scheme as a co-operative, informal and quicker alternative to the courts. It would add to the cost and complexity of dispute resolution.

Current FOS decision making is based on clear processes and criteria set out in our Terms of Reference, and is subject to robust quality assurance. FOS is open and transparent about the approach we adopt to resolving particular types of disputes.

We consider the test case provisions, informal and formal review mechanisms and access to the courts set out below provide sufficient checks and balances under current regulatory arrangements. We also have a robust quality assurance framework across all stages of FOS dispute operations.

FOS is committed to being open and transparent about the approach we take when deciding disputes. This commitment reflects our principles of cooperative dispute resolution and transparency which are stated in paragraph 1.2 of the FOS Terms of Reference.

FOS promotes openness and transparency in our decision making in a number of ways:

- Publishing FOS Approach documents in easy to understand terms.
- Holding regular open forums and meetings with stakeholders where our approach to particular types of disputes is explained.
- Encouraging financial firms, consumers and consumer organisations who may have concerns about the approach we take in our determinations to raise these concerns directly with the relevant Lead Ombudsman or the Chief Ombudsman, or discuss them during regular industry and consumer meetings.
- Recognising that in limited circumstances there may be value in a more formal review mechanism when current informal mechanisms cannot fully address concerns about

We have introduced a formal cooperative review mechanism to supplement informal approaches and test case provisions.

our approach in decisions. Paragraph 10 of our Terms of Reference provides for FOS to place a dispute on hold while a matter is being considered by the courts. Test case provisions can be used if a financial firm thinks that a dispute involves an issue which may have important consequences for the firm's business (or financial firms generally) or involves an important point of law.

- Introducing a formal cooperative review mechanism to supplement the current informal approaches and test case provisions. The review mechanism does not allow determinations to be re-opened. Under the Terms of Reference, determinations are final decisions on specific disputes. The mechanism provides for an assessment of whether FOS should continue to take an approach or modify it for future disputes. The formal review mechanism is set out in section 19A in our Operational Guidelines (fos.org.au/about-us/terms-of-reference).

There is a common misconception that it is not possible to challenge a FOS determination in court. FOS determinations can be challenged in State courts on grounds similar to formal judicial review that apply where:

- the decision was not made in good faith
- was the product of bias or dishonesty
- the Ombudsman or FOS panel misconceived the task which they were required to undertake (e.g. addressed the wrong question) or
- the decision was not made in conformity with the terms of the contract regulating the processes (the FOS Terms of Reference).

While FOS determinations can be challenged in the courts on these grounds, our approach as an EDR scheme is to encourage use of the co-operative review mechanisms or test case provisions in our Terms of Reference, set out above, to resolve any differences about the approach FOS has adopted to specific types of disputes.

Complaints against FOS

FOS also has a robust approach to dealing with complaints on service issues relating to our dispute handling. These were

FOS has a well-developed and comprehensive system to address complaints about its service

assessed as part of the FOS independent review and found to be well developed and comprehensive.¹⁸

However, the FOS Board has recently decided that in order to increase accountability and transparency, FOS will appoint an external assessor to independently review complaints about service issues that arise in the handling of a dispute. This initiative is designed to complement our current internal processes for dealing with complaints about FOS.

The role of independent assessor is not to be a review or appeal mechanism on the findings or outcomes of FOS decisions on the substance of a dispute or jurisdictional decision. The role will be limited to complaints by applicants and financial firms on service issues. The person will be appointed by and report to the FOS Board.

This proposal is based on the arrangements that exist for the UK Financial Ombudsman Service, adapted for our specific circumstances.

¹⁸ Independent Review of FOS (2013), paragraph 16.2.2 'FOS has a more robust and systematic process for logging and responding to complaints against it than any other EDR scheme we have seen'

There are overlaps between FOS and CIO and between FOS and the SCT. There are gaps in regulatory oversight, system-wide reporting and action on systemic issues and there are unnecessary costs and inefficiencies in the system. These factors have a direct negative impact on consumers who make complaints and the financial firms that respond to complaints.

The current arrangements for EDR can be enhanced

The current arrangements for EDR can be enhanced to reduce current gaps and overlaps, better meet the assessment criteria set out in the issues paper and improve the effectiveness of EDR arrangements.

This can be achieved under the current industry Ombudsman model of EDR, which FOS strongly supports.

The key enhancements we propose to address current gaps and overlaps are:

- a merger of the CIO into FOS
- exploration of enhanced and innovative co-operative arrangements between FOS and the SCT
- an increase in current jurisdictional limits including expansion of FOS's small business jurisdiction
- improved legislative powers in a few areas to support our dispute resolution
- establishment of a last resort compensation scheme.

Merger of CIO into FOS

A merger of the CIO into FOS would lead to better outcomes for consumers, reduce regulatory compliance costs and ensure the current system meets the key criteria set out for the purposes of the current review.

A merger would not require major legislative change and could be achieved relatively easily under the current regulatory framework. There are compelling reasons for a merger.

The facts

- Of all financial disputes that were registered with the CIO and FOS in 2014-15, FOS dealt with 87 per cent of these.
- Of the 4,848 disputes received by the CIO in 2014-15, 19 per cent were referred to them by FOS (because the financial firm was a member of the CIO but the consumer came to FOS in the first instance).
- There are membership overlaps between the two schemes, creating issues for consumers, jurisdictional differences and a different approach to the application of fairness in dispute

resolution. These overlaps are described in the following sections of this submission.

- There are cost duplication and inefficiencies through the operation of two schemes.
- The existence of competition for members promotes ‘forum shopping’ with adverse impacts on balanced and fair outcomes for users of the scheme.¹⁹

FOS’s view is that the problems of overlap, duplication, lack of consistency and comparability of outcomes are sufficiently serious that a single merged scheme is required.

We do not consider that the arguments put forward for retaining competing schemes to promote innovation or benchmarking have any substance²⁰ and contrary to these propositions current arrangements inhibit the achievement of effective EDR across the financial sector.

For several years, ASIC has also held this view. In 2000, it contended:

‘Competition between ADR schemes can actually have perverse effects such as forum shopping, empire building, diseconomies of scale and bias in decision making’.²¹

Currently the jurisdiction of the CIO and FOS overlaps and differs to a considerable extent. The overlap has accelerated over recent years from what were previously primarily separate sectoral schemes (with some limited overlap in potential membership) to one where the potential overlap is significant.

This needs to be addressed because the impact of increased competition in EDR has broader adverse consequences:

- The CIO’s jurisdiction is more narrowly confined to products and services regulated under the *Corporations Act 2001* (Corporations Act). This could lead to further pressure on FOS over time to similarly narrow our jurisdiction.

¹⁹ The report on the [independent review of COSL](#) conducted in 2012, p17: “In COSL’s case, choices such as lukewarm support for a one-stop shop consumer call centre, an over-emphasis on saving COSL resources by closing complaints at the pre-investigation stage or opting in its complaints handling for a narrow approach to the law and fairness can all be seen by stakeholders as evidence of ‘competing’ too hard for a favourable reputation with members”

²⁰ Appendix A explains why arguments to retain two EDR schemes are not substantiated

²¹ [ASIC’s submission](#) to the Inquiry into Industry Self-regulation, p27, January 2000

- The Constitutions of both schemes set out different obligations for scheme members. For instance, while FOS requires a member to provide 12 months' notice of cessation of membership²² in order to give consumers who have suffered from the wrongful conduct of industry participants an opportunity to identify losses and go through IDR and EDR processes, the CIO requires only two months' notice.²³ This difference could have significant consequences for consumers who have a dispute with a CIO member.
- Overlapping membership complicates the ability to deal with issues of joinder, contributory negligence and multiple party disputes when membership is split across schemes.
- There is a fragmented approach to reporting, investigation and addressing systemic issues across industry sectors and the financial system as a whole.
- The emerging model in the region is for a single scheme or, in a few cases, sectoral-based rather than competitive EDR schemes. A competitive model of EDR in Australia will complicate regional passport arrangements and reduce our ability to play an influential leadership role in regional EDR developments.

Further details on some of these key issues are provided below.

Membership overlaps

There is considerable overlap in membership between FOS and the CIO. FOS has members in all classes operating in the financial sector (except pawnbrokers who we understand belong only to the CIO). The CIO has a subset of these, as the following graphic depicts:

²² See clause 3.8 of the [FOS Constitution](#)

²³ See article 9.1 of the [CIO Constitution](#)

FOS Member Types

- Bank
- Corporate advisor
- Derivatives dealer
- Foreign exchange dealer
- General insurance broker
- General insurer
- Life insurance broker
- Life insurer
- Make a market
- Product distributor
- Pooled superannuation trust
- Superannuation fund trustee and advisors

- Accountant
- Building societies
- Credit provider
- Credit reporting agency/body
- Credit representative
- Credit union
- Debt collector or buyer
- Finance broker
- Financial advisor/planner
- Friendly society
- MIS operator/fund manager
- Mortgage broker
- Mortgage manager
- Mortgage originator
- Timeshare scheme operator
- Securitises
- Lenders mortgage insurance providers
- Rental lease providers
- Non-bank lenders
- Mutual banks
- Small amount lenders
- Motor vehicle financiers

- Product distributor
- Product issuer
- Research house
- Securities dealer
- Stockbroker
- Trustee
- Underwriting agency
- Warranty provider
- Administration services provider
- Custodian and depository services
- Managed discretionary account operator
- Non-cash payment system provider
- Travellers cheques/foreign currency transfer provider

CIO has members in this group

We cannot, however, join CIO members into a dispute at FOS (or vice versa). There are several instances, for example, where the primary dispute is with a bank (FOS member) but involves a mortgage broker or an authorised credit representative of a financial advisor that is a member of the CIO, where the issue of joinder may arise.

This adds complexity for consumers and results in less effective dispute resolution, particularly as the financial sector evolves with new participants and products.

Fairness/equity

Having two EDR schemes with a different application of the principle of being fair in all circumstances is counter-productive to promoting consistency and comparability of outcomes for consumers and firms for similar types of disputes.

FOS's rules for decision making are based on an overarching fairness test consistent with the standard set by ANZOA, the approach of the UK Financial Ombudsman Service and international best practice. The FOS rules have been tested in the courts. The CIO has a different set of rules.

This means consumers with similar disputes could end up with different outcomes given the different approach adopted to fairness in decision making by each scheme.

Differing application of fairness principles is counter-productive to promoting consistency and comparability for consumers and firms.

Courts have confirmed that FOS's approach to decision making provides us with wide and flexible powers to do justice between the parties to disputes.

The FOS Terms of Reference state that when deciding a dispute and whether a remedy should be provided, FOS will do what in our opinion 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
- previous relevant decisions of FOS or a Predecessor Scheme (although FOS will not be bound by these).²⁴

Similarly the legislation governing the UK Financial Ombudsman Service states:²⁵

'A complaint is to be determined by reference to what is, in the opinion of the Ombudsman, fair and reasonable in all the circumstance of the case.'

The CIO Rules state:

In dealing with a complaint at any stage of the CIO process, the scheme will observe procedural fairness and have regard to:

- relevant legal requirements or rights provided by law to the complainant in relation to the subject matter of the complaint
- applicable codes of practice
- good practice in the financial services industry
- fairness in all the circumstances.²⁶

While the CIO's decision making criteria has not yet been tested in the courts, it may raise some issues as to how the fairness criteria is weighted against the other criteria.

In the case of FOS, the approach to decision making set out in our Terms of Reference has been subject to judicial consideration. The courts have confirmed that our Terms of Reference provide FOS with wide and flexible powers to do justice between the parties. (For example, see *Utopia Financial Services v FOS* [2012] WASC 279.)

It is doubtful whether the courts would apply the same approach as they have done for FOS's Terms of Reference, and they could

²⁴ See paragraph 8.2 of the [FOS Terms of Reference](#)

²⁵ See section 228(2) of the [Financial Services and Markets Act 2000 \(UK\)](#)

²⁶ See rule 12.1 of the [CIO Rules](#)

Different jurisdictional definitions mean consistent and comparable outcomes cannot be delivered under current EDR arrangements.

interpret the CIO Rules as fettering a broad discretion to do justice between the parties in resolving a dispute.

Jurisdictional differences

The existence of two schemes with different jurisdictional definitions applying to similar disputes means consistent and comparable outcomes for consumers and firms cannot be delivered under current EDR arrangements. The CIO has a narrower jurisdiction than FOS for the same types of disputes.

The CIO Rules only allow it to consider disputes about a 'financial service' as defined in section 766A of the Corporations Act or section 12BAB of the *Australian Securities and Investments Commission Act 2001* (ASIC Act). In contrast, the FOS Terms of Reference allow us to consider disputes about 'financial services' defined more broadly.

As paragraph 47 of the issues paper notes, this gives FOS flexibility to accept disputes that may have otherwise been on the margins but relate to products or services provided by our members. This is evident in our approach to small business responsible lending disputes, our ability to consider disputes about non-regulated loans and our discretion to deal with disputes involving non-retail clients when appropriate.

The definition of 'consumer' in paragraph 45 of the CIO Rules automatically excludes all disputes by non-retail clients. By comparison, FOS has discretion to exclude such disputes, which we would not automatically exercise. This enables FOS to consider disputes by non-retail clients where appropriate, consistent with the expectation in ASIC Regulatory Guide 139.87.

The CIO's definition of 'consumer' also limits the range of small business disputes that it can consider, based on the assets and income of a business. FOS does not have any equivalent limitation.

Unlike FOS's Terms of Reference, the CIO Rules do not provide for small business responsible lending disputes or any responsible lending disputes about non-regulated loans. It is not clear whether the CIO considers disputes about lending for investment purposes, other than residential property which is regulated under the *National Consumer Credit Protection Act 2009*.

Paragraph 5.1c) of the FOS Terms of Reference allows us to consider disputes about maladministration in lending. 'Maladministration' is defined in paragraph 20 as 'an act or omission contrary to or not in accordance with a duty or obligation owed at law or pursuant to an express or implied term of the contract'.

Duplication of IT infrastructure, corporate and communication services and outreach activities limits the ability to take advantage of economies of scale.

The driver of change at FOS has been consultation and feedback with consumer organisations and members

When handling a dispute, FOS considers there is a duty to exercise the care and skill of a diligent and prudent lender. We also rely on the ASIC Act obligation to exercise care and skill, the applicable industry code and good industry practice. This involves considering responsible lending criteria, even for non-regulated loans.

Cost

The existence of two schemes increases costs for members given duplication across a wide range of areas such as IT infrastructure, corporate and communication services and outreach activities, and limits the ability to take advantages of economies of scale. This will only increase as investment in IT will be a key driver of scheme efficiency and effectiveness in meeting users' needs into the future.

Where one scheme is actively seeking to expand its membership from the other scheme, the opportunities for developing common platforms and co-investing are very limited. In fact, for FOS, given competitive factors and a different application of the fairness test, we see co-operation with non-financial sector schemes as more likely in the current environment. We do not consider this to be optimal.

Innovation

The driver of change at FOS has not been competition from the CIO. It has been based on feedback from our members and consumer organisations, identification of process improvements through our own analysis of our dispute volumes and trends, and in response to recommendations from the Independent Review of FOS.

FOS has significantly evolved over the past eight years and in 2015 re-engineered our dispute processes, delivering significant benefits to users. (Details of the benefits are provided in the accompanying report 'FOS - Delivering effective outcomes for users in a rapidly changing and dynamic environment').

The innovation and re-design in our processes and technology enhancements has been achieved through strong collaboration with our stakeholders and best practice in other jurisdictions, not any comparisons with the CIO.

This collaboration with our stakeholders has resulted in strong support from industry and consumer stakeholders for the changes we have made to improve the dispute resolution service we provide to the community.

From a system-wide perspective there are gaps in systemic issues reporting of superannuation products and services, and in community awareness of avenues for superannuation-related dispute resolution.

FOS is well positioned to work collaboratively with the SCT to help address these gaps.

Enhanced co-operation between FOS and the SCT

There are currently some overlaps in jurisdiction between FOS and the SCT. To date these have been manageable with FOS referring a significant number of disputes to the SCT. However, we expect these overlaps to increase as a larger segment of the population moves into retirement with increased demands on superannuation funds for advice, insurance, annuities and other new products and services. These products and services will be similar to, and compete with, products and services provided by other financial firms.

In addition, from a system-wide perspective there are gaps in systemic issues reporting of superannuation products and services, and in community awareness of avenues for superannuation-related dispute resolution.

Overlaps

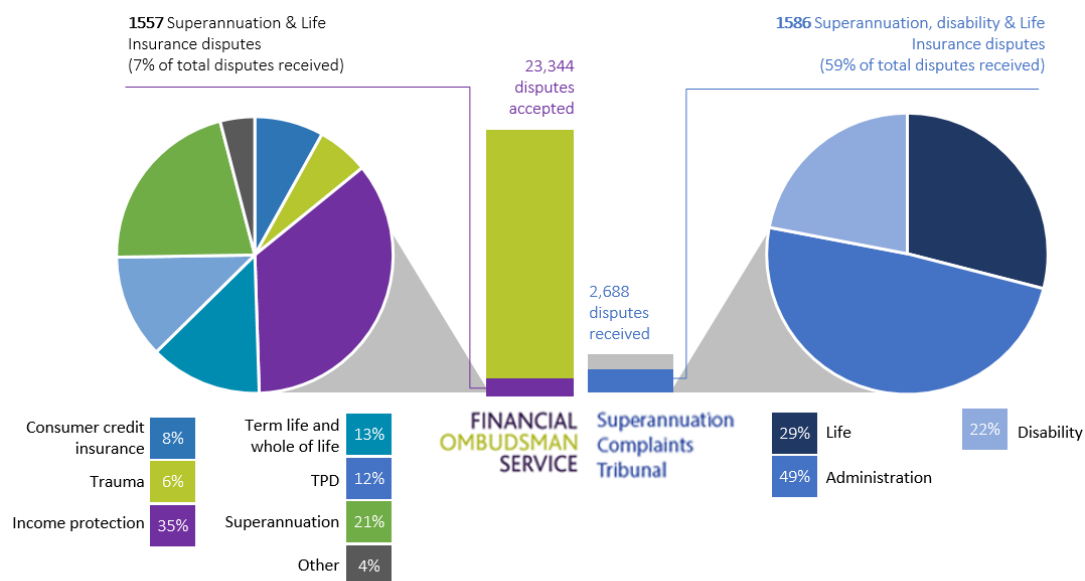
There are currently some overlaps in jurisdiction between FOS and the SCT as outlined in the table below. To date these have been manageable with FOS referring a significant number of disputes to the SCT under a one consumer gateway philosophy, but the overlaps are growing.

Similarities and Differences...	FOS	SCT
Deals with disputes against decisions of trustees of regulated superannuation funds	X	✓
Is an independent forum to resolve disputes	✓	✓
Deals with disputes lodged by trustees of regulated superannuation funds	✓	x
Is governed by legislation	x	✓
Is governed by its Terms of Reference	✓	x
Is free of charge for consumers (also referred to as members of superannuation funds)	✓	✓
Most superannuation-related investment disputes involve the activities of a financial adviser	✓	x
Deals with disputes against insurers and others who provide superannuation services (certain differences apply)	✓	✓
Is funded by industry or through a levy	✓	✓
Deals with disputes in a cooperative, efficient, timely and fair manner (for the SCT, this is expressed as fair, economical, informal and quick)	✓	✓
Most life insurance disputes handled in 2014-15 were about denial of claims and most of these concerned non-superannuation fund insurance policies	✓	x
Is not bound by rules of evidence	✓	✓
Is required to comply with the rules of natural justice	✓	✓
Is not able to deal with disputes that relate to management of the fund (or scheme) as a whole	✓	✓
Can refuse to consider claims if they are frivolous, vexatious or lacking in substance	✓	✓
Has a presumption against legal representation	✓	✓
Publishes decisions on its website (with the parties' names omitted)	✓	✓
Deals with the vast majority of disputes on the papers, with the parties rarely appearing in person	✓	✓
Its decisions can be challenged in court (in limited circumstances)	✓	✓
Determines what outcome it considers fair at the time of its Determination	✓	x
Is there a cap on the amount it can award in its decisions?	\$309,000 \$8,300 per month (for income protection)	Unlimited

Areas of overlap between the schemes include:

- A trustee or a superannuation fund member can lodge a dispute with FOS in relation to a Total and Permanent Disability (TPD) claim if it is outside the time limit for the SCT but still within the six-year time limit for FOS.
- A trustee or superannuation fund member may lodge a dispute with FOS against an insurer. A superannuation fund member can lodge a complaint against an insurer with the SCT only if it relates to an annuity or if the superannuation fund member lodges a complaint against the trustee and the insurer is joined.
- Trustees are required to do everything that is reasonable to pursue an insurance claim for the benefit of a beneficiary, if the claim has a reasonable prospect of success. Trustees can seek to satisfy this duty by lodging a complaint against the insurer for free with FOS, as opposed to the costly alternative of going to court.
- The vast majority of superannuation fund trustees use another entity for giving financial advice to superannuation fund members (including intra fund or scaled advice). A few superannuation fund trustees currently provide advice directly and are therefore members of FOS. FOS currently has 62 superannuation fund trustee members who have a combined total of 5,497 authorised representatives operating within their funds.
- Trustees can lodge a complaint with FOS on behalf of a superannuation fund member about such advice or the superannuation fund member can lodge a claim with FOS directly, subject to certain limitations.
- Trustees can lodge a complaint with FOS about other service providers, such as custodians and administrators, subject to certain limitations. The complaint can be on behalf of the fund or on behalf of an individual superannuation fund member.
- FOS also considers disputes about investment advice given to trustees for the fund but most of these complaints are lodged by trustees of self-managed superannuation funds. It is unclear whether trustees of other superannuation funds are aware of this option, are generally satisfied with their investment advice, or prefer to go to court.

Comparison of disputes received by FOS and the SCT 2014-15



* In 2014-15 FOS received 31,895 disputes. 23,344 moved beyond the registration process and into case management.

The number of superannuation related disputes at FOS is growing and the overlap between FOS and the SCT is increasing

The number of superannuation-related disputes at FOS is growing, as are those involving life insurance. Given the changes in the sector, and the types of issues that are likely to give rise to more disputes as our ageing population transitions to retirement phases of their superannuation, the overlap between the schemes will only increase.

Gaps

While many of the differences between FOS and the SCT exist for good reason, others seem to be features of a current design or focus that could be addressed to improve the effectiveness of dispute resolution in the whole sector. From a system-wide perspective, there are gaps in systemic issues reporting of superannuation products and services, and in community awareness of avenues for superannuation-related dispute resolution.

The SCT's powers and functions set out in its legislation are focused on the resolution of individual complaints.

- Unlike ASIC-approved EDR schemes, the SCT does not have an obligation to investigate and report systemic issues. This leaves a gap in the analysis and reporting of systemic issues in a growing superannuation sector – a gap that

could potentially prevent consumers who have not lodged a complaint receiving redress.

- Like other tribunals, community outreach and stakeholder engagement are not a primary focus area for the SCT, yet a focus here could result in better industry practice, improved dispute processes and greater awareness and accessibility.

Enhancing collaboration

In order to meet the assessment criteria for the review, including consistency and reducing complexity for consumers, we consider these overlap and duplication issues need to be addressed. We propose a staged approach to do so.

In the first instance, we consider there are practical opportunities to explore ways to enhance collaboration between FOS and the SCT to address some of these issues within the context of the current industry Ombudsman arrangements and Tribunal operation of the SCT.

For example, FOS could extend its systemic issues investigation and reporting to include matters covering SCT complaints. Similarly, we could involve the SCT in relevant industry focus groups we hold, and in our outreach activities. One further extension that could create cost efficiencies would be to have a shared back-office and co-location arrangement, while maintaining separate governance structures. FOS could provide outsourced back office and IT support (as FOS currently does for Codes) for the SCT.

Any more significant structural changes to integrate FOS and the SCT would require legislative change, and would be less straightforward than the merger of the CIO into FOS.

Jurisdictional caps and limits

Jurisdictional caps and limits have not kept pace with changes in economic parameters, including growth in average wages and in home lending facilities. We support a review of current jurisdictional caps and limits to ensure they remain relevant.

There are differences in jurisdictional caps and limits between FOS, the CIO and the SCT.

FOS supports a review of the current jurisdictional caps and limits

	FOS	CIO	SCT
Monetary caps and limits	Claim limit: \$500,000 Compensation cap: \$309,000	Claim limit: \$500,000 Compensation cap: \$309,000	Unlimited
Small business caps and limits	Credit facility compensation cap: \$309,000 with proposed increase to \$2m Debt-related dispute monetary limit: \$2m with proposed increase to \$10m	Narrower small business jurisdiction than FOS Caps and limits same as existing FOS	n/a

The claim limit under the FOS Terms of Reference is consistent with the value of the retail client test under section 761G of the Corporations Act (currently at \$500,000).²⁷ 1991 was used as the benchmark year because this was the commencement date of the Corporations Law, which included the \$500,000 threshold²⁸.

However, at the time the average total earnings for full-time workers in Australia was about \$29,300.²⁹ In March 2016, the average total earnings for full-time workers was \$78,832.

Arguably a \$500,000 financial product is now within reach of an increasing number of Australian consumers. An example of this is the mean price of residential dwellings in Australia for the June 2016 quarter, which was \$623,000.³⁰ The following provides the value of housing finance for owner occupiers and investors, until April 2014. Again, the average for an investor is above \$500,000 while owner occupiers are at the \$350,000 level, not including other borrowings.

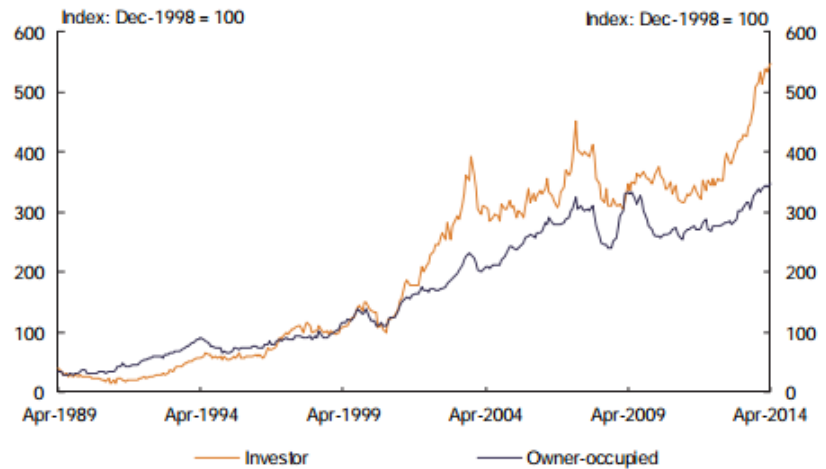
²⁷ See paragraph 164 of [RG 139](#) The amount of the claim, is not necessarily the amount of the transaction (e.g loan) – compensation relates to the loss or detriment suffered.

²⁸ [Wholesale and retail clients future of financial advice- Options Paper 2011](#)

²⁹ ABS Cat. No. 6302.0 Average Weekly Earnings, Australia.

³⁰ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6416.0>

Chart 3.4: Housing finance (flow of housing lending commitments)



Source: RBA.²²

Further work should be done to analyse the relevant data, agree an appropriate methodology and consult with both consumer and industry organisations on adjustments to current dispute caps and limits.

Improved legislative powers

We consider that FOS's ability to efficiently and effectively resolve disputes would be enhanced by having certain powers backed by statute. These could include:

- the power to obtain information and documents (SCT and UK Financial Ombudsman Service have this)
- a power covering fair compensation for loss or damage involving a direction that the financial services provider takes such steps in relation to the complaint as the Ombudsman considers just and appropriate (whether or not a court could order those steps to be taken), with the direction being enforceable by an injunction. A breach could then be the trigger for redress for the consumer through a last resort compensation fund.

Subject to addressing the legal complexities, this could potentially be achieved by amendments to the Corporations Act and/or the ASIC Act within the context of the current regulatory framework for ASIC approval of an industry Ombudsman scheme.

By way of comparison, we note that the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) has a range of

Certain powers backed by statute could help FOS resolve disputes more efficiently and effectively

powers enabling it to obtain information for projects such as research and inquiries. When conducting a hearing for an inquiry referred by the Minister, the ASBFEO has no capacity to award compensation but can require a person to:

- provide specified documents or a statement setting out specified information or
- attend the hearing to give evidence and produce documents specified in a summons.³¹

³¹ See sections 47 and 48 of the *Australian Small Business and Family Enterprise Ombudsman Act 2015*. Non-compliance with requirements could result in a fine.

A new stand-alone statutory tribunal would add complexity and the cost benefit of a triage service has not been demonstrated

The Financial Ombudsman model meets key demands of effective external dispute resolution

Alternative dispute resolution models

The issues paper seeks comments on a number of alternative dispute resolution models for the financial sector. The alternatives canvassed are: a single dispute resolution body, a triage service and the possibility of an additional tribunal.

FOS's views on these proposals are that:

- as set out earlier in this submission, we strongly support retaining the current industry Ombudsman model with several enhancements including:
 - merging the CIO into FOS to form a single industry scheme
 - exploring enhanced co-operative arrangements between FOS and the SCT
- if a single scheme were to be proposed by the panel, we consider it essential that it retains the hallmarks of an industry Ombudsman model for EDR
- a new stand- alone statutory tribunal would add complexity, be more legalistic, result in matters taking longer to be resolved and be less accessible than current arrangements
- we do not support a triage service because its cost benefit has not been demonstrated and it is not clear what problem it is seeking to solve.

Single body

The issues paper seeks views on the option of creating an entirely new body, or integrating the existing schemes and arrangements, which would hear all consumer disputes in the financial system.

The issues paper states that such an arrangement would have the benefit of lessening consumer confusion. In addition, it notes that 'such a model would have the potential to simplify the overall framework, enhance consistency in outcomes and decision-making processes and reduce administration costs for regulators'.

As set out earlier in this submission, we support retaining an industry Ombudsman model as the basis for future EDR arrangements in the financial sector. This model has proved effective in delivering fair outcomes while being open, accessible and simple to use. It has also proved adaptable to a changing environment. These are the critical elements of effective EDR.

The enhancements we propose would deliver many of the benefits identified for the single model.

With the enhancements we propose, including the merger of the CIO into FOS to form a single scheme, expansion of our small business jurisdiction and enhanced co-operative arrangements between FOS and the SCT, the current industry Ombudsman model would deliver many of the benefits identified for the single model. This is FOS's preferred position.

However, we recognise that conceptually there are attractions in an integrated, single scheme given that already FOS deals with 81 per cent of all disputes handled by FOS, the CIO and the SCT.

We have examined how best such a scheme might be established in a way that retains the essential elements of the current industry Ombudsman model.

This has included an initial review of the different types of Commonwealth entities that could accommodate an independent stakeholder Board, remain industry funded, accommodate different jurisdictions and retain functions of the current industry Ombudsman model to deal with systemic issues, conduct outreach and influence good industry practice.

We have also looked at how it might be possible to accommodate different jurisdictions, such as the legal basis for the SCT's jurisdiction, an expanded small business jurisdiction and the current jurisdiction of FOS and the CIO within the one entity, and how other whole-of-government requirements might apply and what impact they would have under such arrangements.

The test we have applied, and we consider the panel should apply, in assessing this and other alternatives, is whether on a clear evidence basis it would lead to a more effective dispute resolution system.

Based on our initial assessment there could be significant legal impediments in creating such a scheme under Commonwealth legislation with binding decision making powers operating by statute. The panel would need to carefully review the legal issues involved.

In addition, even if these legal issues can be addressed, our significant concern is that a single scheme based on current Commonwealth entity models would result in a less flexible, more legalistic and less stakeholder-engaged dispute resolution scheme compared to the current industry Ombudsman model.

Nevertheless, if the panel wanted to further pursue the creation of single scheme across the financial sector, we would want to ensure that any proposed model clearly improves upon rather than detracts from current EDR arrangements based on the key elements of an

We share concerns that a statutory tribunal structure can be costly, legalistic, adversarial, take longer to resolve matters and be less accessible than current arrangements.

industry Ombudsman scheme. We would be keen to work with the panel further to assist if this is the direction proposed.

A stand-alone statutory tribunal

The issues paper seeks views on whether an additional forum, in the form of a tribunal, would improve user outcomes, and, if introduced, whether its jurisdiction should only extend to small business disputes or other disputes.

In the exercise of its binding decision making powers, FOS is operating what is referred to legally as a 'domestic tribunal' created by the contractual arrangements with its members. This has been confirmed in review by the courts of FOS's jurisdiction.³²

But as the Financial Ombudsman we also have broader functions. Engagement and outreach are critical elements of the way we work, to ensure we remain easy for applicants to use and to promote improvements in industry practice.

The changes proposed in this submission:

- consolidation of the existing schemes
- expansion of our small business jurisdiction
- a review of other monetary limits and
- enhancing FOS's powers

will lead to a strengthening of current EDR without the legal complexities and disadvantages of a more formal statutory tribunal.

Consumer organisations and other stakeholders have expressed concerns that a statutory tribunal structure can be costly, legalistic, adversarial, take longer to resolve matters and be less accessible than current arrangements. The potential for 'creeping legalism' of tribunals as described in the Productivity Commission's report on Access to Justice Arrangements should be carefully and fully assessed. We share these concerns.

We draw the panel's attention to a recent review commissioned by the Consumer Action Law Centre (CALC) of the experience of consumers and tenants at the Victorian Civil and Administrative

³² Mickovski v FOS & Anor [2011] VSC 257; Mickovski v FOS & Anor [2012] VSCA 185; Cromwell Property Securities Limited v FOS and Radford [2013] VSC 333 at 60; Cromwell Property Securities Limited v FOS and Radford [2014] VSCA 179 at 63 and 67; Patersons Securities Ltd v FOS [2015] WASC 321

Tribunal (VCAT), evaluating VCAT against the benchmarks for industry-based Ombudsman schemes. Overall, the report found 'very substantial barriers' that inhibit people accessing justice through VCAT.³³

As evidenced in the CALC report, tribunals deal with individual matters and do not generally engage with the community and industry to improve accessibility to justice and raise industry standards. In contrast, these features are central to the purpose of Ombudsman schemes.

Current industry Ombudsman arrangements also reinforce regulatory and licensing obligations of financial firms, and a tribunal is unlikely to do so.

Our ability to be agile and responsive to meet immediate and emerging consumer redress requirements is not easily replicated in a tribunal setting. For example, FOS has worked closely with ASIC and relevant financial firms when ASIC has required a bank or other financial firm to implement a general remediation program to provide redress for affected consumers. This has included agreement by the relevant financial firm for FOS to waive limits on claims and compensation when appropriate.

Another example is seen in the approaches both the regulator (ASIC), and the Fintech sector have made to FOS in recent months to consider how consumers of digital financial products can seek effective redress if and when new and innovative financial products and new types of financial firms (e.g. robo advice, digital currencies, peer-to-peer lending) do not perform as intended.

Indeed, one of the strengths of the industry Ombudsman model of financial sector dispute resolution is its ability to adapt to changes in the financial sector, consumer expectations and interaction with financial services. FOS's current consultation on the possibility of expanding its small business jurisdiction to deal with a broader range of small business disputes by raising the claim limits of disputes within FOS's jurisdiction from \$2 million to \$10 million with an increase in compensation caps from \$309,000 to \$2 million, is an example of this.

Establishing a non-court based statutory tribunal under Commonwealth legislation with jurisdiction to make binding decisions on the range of financial sector disputes contemplated raises complex legal issues and could face the risk of being challenged for the improper exercise of judicial power. This is

³³ <http://consumeraction.org.au/review-tenants-consumers-experience-victorian-civil-administrative-tribunal/>

A stand-alone banking tribunal would mark a return to fragmentation and overlap of schemes and run counter to international developments for increased sharing, integration and merging of Ombudsman schemes to remove duplication and reduce complexity.

An expansion of the small business jurisdiction will be effective only under a merged CIO and FOS model

something the panel would need to carefully and comprehensively review if it were to propose this approach.

In addition to the potential legal impediments involved we consider there a range of other significant concerns.

A stand-alone statutory tribunal for banking disputes

The creation of a stand-alone statutory tribunal on banking-related disputes would be a return to the fragmentation and overlap of schemes on a sectoral basis that the merger of five schemes into FOS in 2008 and 2009 was designed to address.

It would also be counter to international developments in alternative dispute resolution where in response to developments in consumer behaviour, product development and the policy environment, experience in effective consumer redress has seen increased sharing, integration and merging of Ombudsman schemes to remove duplication and reduce complexity.

We have also seen calls for the proposed tribunal to hear complaints about financial investments, life insurance and financial planning. FOS, the CIO and the SCT also cover superannuation, debt recovery, general insurance, insurance and mortgage broking, non-bank credit issues, trustees and a range of areas not apparently addressed in these proposals. If a tribunal were created, it is unclear what is intended for these types of consumer disputes. Given the increasingly interconnected nature of our financial sector, further fragmentation of consumer access to dispute resolution would be highly undesirable. Indeed, such fragmentation could complicate arrangements for consumer access to EDR as part of the Government's Asia Region Funds Passport arrangements.

It is also not clear how a tribunal would be able to effectively handle the large volume of complaints that FOS and the other schemes deal with annually (more than 40,000 disputes and about 250,000 enquiries) without significant delays.

A small business tribunal

About six per cent of disputes received by FOS relate to small business and FOS has built expertise in handling disputes relating to this sector over many years. However, we acknowledge that our current Terms of Reference, claim limits and compensation caps in relation to small business credit facility disputes provide more limited alternative dispute resolution options for small business because we know that credit facility amounts for small businesses can typically extend beyond our current facility limit of \$2 million.

FOS is currently consulting on an expansion of its small business jurisdiction

On 12 August 2016, FOS issued a consultation paper seeking stakeholder views on proposals to increase our small business jurisdiction so that FOS can:

- consider disputes involving larger claims (up from \$500,000 to \$2 million)
- award higher compensation (up from \$309,000 to \$2 million) and
- consider debt-related disputes about larger small business credit facilities (up from \$2 million to \$10 million).

At the request of several key stakeholders, FOS extended its feedback due date until 7 October 2016.

FOS will analyse the feedback received on its consultation questions and provide relevant details to the panel.

Often, if a business is in financial hardship, and receivers are appointed, access to capital to take a dispute through the courts is limited, and accordingly there is an argument that EDR could play a broader role in providing an avenue for redress for small business credit facility disputes.

An expansion of the small business jurisdiction as proposed by FOS in its recent consultation will be effective only under a merged CIO and FOS model, otherwise jurisdictional differences will remain, and small business consumers who could have had disputes with CIO members, were it not for this difference, will be disadvantaged.

If a small business tribunal (SBT) were established, there would be significant overlap between its jurisdiction, that of FOS and the CIO.

- Would the SBT handle all financial service disputes of small businesses, including insurance disputes and disputes about advice?
- How would the SBT deal with disputes that cross over between those of small businesses and the guarantors of small business facilities?
- What would be outside the SBT's jurisdiction?
- How would the operations of the SBT be funded – would financial firms pay levies that fund the SCT, levies that fund the SBT, membership and dispute fees to FOS, membership and dispute fees to the CIO and, potentially, levies to fund a concierge facility to help navigate across an even more complex array of dispute resolution bodies?

How we propose to address the existing gaps in redress for small business and retain the principles of fairness and independence

The creation of a small business tribunal within the existing Australian Small Business and Family Enterprise Ombudsman, as has been proposed by the Parliamentary Joint Committee on Corporations and Financial Services in its report *on Impairment of Customer Loans*, could be problematic for a number of reasons:

- The ASBFEO is an advocate for small businesses, providing important access to dispute resolution services and ensuring government policies take into account the needs of small businesses and family enterprises.
- The ASBFEO has a key role, but seeking to combine advocacy and binding decision-making functions in the same body raises issues of independence of decision making and potential claims of apprehended bias.³⁴
- The conflict in roles could reduce the effectiveness of the important advocacy, assistance and concierge role currently performed by the ASBFEO on behalf of small business.

Establishing a tribunal with binding decision-making power for the types of disputes contemplated outside the formal court system raises complex legal issues of how it would avoid challenge on the basis it was exercising judicial power.

In paragraph 77 of the issues paper, the panel identifies an existing gap for some small business consumers because the *National Consumer Credit Protection Act 2009* does not apply to loans for business purposes. Accordingly, some credit providers who provide facilities only to small businesses are not required to hold an AFSL or an ACL and are therefore not necessarily members of an EDR scheme.

Small business customers of any financial firm that joins FOS, for whatever reason (e.g. because they hold an AFSL or an ACL, or choose to voluntarily join FOS) can lodge a dispute with us however. This covers regulated and non-regulated loans.

One way of addressing the gap is to extend the national consumer credit protection law to small businesses, as mooted in 2009, but not progressed.

We consider the solution to the existing gaps in redress for small businesses is best achieved by:

- Merging the CIO into FOS to form a single industry Ombudsman

³⁴ [See ANZOA Submission to consultation on ASBFEO Bill.](#)

History shows that creating an overarching portal or central gateway for EDR have not been successful

- Extending the national consumer credit protection law to small businesses
- Expanding the small business jurisdiction of the merged single industry Ombudsman scheme based on the current FOS small business consultation, ensuring that this jurisdiction is properly resourced and self-funding so that there is no detriment to the individual consumer dispute jurisdiction
- Providing periodic detailed reports to relevant regulatory and policy bodies (including ASBFEO) so that they have robust data, including trend data about small business disputes, to inform regulatory action, advocacy and policy development to achieve better outcomes for small businesses across Australia.

This would best meet the principles of fairness and independence that are the core tenets of an industry Ombudsman scheme and would achieve what the panel is seeking to achieve – the right balance between providing adequate protection to small business consumers (in this case) and reducing regulatory compliance costs for industry.

A triage service

The issues paper asks whether a ‘triage service’ would improve user outcomes – reduce consumer confusion about where to lodge a dispute, minimise the possibility of consumers being referred between the schemes, ensure consistency in process and outcomes, and realise efficiencies.

FOS does not consider that it would achieve any of the mooted benefits for a number of reasons. The first is grounded in experience. History shows that attempts to create an overarching portal or concierge arrangement for EDR have not been successful:

- The 1998 Wallis Inquiry expressed concerns that the proliferation of financial services disputes resolution schemes could lead to confusion for consumers in identifying the correct scheme to complain to. To address this, ASIC in conjunction with the various dispute resolution schemes established the Financial Complaints Referral Centre (FCRC). The FCRC’s role was to refer consumers to the relevant scheme.

- Industry stakeholders expressed reservations about the demand for a central gateway, and the possibility that promotion of the FCRC might detract from the efforts of the EDR schemes to effectively promote themselves.
- There was also strong resistance from existing EDR schemes to devoting significant resources to the establishment and operation of a central gateway without detailed evidence that there was a sufficient level of demand for the service.
- ASIC in its submission to the Inquiry into Industry Self-Regulation (January 2000) noted that the FCRC was established primarily to address concerns about consumer awareness and that it was not the solution to the problem of scheme proliferation. Call volumes were much lower than expected and after two years of operation it was rolled into ASIC's own inquiry line.
- Before the merger of the five predecessors of FOS, a common telephone line for a range of EDR services (including to the CIO, TIO and Energy Ombudsmen) was established. This telephone line was known as the FOS telephone centre and it operated until 2011.
- According to the CIO's (then COSL) 2011-12 annual review, the portion of enquiries that were received directly to the CIO, rather than via the FOS telephone centre, had increased over the years³⁵. The CIO noted that this was likely to be a result of the legislated requirement for financial firms to include their EDR scheme's contact details in certain key documents. It was at that time that the CIO pulled out of the telephone entry point arrangement.
- In short, the number of calls to the FCRC or the FOS common telephone line did not justify their operation.

³⁵ In 2011-12, 3.5% of enquiries to the CIO came through the FOS call centre and the remaining directly to the CIO.

It is unclear what problem would be solved by creating another body to 'triage' disputes. FOS believes a consumer-facing helpdesk would deliver a Band-Aid solution to current complexities in external dispute resolution that require more effective and sustainable solutions.

The second, significant point is: what problem would be solved by the creation now of another body to 'triage' disputes?

- FOS already handles 87 per cent of disputes registered across the CIO and FOS. In addition, FOS receives about 19 per cent of all CIO disputes in the first instance. Because the financial firm involved in these cases is a member of CIO, not FOS, we refer the applicant to the CIO. So, given current published CIO dispute volumes, this means that we actually receive 89 per cent of all financial disputes that progress to either of the two schemes. We also take several hundred of the initial calls that are then directed to the SCT. The cost benefit of an additional triage service to direct about 10 per cent of all disputes to the 'right place' is therefore doubtful.
- The establishment of a consumer-facing help desk (an online and telephone access point) is likely to add more confusion for consumers rather than address issues of duplication of functions and jurisdiction.
- Efforts by FOS over the years to increase consumer awareness of its services and collaborative efforts with consumer advocacy organisations have improved awareness. It is these efforts, together with outreach programs and appropriate referrals from financial firms to EDR that will ensure consumer awareness of EDR, and not the establishment of a consumer-facing help desk.

We acknowledge that developments in technology provide more digitised solutions for triage-type services, but usually with high up-front costs that would need to be justified through robust cost-benefit analysis. Even with technological solutions, the evidence surrounding the success of portals as an improved navigation for consumers of services across multiple bodies is also questionable:

- Government portals have been used for decades to provide information to people, as well as simplify and consolidate online service, with mixed success.
- The vision of a single 'one-stop shop' website providing access to services over the past decade has proven to be far more difficult than anticipated, and in many cases, the expectations for portal usage have not been achieved.
- Portals are often seen as the panacea to resolve underlying complexities of services, but they will never replace the

need for better programs and policy design, and can only partially overcome complexity in administration.³⁶

FOS considers that the establishment of a consumer-facing helpdesk (online and phone access) would deliver a ‘Band-Aid’ solution to current complexities in EDR that require more effective and sustainable solutions.

The impact of alternative solutions for financial services EDR on financial firms

We have focused on the range of alternatives primarily from a consumer perspective but the array of alternatives also creates confusion and cost for financial firms. The diagram below illustrates this point:

If I...	Have an AFSL	Have an ACL	Am an ACR	Am a product issuer	A trustee of a regulated super fund and an approved deposit fund	Am a provider of a Retirement Savings Account (RSA)	Am a Life company
I could have a dispute today at	FOS or the CIO	FOS or the CIO	FOS or the CIO	FOS	FOS or the SCT	FOS or the SCT	FOS for life policies SCT for annuities and super
And if small business credit facility disputes are handled by a separate body I might have to deal with	Either FOS or the CIO <u>and</u> the Small Business Tribunal (SBT)	Either FOS or the CIO <u>and</u> the Small Business Tribunal (SBT)	Either FOS or the CIO <u>and</u> the Small Business Tribunal (SBT)	FOS and the SBT if the product was a small business product			
And if there is a conceirge triage body I would have to deal with	Either FOS or the CIO <u>and</u> the Small Business Tribunal (SBT) <u>and</u> the triage body	Either FOS or the CIO <u>and</u> the Small Business Tribunal (SBT) <u>and</u> the triage body	Either FOS or the CIO <u>and</u> the Small Business Tribunal (SBT) <u>and</u> the triage body	FOS and the SBT if the product was a small business product <u>and</u> the triage body	FOS or the SCT <u>and</u> the triage body	FOS or the SCT <u>and</u> the triage body	FOS for life policies SCT for annuities and super <u>and</u> the triage body

³⁶ [Article in www.cio.com.au](http://www.cio.com.au) by Glenn Archer, 5 June 2015

Overseas developments and other sectors

The panel has requested information on developments in other jurisdictions and sectors that can provide examples of best practice for dispute resolution in Australia's financial system. In many ways, we consider the changes implemented by FOS are at the leading edge of current alternative dispute resolution developments, while acknowledging the importance of learning from other sectors, schemes and jurisdictions.

ANZOA

ANZOA is the peak body for Ombudsmen in Australia and New Zealand. We refer the panel to the various policy publications released by ANZOA. Of particular relevance are ANZOA's policy document on the [Use of the term Ombudsman: Essential criteria for calling a body an Ombudsman](#) and its strong stance against [Competition among Ombudsman offices](#)³⁷

INFO Network

Set up in 2007, the aim of the International Network of Financial Ombudsman (INFO Network) is for member schemes/offices to work together to develop their expertise in dispute resolution, by exchanging experiences and information. The INFO Network has published the fundamental principles to guide the work of network members:

The financial services Ombudsmen schemes and offices which are INFO Network members are (so far as it is within their control) expected to adopt six fundamental principles, together with the effective approaches to those principles, agreed by the membership:

- Independence, to secure impartiality
- Clarity of scope and powers
- Accessibility
- Effectiveness
- Fairness
- Transparency and accountability.³⁸

Ombudsman research

We refer the panel to the range of empirically-based work undertaken by the Queen Margaret University in Edinburgh. It has

³⁷ Appendix 2 to this [FOS submission](#) to the FSI contains a broad outline of a compensation scheme

³⁸ [INFO Network website](#).

researched subjects including [the future of Ombudsman schemes](#) and [distinguishing features of consumer Ombudsmen](#). The Queen Margaret University has a [Consumer Dispute Resolution Centre](#) that provides training courses to support Ombudsmen.

Cross-border EDR

Increasingly, dispute resolution arrangements are being required to adapt to the growing cross-border nature of financial services.

Europe

In 2011 the European Commission developed a framework for an EU-wide online dispute resolution system for e-commerce transactions. [Regulations](#) introduced later, to address sectoral and geographical gaps in EDR coverage, commenced operation in January 2016.

Asia

ASEAN's Framework for Cross-border Offering of Collective Investment Schemes is designed to speed up the process of authorising collective investment scheme managers to offer products to retail investors in participating ASEAN member states. ASEAN's Working Committee on Capital Market Development is addressing implementation of the framework, which involves considering dispute resolution.

A memorandum of co-operation for the Asia Region Funds Passport came into effect on 30 June 2016. The five signatories to the memorandum – Australia, Japan, Korea, New Zealand and Thailand – have until 31 December 2017 to implement domestic arrangements for the passport, which will cover dispute resolution.

Online dispute resolution

There is increasing interest in online dispute resolution.

A February 2015 report by the UK Civil Justice Council's Online Dispute Resolution Advisory Group presents a series of case studies from around the world that demonstrate the potential of online dispute resolution for low value claims.³⁹

While not without policy and legal issues, FOS recognises it is inevitable that over the next few years, we will need to develop our capacity in online dispute resolution, in collaboration with our stakeholders.

³⁹ Report on <https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>

The recently released Victorian Government Access to Justice Review report makes recommendations to increase user focused services that meet the community's expectations of modern service provision, including the development of online dispute resolution for small civil claims.⁴⁰

⁴⁰ Victorian Government's Access to Justice Review- [Summary Report](#), August 2016

The lack of a compensation mechanism and the continued problem of unpaid determinations undermines current EDR arrangements and should be fixed as an urgent priority.

A compensation scheme of last resort

FOS has for many years been a strong advocate for the provision of high quality consumer protection with a workable last resort compensation scheme.

The lack of a compensation mechanism and the continued problem of unpaid determinations directly undermines the effectiveness of current EDR arrangements, and should be fixed as an urgent matter.

We have developed options for a simple, well-funded, accessible scheme including the rules that would apply and a possible governance and legislative structure.

Our most recent documents dealing with compensation scheme proposals include our submission to the Interim Report of the FSI (the Murray Inquiry)⁴¹ and an updated proposal (from one made in 2009) released in June 2015.⁴²

Our proposals are designed to solve the problem of unpaid FOS determinations. The following statistics indicate the extent of this problem.

- From 1 January 2010 to 30 June 2016, 32 financial service providers were unwilling or unable to comply with 137 FOS determinations, impacting 194 consumers.
- As at 30 June 2016, the value of outstanding amounts awarded in these determinations was \$12,611,859.05 plus interest.
- Including interest and adjusting for inflation, the total amount outstanding was \$16,629,929.56 on 30 June 2016.

There are a number of views across industry, consumer bodies, regulators and parliamentarians about the need for and/or the type (statutory or non-statutory) and scope of such a scheme.

The major banks, some individually and through the Australian Bankers' Association have now supported in principle the establishment of a prospective scheme where consumers of financial products who receive a FOS determination in their favour could access a capped compensation scheme if an adviser's

⁴¹ A broad outline of a scheme is provided at Appendix 2 of this [submission](#).

⁴² The [updated compensation scheme proposal](#) released by FOS on 1 June 2015 addresses matters examined in the report by Richard St John on *Compensation Arrangements for Consumers of Financial Services*.

professional indemnity insurance is insufficient to meet claims. The banks have indicated a willingness to work with us to develop such a scheme.

To help achieve broad consensus about the structure and operation of a compensation scheme of last resort, FOS will work with key stakeholders over the next two months to identify any issues that would impede implementation of such a scheme.

We will consult further with the panel to ensure that we address its areas of interest around the proposed compensation scheme of last resort. We regard implementation of such a scheme as essential for the overall effectiveness of EDR for the financial sector.

Appendix A: Why arguments for retaining two EDR schemes are not substantiated

The CIO considers that there are substantive arguments for the preservation of two EDR schemes in the financial services sector. The table below summarises the claims likely to be made by the CIO based on its previous submissions to various inquiries, and provides factual data to counter each of them.

CIO claims:	The facts:
<p>CIO understands the non-bank and small financial services provider markets.</p>	<p>FOS also has members from each of these sectors as well as a much broader range of services than CIO and has a depth of understanding about the products and services offered by all member types.</p> <p>CIO's jurisdiction is more narrowly confined to corporation's law matters than that of FOS. This provides an incentive for forum shopping by financial firms, and leads to poorer consumer redress.</p> <p>The supposed 'benefits' of having product-specific Ombudsman schemes to consolidate expertise were disproven by the merger of schemes across several financial services sectors into FOS in 2008 and 2009. Indeed, with increasing convergence of insurance, advice and traditional banking and finance products, having separate schemes is likely to cause greater complexity and duplication.</p> <p>The existence of two separate schemes prevents the joining of CIO members into a dispute at FOS (or vice versa). This problem may arise, for example, where the primary dispute is with a bank (FOS member) but involves a mortgage broker, or an authorised credit representative of a financial adviser, that is a CIO member.</p>

CIO claims:	The facts:
<p>A consolidation of CIO and FOS would mean financial firms who are dissatisfied with service levels or costs can't vote with their feet.</p>	<p>There is no consumer choice about the EDR scheme that will accept a dispute. The presence of two separate schemes provides an opportunity for 'forum shopping' by financial firms who could be influenced to join the scheme that is more likely to find in their favour.</p> <p>As the independent review of the then COSL stated:</p> <p>'The presence of competition is a powerful influencer of organisational behaviour – often in subtle and unacknowledged ways. In COSL's case, choices such as lukewarm support for a one-stop shop consumer call centre, an over-emphasis on saving COSL resources by closing complaints at the pre-investigation stage or opting in its complaints handling for a narrow approach to the law and fairness can all be seen by stakeholders as evidence of 'competing' too hard for a favourable reputation with members.'</p> <p>A single EDR scheme will have greater influence on the standard of IDR across the sector because FSPs would not have the opportunity of 'forum shopping'.</p>
<p>About 70% of CIO's funding comes from membership fees, which means its funding is potentially more stable overall and there is no incentive to needlessly generate complaints or escalate them.</p>	<p>As the issues paper notes, while this does provide more stable funding it may provide less incentive to settle or reduce the volume of disputes.</p> <p>The FOS process is designed to allow members to resolve complaints directly with their customers, and provides clear incentives for early resolution at all stages of our dispute process.</p>

CIO claims:	The facts:
<p>About 75% of FOS's funding comes from complaint fees. This means that funding is more variable from year to year, being more dependent on the overall number of complaints received. A financial firm with multiple or more complex complaints before FOS will pay higher fees.</p>	<p>The principles that underpin FOS's funding model include:</p> <ul style="list-style-type: none"> • having a 'user pays' system that recognises the level of use of FOS services • recognising the varied size and resources of members • rewarding members who have low or no disputes. <p>FOS handles six times the disputes that the CIO handles and so it is no surprise that 75% of funding is dispute generated. Nor is it surprising that a financial firm with multiple or more complex disputes will pay more. The vast majority (93%) of our members who do not have a dispute at FOS pay only an annual membership fee. We believe our membership fees are less than those levied by CIO.</p>
<p>Having two EDR schemes allows each scheme to benchmark its performance against the other. This produces better outcomes for financial firms and consumers because the schemes are forced to adopt best practice and improve their service offering.</p>	<p>The driver of change at FOS has not been competition from CIO. It has been based on feedback from our members and consumer organisations, identification of process improvements through our own analysis of our dispute volumes and trends, and in response to recommendations from the Independent Review of FOS.</p> <p>FOS has significantly evolved over the past eight years and in 2015 re-engineered our dispute process, delivering significant benefits to users.</p> <p>The innovation and re-design in our processes and technology enhancements has been achieved through strong collaboration with our stakeholders and best practice in other jurisdictions.</p> <p>FOS has a clear philosophy and track record of continuous improvement.</p>
<p>Without competitive tension, turnaround times, service levels, innovation and continuous improvement would suffer, and there would be less incentive to keep costs in check and run the scheme efficiently.</p>	<p>See above. The FOS dispute process is significantly different to that of CIO. The improvements FOS has made have seen the average time to resolve a dispute at FOS drop from 95 days in 2014-15 to 62 days in 2015-16. This has been achieved through collaboration with our members and consumer bodies.</p>

CIO claims:	The facts:
<p>CIO's membership base differs significantly from FOS's. Its members are generally not supportive of being in a single EDR scheme which is geared towards large institutional players, such as banks and insurers.</p>	<p>83% of FOS's licensee members are small entities and most of these had no disputes at FOS in the past financial year.</p> <p>FOS makes a significant investment in providing our smaller members with details about effective IDR processes and with information about how to avoid having disputes at FOS.</p>
<p>A single merged EDR scheme would be prone to be monopolistic in its behaviour – dictating terms, rather than being responsive to stakeholder concerns about performance.</p>	<p>FOS's track record of stakeholder engagement – regularly surveying our members and our applicants about how we can improve our dispute processes and piloting new ways of working to meet user needs – is on the public record and has broad third party endorsement.</p> <p>The success of the dispute process re-engineering carried out by FOS in 2014-15 is a compelling example. Within one year, working with stakeholders, we re-engineered our dispute processes including a new registration and referral process, introduced a fast track process and improved the way we handle financial difficulty disputes. At the same time, we upgraded our case management system, introduced new technologies such as the online dispute form and the electronic statement of financial position, and enhanced our secure member portal. The changes enabled FOS to resolve disputes much more quickly, as explained above.</p>

CIO claims:	The facts:
<p>A portal will solve the issues of overlap and duplication. A merger of schemes is therefore not necessary.</p>	<p>There are only three industry Ombudsman schemes that operate nationally in Australia – FOS, CIO and TIO. Energy and utility schemes are state based and have a raft of regulatory bodies. There are well established collaborative arrangements between all schemes under the ANZOA banner and regular contact between schemes to ensure that all schemes have the necessary information to refer a consumer to the right scheme, given their particular issues.</p> <p>FOS already handles 87% of all disputes registered with CIO and FOS. In addition to this, FOS receives about 19% of all CIO disputes in the first instance. Because these disputes are about members of CIO, we refer the applicants directly to CIO. Given the current published CIO dispute volumes, this means that we actually receive 89% of all financial disputes received into EDR. The cost benefit of an additional triage service to direct about 10% of all disputes to the ‘right place’ is therefore doubtful.</p>