



Victorian Access to Justice Review

Financial Ombudsman Service Australia Submission

March 2016



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Executive summary

Financial Ombudsman Service (FOS) Australia is an ASIC-approved independent external dispute resolution (EDR) scheme that covers disputes across the financial sector.¹

FOS made a submission to the Productivity Commission's recent inquiry into access to justice arrangements in December 2013². We now welcome the opportunity to contribute to the Victorian Access to Justice Review.

This submission³ addresses Items 1, 2, 3, 4 and 6 of the Review's Terms of Reference. Key information provided in this submission is noted below.

Easily accessible information about dispute resolution – Item 1

Section 3 explains how FOS provides information about dispute resolution services and key issues that arise in disputes we consider, including information on how we assist consumers with additional needs.

Alternatives to civil litigation – Item 2

Section 4 discusses the situations where consumers of financial services may resolve disputes through FOS instead of civil litigation.

Expansion of alternative dispute resolution mechanisms – Item 3

Section 5 notes recent and planned improvements to the services FOS provides and ways in which the use of FOS could be increased.

Reforms to the Victorian Civil and Administrative Tribunal (VCAT) – Item 4

Section 6 provides information about the processes of FOS, and recent changes to improve their efficiency, which could be considered when developing reforms to VCAT.

Funding of legal assistance providers – Item 6

Section 7 highlights the need to develop a sustainable funding model for community financial counselling, legal aid and specialist legal centres.

If we can provide further input or assistance, please contact us.

¹ FOS is approved by ASIC under its Regulatory Guide 139 which is available under 'Regulatory Resources' on www.asic.gov.au.

² See [submission made by FOS in December 2013](#).

³ This submission has been prepared by the Office of the Chief Ombudsman and does not necessarily represent the views of the Board of FOS. It draws on the experience of FOS and its predecessor schemes in the resolution of disputes about financial services.

1 Introduction

FOS provides access to justice by operating as an alternative dispute resolution service.

To very briefly note our main activities, we provide these statistics, which relate to the year from 1 July 2014 to 30 June 2015⁴:

Total disputes received	31,895 (up by 1% from 2013-2014 ⁵)	
Total disputes closed	34,714 (up by 4% from 2013-2014)	
Financial difficulty disputes accepted	4,134 (down by 12% from 2013-2014)	
Systemic issues resolved	52	
Investigations of alleged breaches of industry codes of practice	347	
Members	Licensees: 4,849	Authorised credit representatives: 9,258
Phone calls handled by FOS contact team	210,420 (down 5% from 2013-2014)	
Visits to FOS website	602,542 (up by 3% from 2013-2014)	

FOS made a submission to the Productivity Commission's recent inquiry into access to justice arrangements⁶. The Productivity Commission's report concluded that industry-based dispute resolution schemes such as FOS are performing well and considered whether design features of those schemes could be introduced in other dispute resolution organisations.⁷

The final report of the Government's Financial System Inquiry, released in December 2014, also indicated that alternative dispute resolution systems for financial services are 'generally working well'. The report expressly recognised 'the importance of continuing to have an adequate consumer dispute resolution' in the financial sector.⁸

We have continued to enhance our services and, in particular, improve consumer access to the services, since making our submission to the Productivity Commission's inquiry. If

⁴ For more detail, see our [2015-2016 Business Plan](#).

⁵ This and later references to years in this submission are to years from July 1 to June 30.

⁶ See [submission made by FOS in December 2013](#).

⁷ See Chapter 9 of the Productivity Commission's [Report 72, Access to Justice Arrangements](#), 5 September 2014.

⁸ See page 194 of the Australian Government's [Financial System Inquiry Final Report](#), November 2014.

updates of particular statistics in that submission would assist the Review, we would be happy to provide the updates. Recent statistics can also be found in our [Annual Review 2014-2015](#).

2 Overview of FOS

2.1 Our role

FOS serves the community by resolving disputes between consumers and their financial services providers in a way people can trust. FOS is an independent organisation and our service is free to consumers.

2.2 Industry-based dispute resolution

FOS and other industry-based dispute resolution schemes have been developed to give the Australian community a cheaper, quicker and less formal alternative to the courts. Reforms to financial sector regulation have recognised the importance of consumers having access to a low-cost means to resolve disputes with financial services providers. Access to an independent third party review of a complaint supports consumer confidence in Australia's financial sector.

EDR in the financial sector has developed through a commitment from the major participants – consumer organisations, financial services providers, government and the regulators – to effective mechanisms for non-court based consumer EDR. The formal components of this commitment are the regulatory accountability arrangements established by ASIC and our [Terms of Reference](#), which outline the types of disputes we can consider and act as a contract between us and our members.

2.3 Our approach

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

2.4 Trust

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

Therefore, at the heart of what FOS deals with is consumers' loss of trust in financial services. We see our role largely as helping restore that trust, and in doing so we:

- act as an impartial and independent third party in resolving disputes between consumers and their financial services providers

- share our experience to help prevent future disputes
- identify systemic issues and work with financial services providers to address the effect these systemic issues have beyond the consumer who brought the dispute to FOS and
- play a role in the way financial services providers serve their customers.

2.5 Further information

Information about FOS is set out in full on our website at www.fos.org.au. Appendix 1 summarises key points.

3 Terms of Reference - Item 1

Item 1 of the Review's Terms of Reference is:

'the availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems'.

This section of the submission explains how FOS provides information about:

- dispute resolution services and
- key issues that arise in disputes we consider.

Some of our information is designed specially to help consumers with additional needs to access our services and resources. Section 3.2 explains how we make this information available.

Making FOS as accessible as possible is one of our top priorities for the 2015-2016 year.

3.1 Dispute resolution services for all consumers

3.1.1 Website

Our website provides comprehensive, easy-to-read information about our dispute resolution services. The '[Resolving Disputes](#)' and '[Consumers](#)' tabs on the home page are the main channels to this information, which includes simple overviews as well as detailed material.

We also provide information through our website to assist in the resolution of common legal problems. For example:

- 'FOS Approach' documents

We have created FOS Approach documents to help individuals, small business owners and financial services providers to better understand how we reach decisions about key issues that arise in disputes we consider.

FOS approach documents are designed to promote early resolution of disputes by the parties themselves, so that only the more complex and difficult make their way to FOS. For disputes that are referred to us, the documents are designed to explain what we expect from both parties and how we will approach their dispute. As a rule, each document contains an introduction, key summary points, a guide to our approach, a case study and useful links.

FOS Approach documents can be accessed easily through our website⁹. Examples of the subjects covered in the documents are:

- financial difficulty
- misleading conduct
- mortgagee sales and
- responsible lending.

- Determinations

Determinations are formal decisions made by FOS about disputes. We publish determinations on our website, where they can be searched.

If consumers want to find out how we have decided disputes that raised particular legal problems, they can search for published determinations about that category of disputes. We offer to help people to use our search facilities.¹⁰

- Case studies

We produce case studies to highlight trends that appear to be affecting consumers and financial services providers. The case studies, which are published on our website, provide information about resolution of legal problems raised in recent disputes. Indexing allows the case studies to be searched efficiently.¹¹

3.1.2 Stakeholder engagement

Through our stakeholder engagement program, we give stakeholders including consumer organisations information about our dispute resolution services and the way we approach issues that arise commonly in disputes.

Our regular stakeholder engagement activities include:

- convening our Consumer Liaison Group

This group, which includes consumer advocates and representatives, works to help make FOS more accessible and:

- increase and improve engagement between FOS and the community sector

⁹ See '[Our Approach](#)' under the 'Publications' tab on our website.

¹⁰ For further detail, see '[Search decisions](#)' under the 'Resolving Disputes' tab on our website.

¹¹ See '[Case Studies](#)' under the 'Resolving Disputes' tab on our website.

- promote better understanding of key dispute resolution issues and
- provide a mechanism to communicate updates between FOS and the community sector.
- holding our National Conference, where we encourage stakeholders to raise and discuss any questions they have about our processes or issues giving rise to disputes
- conducting a range of other events including training sessions, forums, regular meetings and webinars
- attending and presenting at conferences, education sessions and other events held by consumer organisations and other agencies that work with vulnerable and disadvantaged consumers and
- working closely with financial counsellors through their national and state bodies.¹²

During the 2014-2015 year, we expanded our community outreach program and also took these steps to make FOS more accessible for consumers:

- enhanced the presentation of information on our website and in our publications

For example, in 2014-2015:

- we added new videos to our online resources explaining our dispute resolution process, the services we provide and how we can help consumers
- we made our website and other communications more accessible for people with visual impairment by introducing better contrasting colours and addressing other accessibility issues and
- we included transcripts in our online videos.
- produced new guidelines for our staff to improve the accessibility of our services, with a focus on disadvantaged and vulnerable consumers
- developed a new electronic statement of financial position and an online dispute form and
- continued our efforts to reach community groups such as Aboriginal and Torres Strait Islander people and culturally and linguistically diverse communities.

3.1.3 Phone inquiries

Consumers may lodge their disputes over the phone or call FOS for general information about our processes. If we cannot help, we try to refer the caller to the appropriate agency or service.

¹² For details of our stakeholder engagement activities, see pages 25 to 30 of our [Annual Review 2014-2015](#).

FOS received 210,420 calls in 2014-2015. This was 5% fewer calls than we received in 2013-2015 and the decrease corresponds with the increase in the number of disputes registered through our website over the same period.

In 2014-2015, we improved our greeting to callers making their first contact with FOS and developed a plain English script for their calls. We also introduced a toll free call number to allow people to call us free of charge from most phones.

3.1.4 Media relations

FOS works with media outlets throughout Australia to share the knowledge and experience of our Ombudsmen and other experts with the broader community and help to develop community awareness of dispute resolution services. We respond to inquiries about our service and inform debate about dispute resolution and consumer and financial issues.

3.2 Assistance for consumers with additional needs

At FOS, we are committed to meeting any additional needs of consumers, and breaking down any barriers to accessibility that consumers may experience.

Some of the factors that may affect access to our service include:

- language barriers, especially where English is not a consumer's first language
- hearing, speech and vision and other physical and medical conditions
- literacy issues
- mental health conditions and
- social and economic issues.

The first step in lodging a dispute with FOS is filling out a dispute form. This may be done online, by sending us a hard copy of the form, or over the phone. The dispute form asks how we can help the consumer. If the consumer indicates they may need help, a FOS staff member phones the consumer to discuss different ways in which we can communicate and other assistance we can provide. We meet consumers' additional needs by:

- providing extra support
- referring consumers to support agencies such as community legal centres, legal aid offices, financial counsellors, police and organisations able to help with mental health issues or
- being more flexible in our approach to the dispute resolution process – for example, by:
 - allowing consumers extra time to respond to requests or

- expediting a dispute if we consider it warrants our immediate direct involvement.

Our website explains the extra support we provide for consumers with additional needs. The home page features a 'Special Assistance' section, which provides:

- 'Accessibility help'

This refers to, for example, information provided in Auslan by video, services to convert on-screen text to speech and a mechanism to adjust text size.

- lists of sources of additional assistance

Examples of additional assistance offered include:

- the National Relay Service for people with hearing and/or speech impairment and
- translation and interpreter services to support consumers who would benefit from communicating in a language other than English.
- brochures about our services, translated into Arabic, Chinese, Farsi, Greek, Italian, Korean, Spanish, Turkish and Vietnamese.

Other information on our website explaining extra support includes:

- information about consumer advocates, and how they can help consumers with disputes (provided through the '[Community](#)' tab on our website) and
- a consumer fact sheet '[Accessing FOS – how can we help?](#)' (provided through the 'About Us' tab on our website, under 'Accessibility').

The fact sheet explains how we can adapt our approach to meet the needs of consumers and includes the simple guide set out below to help consumers communicate with FOS.

Hearing and speech

You can contact us through the National Relay Service using:

- TTY/Voice Text Telephone
- Speak and Listen
- Internet Relay

You can also nominate email (or post) as your preferred method of communication.

Mental Health

If you have a mental health issue, we would like to understand if you see this affecting your ability to engage with us to resolve your dispute.

You can choose to:

- Nominate email (or post) as your preferred method of communication
- Lodge your dispute over the phone.

Language

At your request:

We can provide information about our services in different languages

You can write to us in your preferred language and we will have your correspondence translated.

We can arrange for our correspondence to be translated into your preferred language.

Vision

You can increase the font size on our website as needed.

At your request:

We can mail a dispute form to you in a large font size, eg 16pt or larger.

We can print our correspondence to you in a large font size, eg 16pt or larger.

You can lodge your dispute over the phone.

4 Terms of Reference – Item 2

Item 2 of the Review’s Terms of Reference is:

‘options for diverting people from civil litigation and into alternative services where appropriate, such as a “triage” model’.

Dispute resolution through FOS is an alternative to legal proceedings through the courts. By handling disputes, we in effect divert people from civil litigation. To provide detail about the disputes we handle, section 4.1 outlines our jurisdiction.

Consumers with claims against financial services providers may lodge disputes with FOS and in that sense be diverted away from civil litigation **before** any litigation commences.

Once a consumer lodges a dispute with FOS against a financial services provider, civil litigation about the disputed matter by the financial services provider is limited strictly. To outline the situation under our Terms of Reference in simplified terms, the financial services provider may not:

- commence legal proceedings (subject to certain exceptions) or
- seek judgment in a case where the financial services provider commenced debt recovery proceedings before the dispute was lodged.¹³

¹³ See paragraph 13.1 of our Terms of Reference and the guideline to that paragraph in our [Operational Guidelines](#).

In some circumstances, a consumer can lodge a dispute with FOS **after** the financial services provider has commenced civil litigation against the consumer. In these limited circumstances, aspects of disputes are handled by FOS – not by the court in which the litigation has commenced. Section 4.2 provides more information about this part of our jurisdiction.

4.1 Jurisdiction of FOS

Our jurisdiction is set out in Section B of our Terms of Reference and explained in detail in our [Operational Guidelines](#). Section B provides for matters including:

- who can access our services ('eligibility')
- the types of disputes we can consider and
- the monetary limit to our jurisdiction.

The provisions referred to above meet requirements imposed by ASIC's Regulatory Guide 139 *Approval and oversight of external dispute resolution schemes*¹⁴ (Regulatory Guide 139). To operate as an EDR scheme in the financial services industry, FOS needs to continue to meet the requirements in Regulatory Guide 139.

4.1.1 Access to our services

Consumers of financial services who are individuals or certain small businesses may be eligible to lodge disputes with FOS.¹⁵

4.1.2 Types of disputes we can consider

We can consider a dispute lodged by an applicant if it is within, and not excluded from, our jurisdiction. The main requirements that a dispute must meet to fall within our jurisdiction are noted briefly below.

- The dispute must relate to:
 - a contract or obligation arising under Australian law
 - a particular type of collective investment offered in Australia or
 - an investment in a product offered through a platform in Australia.
- The subject of the dispute must be:
 - a financial service provided to the applicant

¹⁴ See 'Regulatory Resources' on www.asic.gov.au.

¹⁵ See paragraph 4.1 of our Terms of Reference and the guideline to that paragraph in our [Operational Guidelines](#) for more detail on eligibility requirements.

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

Disputes referred to in paragraph 5.1 of the Terms of Reference are excluded from our jurisdiction. To mention a few examples, this provision excludes:

- certain disputes about the performance of investments
- disputes already dealt with in another forum
- certain disputes about levels of fees and
- disputes about assessments of the credit risk posed by a borrower or the security required for a loan.

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

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

Our jurisdiction in relation to general insurance products is limited by paragraph 4.3. Paragraph 20.1 imposes particular limitations in regard to small business insurance products.

4.1.3 Our monetary limits

Paragraph 5.1o) of our Terms of Reference sets \$500,000 per claim as the monetary limit of our jurisdiction. That provision states that we may not consider a dispute in which the value of the claim exceeds \$500,000. This is the figure used in the retail client test under section 761G of the *Corporations Act 2001*.

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

A compensation cap must be at least \$150,000 for a claim against a general insurance broker and at least \$280,000 for other claims. At present, our Terms of Reference set a \$166,000 cap for claims against general insurance brokers and a \$309,000 cap for other claims. The caps are required to be adjusted in accordance with an indexation formula specified in paragraph 9.8 of our Terms of Reference.

4.2 Legal proceedings disputes

A legal proceedings dispute is a dispute relating to debt recovery lodged with FOS after the financial services provider has already commenced debt recovery proceedings against the consumer. FOS can consider these disputes as long as the consumer has not taken a step beyond lodging a defence or a defence and counterclaim in the proceedings.¹⁶

After a legal proceedings dispute is lodged, the financial services provider cannot take steps in its proceedings other than steps necessary to preserve its legal rights.¹⁷ Once we determine that a dispute is a legal proceedings dispute, we treat it as urgent and expedite it through our dispute resolution processes.

FOS accepted 1425 legal proceedings disputes in 2014-2015. Of the legal proceedings disputes that reached outcomes in that year:

- 20% were resolved by the financial services provider
- 15% reached outcomes through FOS conciliations and
- 13% were settled by negotiation.¹⁸

5 Terms of Reference – Item 3

Item 3 of the Review's Terms of Reference is:

'whether and how alternative dispute resolution mechanisms should be expanded so that more Victorians can make use of them'.

5.1 Improvements to our services

The Review will consider whether alternative dispute resolution mechanisms including FOS should be expanded. We anticipate this will involve considering the services we offer at present and our plans to improve those services.

¹⁶ Paragraph 5.1r) of our Terms of Reference excludes certain small business disputes from our jurisdiction. If the consumer in a legal proceedings dispute is a small business, FOS cannot consider the dispute if it concerns a credit contract with a credit limit of over \$2 million.

¹⁷ See paragraph 13.1 of our Terms of Reference and the guideline to that paragraph in our [Operational Guidelines](#).

¹⁸ See page 93 of our [Annual Review 2014-2015](#) for full details of outcomes.

As noted in the introduction, reports of inquiries released in 2014 indicated that FOS was performing well. Since those reports were released, we have completed implementation of the recommendations made in the independent review of FOS conducted in 2013. These recommendations are discussed in section 6.2 below.

We have identified areas in which our services could be improved further and have done a substantial amount of work to progress the improvements that are required in our view. Two of these areas are discussed briefly below.

5.1.1 Unpaid determinations

Some consumers awarded compensation in formal decisions made by FOS, known as 'determinations', have not received their compensation. This problem of unpaid determinations has persisted, and grown, in recent years. We have highlighted the problem in submissions to inquiries and other public statements, explaining the reasons for non-payment, the scale of the problem and how it undermines the effectiveness of EDR arrangements for financial services.¹⁹

Our quarterly publication, *The FOS Circular*, provides regular updates on unpaid determinations. The most recent update²⁰ includes these statistics.

- From 1 January 2010 to 31 December 2015, 34 financial services providers were unwilling or unable to comply with 136 determinations made in favour of approximately 192 consumers.
- The value of the outstanding amounts awarded by these determinations was \$12,594,735.82 plus interest as at 31 December 2015.
- Including interest awarded, and adjusted for inflation over time on a simplified per annum basis, the real value of this uncompensated loss was \$16,622,513.74.

To address the problem of unpaid determinations, we have consistently recommended that a limited last resort compensation fund should be established. In June 2015, we released an updated proposal to establish such a fund.²¹ We are continuing to advocate establishment of a fund and participate in discussions about issues associated with unpaid determinations.

5.1.2 Remediation programs

If the conduct of a financial services provider causes a large number of consumers to suffer loss, the financial services provider may need to establish and operate a remediation program to provide redress. Consumers who participate in such a

¹⁹ See, for example, our submissions to the Financial System Inquiry in [August 2014](#) and [March 2015](#) and our submission to the Senate inquiry into the scrutiny of financial advice in [December 2014](#).

²⁰ *The FOS Circular, Issue 24*, issued in January 2016.

²¹ See updated [proposal](#) released by FOS on 1 June 2015.

program can obtain compensation for loss without being involved in court proceedings.

To date, there has not been any specific regulatory guidance for remediation programs to ensure a consistent, transparent and efficient approach to similar matters across consumers and financial services providers. FOS drew attention to this gap in regulation recently²² and ASIC is now developing the necessary guidelines.²³

ASIC's proposed guidelines will give FOS a key role in remediation programs. The role will include, for example:

- agreeing details of programs, such as limits to compensation payments and timeframes for action, with financial services providers
- conducting external reviews of decisions sought by consumers and
- handling certain complaints about programs.

Remediation programs can provide an alternative to court proceedings for consumers. We anticipate that remediation programs will operate more satisfactorily for consumers after the proposed guidelines start to apply.

5.2 Increasing use of FOS

One way to expand our services so that more consumers can use them would be to expand our jurisdiction. This would require amendments to our Terms of Reference.

Terms of Reference amendments can only be made in accordance with the process specified in our Constitution²⁴, which requires consultation with ASIC, our members and other stakeholders. Any amendments would need to accord with the financial services legislation and ASIC's guidance on dispute resolution.²⁵

Without changing our jurisdiction, use of our services could be increased by raising the profile of FOS and making it more accessible to consumers. We note, however, that our ongoing work already includes a highly developed consumer engagement program which aims to raise the profile of FOS and increase its accessibility. Details of our consumer engagement work are set out in our recent annual reviews and business plans²⁶ and referred to in section 3.1.2 above.

²² See public submissions made by FOS such as our submission to the Financial System Inquiry in March 2015.

²³ For more detail, see ASIC's Consultation Paper 247 available under 'Regulatory Resources' on www.asic.gov.au.

²⁴ See clause 14 of the [Constitution](#) of FOS.

²⁵ See ASIC's Regulatory Guides 139 and 165 available under 'Regulatory Resources' on www.asic.gov.au.

²⁶ See, for example, pages 25 to 30 of our [Annual Review 2014-2015](#) and our [2015-2016 Business Plan](#).

6 Terms of Reference – Item 4

Item 4 of the Review's Terms of Reference is:

'potential reform to the jurisdiction, practice and procedures of VCAT to make the resolution of small civil claims as simple, affordable and efficient as possible'.

FOS is designed to provide a simpler, quicker alternative to the courts for consumers with unresolved complaints against their financial services providers. When developing reforms to the jurisdiction, practice and procedures of VCAT, it may be helpful to consider:

- the dispute resolution processes of FOS and
- reforms implemented recently to improve our processes, which were directed chiefly to improve efficiency without compromising fairness. Our dispute resolution processes

6.1 Our dispute resolution processes

As indicated in section 3.1.1 above, our dispute resolution processes are explained fully on our website. Information about the processes can be accessed easily through the 'Resolving Disputes' and 'Consumers' tabs on our home page.

An outline of our dispute resolution processes, noting timeframes, is set out in Appendix 2.

6.2 Recent reforms to our processes

ASIC's Regulatory Guide 139 requires FOS to undertake an independent review every 5 years and specifies how the reviews must be conducted. Independent reviews, which assess an EDR scheme's performance in qualitative as well as quantitative terms, are designed to provide feedback on how the scheme should evolve and highlight any need for change or improvement.

The first independent review of FOS was conducted in 2013. It examined:

- the accessibility, independence, fairness, accountability, efficiency and effectiveness of our services
- our jurisdiction and
- our dispute resolution processes.

The key recommendations of the independent review focussed on the need for FOS to increase the pace of its efforts to eliminate dispute backlogs and reshape its

processes to reduce the time taken to resolve new disputes. The recommendations are set out in full on our website together with our responses.²⁷

FOS implemented changes that eliminated our dispute backlogs by June 2015 and streamlined our processes. The changes included:

- introducing a new process to fast-track decisions for simpler and low-value disputes
- altering processes to give financial services providers an additional opportunity to resolve disputes directly with consumers
- allowing specialist expertise to be used earlier in disputes and reducing multiple 'touch points' and procedural stages
- developing a more efficient financial difficulty dispute resolution process with earlier contact, flexible pathways and consistent decision making and
- more effectively communicating outcomes of disputes.

The recent changes have improved the performance of FOS in several important respects. Our 2015-2016 Business Plan explains the improvements in detail. Points that may be of particular interest to the Review include:

- consumer satisfaction rates improved
- our clearance ratio²⁸ increased significantly
- statistics for 2014-2015 showed
 - only 3% of open disputes were over 365 days old
 - 83% of disputes were closed within 180 days
 - 95% of disputes were closed within 365 days and
 - FOS closed 26.92 disputes per quarter per full time employee.

7 Terms of Reference – Item 6

Item 6 of the Review's Terms of Reference is:

'the availability and distribution of funding amongst legal assistance providers by the Victorian and Commonwealth governments to best meet legal need'.

²⁷ See [Independent Review Recommendations action table](#) on our website.

²⁸ The clearance ratio compares the number of disputes we closed with the number we received.

7.1 Assistance required by consumers

Community financial counselling, legal aid and specialist legal centres play a very valuable role in the financial sector. They raise the standard of practical financial literacy, help consumers to avoid financial problems and, where problems do arise, help consumers to pursue and resolve disputes.

Recently, FOS became aware of gaps in the availability of financial counselling services and consumers indicated that they had encountered long delays when accessing these services. When financial counselling is not available, or only available after long delays, consumers' financial problems are exacerbated and their wellbeing suffers.

We consider that without community counselling and legal services, many vulnerable and disadvantaged consumers could not take complaints about financial services to their financial services providers or escalate complaints to EDR schemes. Reflecting our role as an EDR scheme, our comments focus on the issue of access to complaint-handling services for the financial sector. We consider that our comments apply to the issue of access to justice generally, however.

7.2 Debt management firms

If consumers cannot obtain assistance free of charge, they may turn to debt management firms. These firms promise to help consumers by:

- developing and managing budgets
- negotiating with creditors and debt collectors
- arranging debt agreements and
- removing default listings or other information on credit reports.

For fees, debt management firms already act on behalf of consumers in disputes handled by FOS – taking steps that consumers could take themselves²⁹. Our experience indicates that these firms may not add value when dealing with FOS.³⁰

In the financial sector, EDR services are designed to be used by consumers without legal representation or other professional assistance, and dispute processes assume that stakeholders will be co-operative. We are concerned that the continued involvement of debt management firms may cause parties to disputes to adopt more adversarial approaches. This could make dispute resolution processes slower and less efficient. We are also concerned that significant costs are incurred in dealing

²⁹ When consumers need assistance with our dispute processes, we provide assistance free of charge.

³⁰ For further information about how debt management firms may adversely affect consumers and dispute resolution, see [ASIC's Report 465](#) released in January 2016 *Paying to get out of debt or clear your record: The promise of debt management firms* and information about the situation in the United Kingdom noted in section 7.3 of our [first submission to the Financial System Inquiry](#).

with debt management firms pursuing complaints that may not be meritorious or in the interests of the consumers they claim to represent.

On 1 January 2015, we added paragraph 6.1d) to our Terms of Reference to address issues relating to debt management firms. The provision allows us to decline to accept a dispute in which a paid agent is acting for the consumer if the agent's conduct is not in the consumer's best interest or information required by FOS is not provided. Our Operational Guidelines explain paragraph 6.1d) in more detail.³¹

At an experts' 'roundtable' held on 18 February 2016, about 40 representatives of consumer advocacy organisations, industry associations, Ombudsmen including FOS and regulators met to discuss the social and industry impacts of debt management firms. The experts reached a consensus³² that introducing a regulatory framework for these firms could improve their conduct, protect consumers, enhance consumer outcomes and reduce industry costs. The regulatory framework could, for example:

- require debt management firms to join a dispute resolution scheme such as FOS to ensure consumer complaints about the firms are handled satisfactorily and
- allow the firms to lodge consumers' disputes with dispute resolution schemes only if they have a reasonable basis.

7.3 Funding

FOS strongly supports the important role community financial counselling, legal aid and specialist legal centres play in helping vulnerable consumers and providing a vital referral point to dispute resolution mechanisms such as FOS. For this reason, we continue³³ to call for the development of a sustainable funding model for community financial counselling, legal aid and specialist legal centres.

³¹ See the guideline to paragraph 6.1 in our [Operational Guidelines](#).

³² For details of the consensus reached, see the [communique](#) released.

³³ We have called for the development of a sustainable funding model on several occasions. See, for example, our [first](#) and [third](#) submissions to the Financial System Inquiry and our [media release](#) on 21 January 2016.

Appendix 1 - About FOS

FOS was formed in 2008 from the merger of three predecessor schemes organised largely along industry sector lines. The original participants were:

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

On 1 January 2009, two other schemes joined FOS, namely:

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

FOS is an ASIC-approved independent EDR scheme that covers disputes across the financial sector. Our service is free to consumers and is funded through a combination of levies and case fees paid by our members, which are financial services providers.

Our operations are governed by our Terms of Reference that form a contract with our members. The Terms of Reference are available on our website.

FOS and its predecessor schemes have over 20 years' experience in providing dispute resolution services in the financial services sector. FOS provides services to resolve disputes between member financial services providers and consumers, including certain small businesses, about financial services such as:

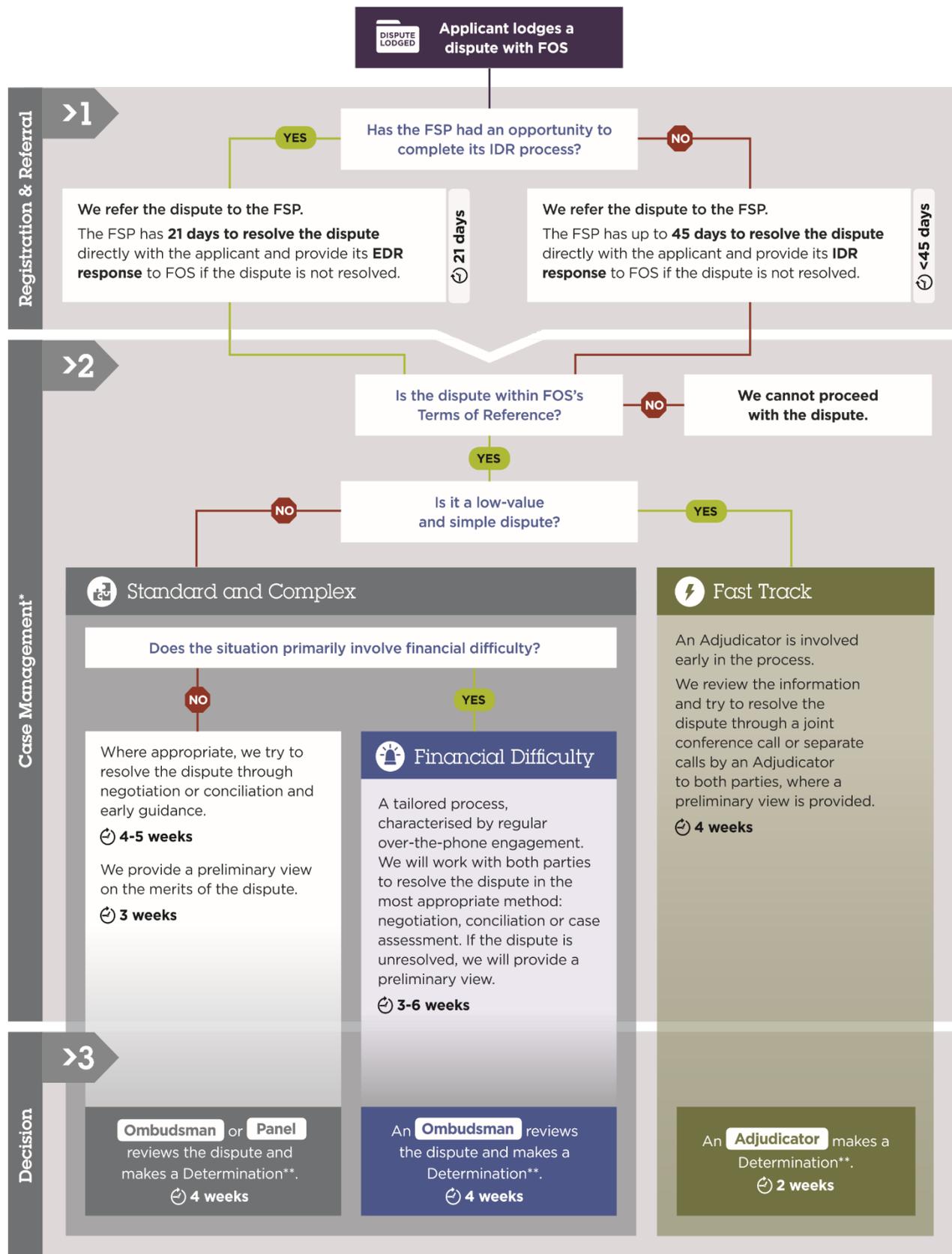
- banking
- credit
- loans
- general insurance
- life insurance
- financial planning
- investments
- stock broking
- managed funds, and
- pooled superannuation trusts.

As well as its functions in relation to dispute resolution, FOS has responsibilities to identify and resolve systemic issues and obligations to make certain reports to ASIC. FOS also provides code monitoring, administration and secretariat services to four Code Compliance Committees who monitor financial services providers' compliance with industry codes of practice.

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

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

Appendix 2 - FOS dispute resolution process map



These are average expected timeframes.

*A single case worker will manage the dispute wherever possible.

**A financial services provider is bound by a Determination if an Applicant accepts it.