

CREDIT OMBUDSMAN SERVICE LIMITED

ACN 104 961 882

CREDIT OMBUDSMAN RULES

Second Edition

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CREDIT OMBUDSMAN SERVICE LIMITED

CREDIT OMBUDSMAN RULES **Second Edition**

About the Credit Ombudsman Service

Introduction

1. The Credit Ombudsman Service (“COS”) has been established by Credit Ombudsman Service Limited (“the Company”) as an External Dispute Resolution Scheme providing to Consumers an alternative to legal proceedings for the resolution of disputes with members of the Company (“Members”).
2. The broad aim of COS is to provide an independent and prompt resolution of disputes having regard to:
 - (a) relevant legal requirements;
 - (b) the MIAA Code of Practice and other Recognized Codes of Practice;
 - (c) good practice in the Credit Industry; and
 - (d) fairness in all the circumstances.
3. Consumers who elect to refer their complaint to COS can have their complaint determined by the Credit Ombudsman. Consumers are not bound by the Credit Ombudsman’s decision. Consumers who do not accept the Credit Ombudsman’s determination retain any legal rights they have to refer their complaint to a Court or a Tribunal. However the Credit Ombudsman’s decision is binding on a Member only if the Consumer accepts the Credit Ombudsman’s decision in full and final settlement of the Consumer’s complaint. Consumers who accept the Credit Ombudsman’s determination may be required to sign a document that has the effect of precluding the Consumer from later bringing legal or other proceedings against the Member in relation to the matters that were the subject of the complaint.

Who is Credit Ombudsman Service Limited?

4. This is an incorporated company. The Members of the Company are individuals, firms and corporations that operate in the Credit Industry and who agree to be bound by the Credit Ombudsman Rules and the MIAA Code of Practice or other

Recognized Code of Practice. The Company has a board of directors which comprises:

- (a) an independent Chairman, and
- (b) an equal number of Consumer Representatives and Members Representatives.

5. The main objectives of the Company are to:

- (a) act as the primary disputes resolution body for the Credit Industry, and
- (b) actively facilitate the resolution of disputes concerning all aspects of the provision of credit and associated services to Consumers by Members.

How does COS work?

6. The Company has established these rules called the Credit Ombudsman Rules. These Rules set out:

- (a) who can make a complaint to COS
- (b) what matters can be the subject of a complaint
- (c) what matters are not covered by COS
- (d) what procedures apply for making a complaint to COS and having that complaint resolved.

7. COS is supervised by the Board.

8. The day to day functions of COS are carried out by the Scheme Manager. The Scheme Manager is responsible for:

- (a) managing the receipt and resolution of complaints, and
- (b) carrying out a conciliation role as between Consumers and Members, before the Credit Ombudsman becomes involved and is called upon to make a determination.

9. The Credit Ombudsman is a person appointed from a panel of people independent of the Company and the Members. The Credit Ombudsman deals with disputes between Consumers and Members and can hand down a binding determination or "Award".

When did COS commence?

10. COS commenced operations on 1st August, 2000. COS was initially established by MIAA under the supervision of the Credit Industry Review Committee. On 1st July 2003 the Company was incorporated as an entity independent of MIAA. Different versions of the Credit Ombudsman Rules

will operate in respect of your complaint depending on the date of receipt of your complaint.

- 10A. The Second Edition of the Credit Ombudsman Rules takes effect on such date as the Board specifies for the purpose and publishes on the COSL website and will apply to:
- (a) all reviews of COS's decisions or of Board Directions requested or commenced after the Second Edition of the Credit Ombudsman Rules takes effect; and
 - (b) all legal proceedings commenced after the Second Edition of the Credit Ombudsman Rules takes effect to have set aside or otherwise challenge a COS decision or a Board Direction;
- irrespective of:
- (c) whether the subject complaint was received before or after the Second Edition of the Credit Ombudsman Rules takes effect; and
 - (d) whether the particular COS decision or Board Direction was issued before or after the Second Edition of the Credit Ombudsman Rules takes effect.

Who can make a complaint to COS?

11. You can make a complaint to COS about Member Services provided to you by a Member if you are a Consumer and, in relation to those Member Services, you have dealt with a Member:
- (a) as a Borrower or prospective Borrower
- or
- (b) as a Loan Guarantor or prospective Loan Guarantor.
- 11A. Even if you are not a Consumer, if the Board gives its approval and you pay whatever fee may be prescribed by the Board for the purpose, you can make a complaint to COS about Member Services provided to you by a Member where, in relation to those Member Services, you have dealt with a Member:
- (a) as a Borrower or prospective Borrower
- or
- (b) as a Loan Guarantor or prospective Loan Guarantor.

What kinds of complaints are covered by COS?

12. You can make a complaint to COS about Member Services provided to you by a Member so long as those Member Services directly relate to your being provided or

applying to be provided with Credit or your becoming or being or invited to become a Loan Guarantor.

13. You can make a complaint if you believe that the Member has, in providing Member Services to you:
 - (a) breached relevant laws
 - (b) breached the MIAA Code of Practice or other Recognized Code of Practice
 - (c) not met standards of good practice in the Credit Industry, or
 - (d) acted unfairly towards you.

14. You can claim compensation up to \$100,000 for any Direct Loss you have suffered as a result of the Member's conduct. This amount may be increased by the Board from time to time.

15. Alternatively or in addition to claiming compensation, you can ask that the Member be ordered to do or refrain from doing some act in relation to the subject matter of your complaint.

16. If you are not claiming compensation or are not seeking orders against a Member, you cannot make a complaint to COS. If what you want is some disciplinary action against the Member and that Member is a member of MIAA or another Recognized Industry Body or is otherwise subject to disciplinary action by a Recognized Disciplinary Process, then you should send your complaint to the MIAA or that Recognized Industry Body or that Recognized Disciplinary Process. In the case of a MIAA member, the MIAA Tribunal will deal with your complaint under the MIAA's own Disciplinary Rules. In the case of a member of a Recognized Industry Body, that Recognized Industry Body will deal with your complaint through its own disciplinary tribunal or process. In the case of a Member who is subject to the rules of a Recognized Disciplinary Process, then that body will deal with your complaint under its own rules.

What kinds of complaints are not covered by COS?

17. Your complaint will not be dealt with by COS in any of the following cases:
 - (a) if your complaint is about a Member's acts or omissions that do not comprise or otherwise are not directly related to the Member providing Member Services to you
 - (b) if your complaint is about someone who:
 - (i) was not a Member at the time of the acts or omissions you are complaining about; or

(ii) is not a Member at the time you make the complaint

- (c) if your complaint is about a Member who is not obliged to comply with these Rules because that Member is a member of another external disputes resolution scheme approved by the Board
- (d) if you are claiming more than \$100,000 compensation in respect of your complaint or in the aggregate of all your complaints based on the same subject matter against the same Member
- (e) to the extent that any aspect of your complaint relates to acts, omissions, policies or commercial or other matters by or concerning someone other than the Member you are complaining about eg. a Lender's decision to refuse your Loan application, Loan interest rates, a Lender's policy to require mortgage insurance
- (f) [deleted]
- (g) to the extent that your complaint relates to the level of any legally permissible fee, charge or commission
- (h) to the extent that your complaint relates to any transaction entered into outside Australia
- (i) in the case of a secured Loan, where the security is situated or legally registered outside Australia or is governed by laws other than the laws of Australia
- (j) if you are not seeking compensation or orders (see Rule 16) against a Member
- (k) to the extent that you are seeking compensation other than compensation for Direct Loss
- (l) if you were not the Borrower, prospective Borrower, Loan Guarantor or prospective Loan Guarantor to whom the Member Services in question were directly provided by the Member
- (m) if the Member's act or omission you are complaining about (or the earliest of them) occurred more than 6 years before the date of receipt of your complaint by COS or before the date of commencement of these Rules (note: different versions of the Credit Ombudsman Rules will operate in respect of your complaint depending on the date of receipt of your complaint – refer to Rule 10) (whichever is the shorter period)
- (n) if you have previously made a complaint about the same Member which has been considered by COS, unless relevant new evidence is available
- (o) if the subject matter of your complaint is already the subject of proceedings before a court, tribunal, arbitrator, other ombudsman or other Dispute Resolution Scheme or is under investigation by any ombudsman, unless:

- (i) both you and the Member consent in writing to your complaint being considered by COS; or
 - (ii) the proceedings were commenced by the Member on or after the date of receipt of your written complaint by COS – but this exception will not apply if the proceedings concern the subject matter of a proper Objection Notice that the Member has given COS under Rule 70
- (p) if your complaint has already been determined by a court, tribunal, arbitrator or ombudsman, or other dispute resolution scheme unless the particular proceedings leading to the determination of your complaint were commenced on or after the date of receipt of your written complaint by COS – but this exception will not apply if the proceedings concerned the subject matter of a proper Objection Notice that the Member has given COS under Rule 70
- (q) if it is more appropriate that your complaint be dealt with by a court or another independent complaints or dispute resolution or arbitration procedure
- (r) if the complaint involves an issue which might have important consequences for the Member or the Credit Industry, or an important or novel point of law, and is dealt with under the special procedures set out in Rules 70 to 75
- (s) if COS is satisfied at the time of receiving your complaint, or at any time after receiving your complaint that:
- (i) if the matters set out in your complaint were found to be true, these matters would not constitute:
 - (A) a breach of relevant laws by the Member;
 - (B) a breach of the MIAA Code of Practice or other Recognized Code of Practice by the Member;
 - (C) a failure by the Member to meet standards of good practice in the Credit Industry; or
 - (D) the Member acting unfairly towards you; or
 - (ii) your complaint is frivolous or vexatious or is being pursued by you in a frivolous or vexatious manner or for an improper purpose.

What happens if my complaint is not covered by COS?

18. If your complaint is not covered by COS, COS will write to you letting you know that, and giving you reasons why your complaint is not covered by COS.

Do I have to pay any fees when I take my complaint to COS?

19. You do not have to pay any fee if you are a natural person or a “small business”. However other complainants must pay whatever fees the Board prescribes from time to time. COS will let you know if you will be required to pay a fee to COS, before having your complaint dealt with.
20. If a fee is payable to COS, then COS does not have to do anything about your complaint until the fee is paid in full.

Is there anything I need to do first before making a complaint to COS?

21. Before taking your complaint to COS you must first of all try to resolve your complaint with the Member concerned, using the Member's Internal Dispute Resolution (or IDR) procedures. COS will not consider your complaint unless you have first attempted to resolve it with the Member.
22. Every Member must have IDR Procedures in place. As part of these Procedures, the Member must give you the name and contact details of the Member’s “Complaints Contact Person” in the “Broker Services Contract”, or other agreement between you and the Member, or otherwise before the Member starts to do the things it has undertaken to do for you. The Member must also promptly give you a copy of its IDR Procedures if you ask for them.
- 22A. In addition, COS can tell you what you need to do to have your complaint dealt with under a Member's IDR Procedures.
23. The Member's IDR Procedures require the Member to give you a substantive response as soon as possible, but within 45 days, after you lodge your complaint. If the Member cannot do this, the Member must give you reasons for the delay and inform you of your right to take your complaint to COS.
24. A Member will have substantively responded to you if the Member:
 - (a) accepts your complaint and if appropriate offers you redress, or
 - (b) offers you redress without accepting the complaint, or
 - (c) rejects your complaint.
25. Subject to Rule 26, if:
 - (a) the Member does not give you a substantive response to your complaint within 45 days, or

- (b) the Member gives you a substantive response but you consider that the response does not satisfactorily resolve your complaint, you may make a complaint to COS.
26. If COS thinks it appropriate to do so, COS may regard the Member's IDR Procedures as having been completed even though 45 days have not elapsed. In this case, COS may accept your written complaint and commence the COS EDR process.

Making a Complaint to COS

How do I make a complaint to COS?

27. You may make a complaint to COS:
- (a) by writing to COS
 - (b) by completing the complaint information through the COS web site
 - (c) by ringing COS and giving details of your complaint to COS.
28. If you ring COS you must afterwards set out your complaint in writing.
29. If you have any difficulty in presenting your complaint, COS will help you prepare it. In doing so, COS will not be “taking sides” but will simply help you present your complaint as clearly and concisely as possible.
30. When you make a complaint:
- (a) you do not need to use any formal, legal or technical language
 - (b) you must tell COS what compensation you want the Member to give you, or corrective action you want the Member to take to resolve your complaint
 - (c) you must give COS a copy of all documents that are relevant to your complaint
 - (d) you must give consent to COS sending a copy of your complaint and your documents to the Member you are complaining about.

What happens when COS receives my complaint?

31. If it has not done so already, COS will assess whether your complaint is covered by COS. If not, COS will write to you letting you know why your complaint is not covered by COS.

Can I have COS's decision that my complaint is excluded reviewed?

32. If you are dissatisfied with COS's decision to exclude your complaint, then you can write to COS and ask that your complaint be referred to the Credit Ombudsman for a Ruling whether or not your complaint is covered by COS. You must do this within 14 days of receiving COS's letter telling you that your complaint is excluded.
33. If you ask for the Credit Ombudsman to review COS's decision, the Credit Ombudsman will consider the matter and let you know the outcome as soon as practicable. The Credit Ombudsman's Ruling in respect of your complaint will be final and binding on you and the Member.

What happens once my complaint is accepted?

34. Provided that you have given all necessary consents, COS will send your complaint and accompanying documents to the Member concerned.
35. The Member must give its response to your complaint to COS promptly, and if possible within 21 days after COS has given the Member a copy of your complaint.
36. COS will send you a copy of the Member's response to your complaint as soon as practicable.

Dealing with your complaint – the Conciliation Phase

What do I do if I am not happy with the Member's response?

37. If you are dissatisfied with the Member's response to your complaint, you can ask COS to help in having your complaint resolved by a conciliation process. If you want COS to help you conciliate your complaint about the Member then you need to notify COS within 21 days after you receive your copy of the Member's response.
38. In the Conciliation Phase COS can use any available dispute resolution means which it thinks is appropriate to resolve your complaint by agreement between you and the Member. If the Board has given a direction to COS about the Conciliation Phase then COS must comply with that Board direction.
39. Subject to any direction by the Board, COS can:
 - (a) facilitate informal negotiations between you and the Member to resolve the matter
 - (b) conduct alternative dispute resolution processes such as mediation

- (c) make recommendations to you and the Member about resolving the dispute.
40. Neither you nor the Member will be bound by COS's recommendations unless you and the Member agree to them.

How long does the Conciliation Phase last?

41. Normally COS will try to complete the Conciliation Phase within 45 days. However COS may allow up to 90 days for a resolution of your complaint if COS thinks this is appropriate. COS will let you know as soon as practicable if it is going to allow the Conciliation Phase to last up to 90 days. If COS forms the view that it will be unable for whatever reason to further assist the parties to achieve resolution of the complaint in the Conciliation Phase, COS may declare the Conciliation Phase completed.
42. If you and the Member come to an agreement during the Conciliation Phase, then COS will prepare a “Conciliation Settlement” which will set out what you and the Member have agreed about resolving the dispute.
43. If the Member fails to comply with the Conciliation Settlement, you can ask COS to notify the Credit Ombudsman of the terms of the Conciliation Settlement and the Member’s failure to comply with it.
44. If the Credit Ombudsman is satisfied:
- (a) that the Conciliation Settlement was validly signed by both you and the Member
 - (b) that your complaint was one which could be dealt with by COS, and
 - (c) that the Member has failed to comply with the Conciliation Settlement,
- then the Credit Ombudsman may forthwith make an Award in terms of the Conciliation Settlement to enforce it.

Dealing with your complaint – The Determination Phase

How can I get my complaint resolved if the Conciliation Phase does not work out?

45. If your complaint is not resolved by the end of the Conciliation Phase, then COS will refer your complaint to the Credit Ombudsman for determination.

Who is the Credit Ombudsman?

46. The Credit Ombudsman is a person appointed by the Company to determine your complaint from a panel of people who are independent of the Company and the Members.
47. To be appointed to the Credit Ombudsman panel, the person must:
- (a) have broad experience in legal adjudication or in facilitating, negotiating or mediating dispute resolution, or
 - (b) be a barrister or a solicitor of not less than five years standing, and
 - (c) be able to become well informed about and make objective and independent decisions on the subject matter of the complaint, and
 - (d) be able to exercise sound and fair judgement, and
 - (e) be able to command the respect of the parties.
48. Wherever possible, the Credit Ombudsman appointed to hear your complaint will be based in the State in which you reside.

What is the procedure for determining my dispute?

49. The Credit Ombudsman will decide what procedure to adopt in determining your complaint. However the Credit Ombudsman will endeavour to resolve the matter with as little formality and technicality as possible but consistent with achieving procedural fairness as regards both you and the Member.
50. Without limiting what the Credit Ombudsman can do to resolve your complaint:
- (a) the Credit Ombudsman may decide to not hold a hearing and to consider your complaint on the basis of the documents that you and the Member have provided
 - (b) the Credit Ombudsman may decide to hold a hearing and may give directions to you and the Member as to how the hearing will be conducted
 - (c) if a hearing is to be held, the Credit Ombudsman may give directions as to legal representation by you and the Member
 - (d) the Credit Ombudsman may require you and the Member to provide any information or document that is relevant to determining your complaint
 - (e) the Credit Ombudsman may proceed to determine your complaint in the Member's absence on the basis of the evidence you have provided and that is otherwise available to the Credit Ombudsman where the Member has been given the opportunity to produce evidence and/or make representations and/or attend a hearing but has failed within a reasonable time to do so.

Will anything I do or say prejudice any legal proceedings I might bring later?

51. All statements you make and information or documents you provide are on a “without prejudice” basis. The same is true for the Member. This means that nothing said or done or information provided during the Determination Phase can be used in later legal proceedings.
52. Any information obtained during the Conciliation Phase or Determination Phase must not be disclosed by:
- (a) you
 - (b) the Member
 - (c) the Board
 - (d) the Scheme Manager, or
 - (e) the Credit Ombudsman
- to anyone else unless disclosure is required by law or required or permitted by the Company’s Constitution.

Do I have to be legally represented if the Credit Ombudsman holds a hearing?

53. You do not have to have legal or other representation (“Representation”), but you can ask the Credit Ombudsman to allow you to have Representation. It will be up to the Credit Ombudsman to decide if you can or should have Representation. The Credit Ombudsman will consider what is procedurally fair to both you and the Member. You will have to pay all the costs of any Representation the Credit Ombudsman permits you to have.

What if the Member and I reach agreement?

54. If at any time during the Determination Phase you and the Member come to an agreement, then the Credit Ombudsman can prepare a Settlement Agreement setting out what you and the Member have agreed about settling your complaint. A Settlement Agreement may include a requirement that the Member pay you compensation for any Direct Loss you have suffered. Alternatively, or in addition, a Settlement Agreement may include an order that the Member do or refrain from doing some act in relation to the subject matter of your complaint.
55. Both you and the Member must sign the Settlement Agreement for it to be binding on the Member.

56. If you and the Member have signed a Settlement Agreement and the Member does not comply with it, then you can ask the Credit Ombudsman to make a binding Award in terms of the Settlement Agreement.

How will the Credit Ombudsman determine my complaint?

57. At any stage during the Determination Phase the Credit Ombudsman can propose a Determination Settlement on terms which appear to the Credit Ombudsman to be fair to both you and the Member. A Determination Settlement may include a requirement that the Member pay you compensation for any Direct Loss the Credit Ombudsman determines you have suffered up to a maximum of \$100,000 (or other limit set by the Board). The amount of compensation will be what the Credit Ombudsman believes is sufficient but not more than is required to compensate you for your Direct Loss.
58. Alternatively, or in addition, a Determination Settlement may include an order that the Member do or refrain from doing some act in relation to the subject matter of your complaint.
59. If the Credit Ombudsman proposes a Determination Settlement, he or she will send a copy of it to:
- (a) you;
 - (b) the Member; and
 - (c) the Scheme Manager.
- 59A. If within one month you sign to accept that Determination Settlement in full and final resolution of your complaint, then the Member must also sign to accept the Determination Settlement. A Determination Settlement will include a Deed of Release limited to the subject matter of the complaint as dealt with by the Credit Ombudsman. This Deed of Release may have the effect and only the effect of releasing the Member from any further legal liability to you and precluding commencement of legal proceedings by you against the Member in relation to the subject matter of your complaint on condition that the Member has fully complied with the Credit Ombudsman's Award. All costs of and in connection with the preparation and signing of a Deed of Release must be met by the Member.
60. If the Member fails within one month to sign the Determination Settlement, then the Credit Ombudsman may forthwith make a binding Award in terms of that Determination Settlement.

61. If you do not sign to accept the Determination Settlement within one month after the Credit Ombudsman sends it to you, the Credit Ombudsman may declare the Determination Phase of your complaint closed and your complaint concluded without resolution.
62. If you and the Member have signed a Determination Settlement and the Member does not fully comply with it, then you can ask the Credit Ombudsman to make a binding Award in terms of the Determination Settlement.
- 62A. Where the Credit Ombudsman makes an Award the Member must comply with it fully and within the time periods specified in the Award. If a Credit Ombudsman's Award does not specify a particular time period then the Member must comply with the Award as soon as practicable.

What principles will the Credit Ombudsman have regard to in determining my complaint?

63. The Credit Ombudsman will have regard to:
- (a) relevant legal requirements
 - (b) the MIAA Code of Practice or other Recognized Code of Practice
 - (c) good practice in the Credit Industry, and
 - (d) fairness in all the circumstances.
64. In considering what is good practice in the Credit Industry, the Credit Ombudsman must have regard to, but is not bound by Practice Standards set out in the MIAA Code of Practice or the relevant provisions of other applicable Recognized Codes of Practice.

Will the Credit Ombudsman publish the determination of my complaint?

65. Any Determination Settlement or Award will be in writing and include a statement of reasons.
66. A copy of the Determination Settlement or Award will be given to:
- (a) you
 - (b) the Member
 - (c) the Board
 - (d) the Scheme Manager,
 - (e) each other Credit Ombudsman, and

- (f) if the Member is a member of the MIAA, to the MIAA National Secretariat, or if the Member is a member of a Recognized Industry Body, to that body's Secretariat or public officer, or in the case of a Member who is subject to the rules of a Recognized Disciplinary Process, to that body's proper officer; and a summary of the Determination Settlement or Award may be published on the COS website.

Who pays the costs of the Credit Ombudsman's Determination?

67. As a general rule, the Credit Ombudsman will not award costs. However the Credit Ombudsman may award costs against a Member if a hearing has been held in relation to your complaint because that Member specifically asked for it. In that case, the Member will be required to meet your reasonable costs of attending the hearing including reasonable travel and accommodation costs.

What else can the Credit Ombudsman do?

68. The Credit Ombudsman may make any orders he or she thinks are appropriate to give full effect to the Settlement Agreement, Determination Settlement or Award.

Enforcement

How does COS enforce awards?

69. If a Member fails to comply with an Award after COS gives the Member 28 days written notice to comply with it, then COS can do one or more of the following:
- (a) take action to suspend or cancel the Member's membership of COS;
 - (b) give written notice of the fact if the Member is a member of the MIAA, to the MIAA National Secretariat, or if the Member is a member of a Recognized Industry Body, to that body's Secretariat or public officer, or in the case of a Member who is subject to the rules of a Recognized Disciplinary Process, to that body's proper officer;
 - (c) bring legal proceedings against the Member for recovery of the amount awarded or the making of Court orders in terms of an Award;
 - (d) bring legal proceedings for specific performance of the Member's agreement to abide by the Company's Constitution and these Rules;
 - (e) take such other action as COS deems appropriate to secure compliance with the Member's obligations under the Company's Constitution and these Rules.

Important issues

70. In some circumstances COS will not deal with your complaint even if it otherwise is covered by COS. This can happen if the Member gives an Objection Notice to COS because the Member believes:
- (a) that your complaint involves or may involve an issue which could have important consequences for the Member's business, or the Credit Industry generally, or
 - (b) that your complaint raises an important or novel point of law.
71. A Member who gives an Objection Notice must give reasons in writing to COS.
72. The Member has six months after giving the Objection Notice to COS to commence proceedings in a Court or Tribunal in Australia to have the issue determined.
73. The Member also has to give an undertaking to COS to pay your costs and disbursements (on a solicitor and client basis) of the proceedings and any subsequent appeal, which is commenced by the Member.
74. If the Member does not commence these proceedings within six months from giving the Objection Notice to COS, then COS will deal with your complaint as if the Objection Notice had not been given.
75. However the Member does not have to pay your costs if you institute the subsequent appeal.
- 75A. Except as permitted by Rules 70 to 75, a Member must not commence legal proceedings against you in relation to the subject matter of your complaint on or after the date on which your written complaint is received by COS.
- 75B. However, subject to Rule 75C but otherwise despite any other provision of these Rules, the Board may in its absolute discretion direct that a Member may commence legal proceedings against you in relation to the subject matter of your complaint on or after the date on which your written complaint is received by COS if the Board is satisfied that to not allow this would be unfair to the Member.
- 75C. The direction of the Board under Rule 75B is final and binding on you and the Member.

Joining other parties

76. If COS believes that:
- (a) it would not unfairly prejudice you, and

- (b) it would lead to a more efficient and effective resolution of your complaint, COS may allow or require another Member (called the Third Party Member) to be joined as a party to your complaint.
77. COS may impose terms and conditions on joining a Third Party Member. For example, COS may require the Member you have complained about to pay costs or to provide security for future costs.
78. Once a Third Party Member has been joined in your complaint, COS may give directions about how your complaint will be dealt with.

Reporting

79. The Board is responsible for supervising COS. However the Scheme Manager is responsible for the day to day collection of information necessary for COS to report to ASIC in accordance with ASIC's policy requirements. ASIC's policies impose significant reporting obligations on COS.

Miscellaneous matters

Confidentiality

80. If you believe that disclosure of information by you will place you in breach of a duty of confidentiality you owe to someone else, then you may write to the Credit Ombudsman about this. You have to use your best endeavours to obtain that third party's consent to your disclosure of the information. However if you do not get this consent within a reasonable time, then you will not be required to comply with any direction from the Credit Ombudsman that you provide this information. The same rules apply to the Member you are complaining about.
81. Also, you can ask the Credit Ombudsman to treat the information that you give as confidential and the Credit Ombudsman must not disclose the information to anyone else. However the Credit Ombudsman will not be allowed to use that confidential information to make a finding adverse to the Member. The same rules apply to the Member you are complaining about.

Declaring your complaint closed

82. COS may at any time declare your complaint closed in any of the following cases:
- (a) if your complaint is or becomes one not covered by COS by reason of Rule 17;
 - (b) if your complaint is withdrawn.

Rulings

83. The Credit Ombudsman has power to give a written Ruling:
- (a) whether or not your complaint is covered by COS, or
 - (b) about any matter that arises in the course of COS dealing with your complaint.
84. COS may at any time and from time to time request a Ruling from the Credit Ombudsman.
85. Only for the purposes of COS, a Ruling is final and binding on you and the Member.

Board directions

86. The Board may from time to time issue Board Directions:
- (a) dealing with administrative and procedural matters to ensure that complaints are resolved efficiently and effectively
 - (b) dealing with the Board's reporting obligations
 - (c) dealing with the expulsion, suspension or reinstatement of a Member
 - (d) dealing with other matters raised in relation to the Board's powers and functions under the Company's Constitution
 - (e) to deal with changes to the law, Government regulation, and the Credit Industry generally.
87. All Board Directions are binding on you, the Member, COS and all other parties to a complaint to COS.
- 87A. To the extent to which a Board Direction applies to you or a Member the subject of a complaint, the Board Direction must in the manner determined by the Board be served on you, the Member, COS and all other parties to a complaint to COS.

Credit Ombudsman decisions

88. No decision of a Credit Ombudsman shall be taken as creating a precedent binding on a Credit Ombudsman in dealing with any other complaint.
89. [deleted]

COS Decisions are Final

- 89A Every decision of COS and every Board Direction is final and binding on a Member and may be reviewed or reopened only in the circumstances allowed in these Rules. Subject always to these Rules, you are expected to comply with every COS decision and every Board Direction insofar as applicable to you. You are at liberty however at all times to pursue other remedies in relation to the subject matter of your complaint in the courts or any another forum.
- 89B Where a party is required by these Rules to accept any Determination Settlement or Award within a particular period of time, if acceptance is not received by COS within that period then for all purposes under these Rules that party will be deemed to have rejected the Determination Settlement or Award.
- 89C If upon his or her own motion or upon application by a Member within 30 days of the date on which a Determination Settlement or Award was sent to that party the Credit Ombudsman is satisfied that in relation to a Determination Settlement or Award:
- (a) there is a clerical mistake;
 - (b) there is an error from an accidental slip or omission;
 - (c) there is a material miscalculation of figures or a material mistake in the description of any person, thing or matter;
 - (f) there is a defect in form; or
 - (g) the terms of the Credit Ombudsman's Determination Settlement or Award do not reflect the actual intention of the Credit Ombudsman who made the particular decision;
- the Credit Ombudsman may make whatever amendments to the Determination Settlement or Award as he or she sees fit, may re-issue the Determination Settlement or Award, and may give such directions as he or she sees fit (including directions about times for compliance) in connection with the Determination Settlement or Award.
- 89D A Member who institutes legal proceedings to challenge any COS decision or a Board Direction must comply with all the following requirements:
- (a) the legal proceedings must be instituted within 30 days of service on the Member of a Determination Settlement or Award or other COS decision or of a Board Direction; and
 - (b) as a condition of commencing legal proceedings the Member must pay on a solicitor and client basis the legal costs of, and must pay the disbursements incurred by, each of the Member concerned, the Company and you in relation to the legal proceedings and any appeal; and
 - (c) if the Company so specifies, the Member must furnish security for costs and disbursements in relation to the legal proceedings and any appeal as the Company reasonably requires.

Publicizing COS

90. The Board and all Members must ensure that COS is appropriately and effectively publicized. For example, COS is publicized on the Company's web site. Also, copies of the Credit Ombudsman Rules are available on request from a Member.

Complaints against two or more Members

91. If you want to make a complaint about two or more Members in relation to the same subject matter, you can do so. But you must first of all try to resolve your complaint with each of the Members concerned. All the Credit Ombudsman Rules apply with any necessary modifications in respect of a complaint against two or more Members in relation to the same subject matter.

Service

- 91A. The Board may from time to time specify the manner of service on a person of a Conciliation Settlement, Settlement Agreement, Determination Settlement or Award or other document or COS decision or of a Board Direction.

COSL Referrals

- 91B. Where the Credit Ombudsman has finally dealt with your complaint (and whether or not an Award is made against the Member concerned) and you have also requested that some disciplinary action be taken against the Member by the MIAA Tribunal, under the rules of a Recognized Industry Body, the disciplinary process of a Recognized Disciplinary Process, or another tribunal or process (whether as an arm of Government or otherwise) having power to make orders of a disciplinary nature against the Member (a "Disciplinary Tribunal"), the Credit Ombudsman must refer the complaint to the Board for consideration whether or not to make a COSL Referral to a Disciplinary Tribunal to be dealt with under its rules or processes.
- 91C. The Board may make a COSL Referral if the Board is satisfied that to do so would not be unfair to the Member concerned.
- 91D. Despite Rules 91B and 91C, where the Credit Ombudsman is considering a complaint under these Rules, and irrespective of whether or not you have also requested that some disciplinary action be taken by a Disciplinary Tribunal against the Member, the Credit Ombudsman may of his or her own volition and on such grounds as appear to the Credit Ombudsman to be reasonable, refer your complaint to the Board for consideration whether or not to make a COSL Referral to a Disciplinary Tribunal to be dealt with under its rules or processes.
- 91E. The Board may make a COSL Referral to a Disciplinary Tribunal if the Board is satisfied that to do so would not be unfair to the Member concerned and

would not interfere with the completion of the dispute resolution process by the Credit Ombudsman.

91F. If your complaint is the subject of a COSL Referral under either Rule 91C or 91 E, you may not seek any compensation or other reimbursement whatsoever under the rules or processes of the Disciplinary Tribunal irrespective of whether or not you have received or might receive any compensation pursuant to an Award by the Credit Ombudsman.

91G. When making a COSL Referral, COSL will send to the Disciplinary Tribunal only:

91G.1 your written complaint and documents that accompanied your written complaint; and

91G.2 if made, the Credit Ombudsman's Award that relates to your complaint.

Dictionary

92. Certain words and phrases have the special meanings set out below:

“Aggregator”	an intermediary who operates as such in the Credit Industry and includes an intermediary who channels applications for credit to Credit Providers with whom it has agency arrangements on behalf of other intermediaries who do not have such arrangements with Credit Providers and who disburses commission received by the Aggregator from Credit Providers to the relevant intermediary in accordance with prior written arrangements
“ASIC”	Australian Securities and Investments Commission
“Award”	the binding determination made by the Credit Ombudsman
“Board”	the board of directors of the Company
"Board Direction"	a direction issued by the Board as contemplated by Rule 86;
“Borrower”	a person granted Credit
"Case Assessment"	a written assessment of a Consumer's complaint prepared in the form and containing the information and documents specified by Board Direction from time to time
“Company”	Credit Ombudsman Service Limited
“Conciliation Phase”	the complaint handling phase dealt with by the Scheme Manager
“Conciliation Settlement”	the settlement reached between you and the Member during the Conciliation Phase
“Consumer”	any member of the public whether an individual or Small Business but does not include a Member
“Consumer Representative”	a director of the Company appointed to that office under the Company’s Constitution
“COS”	the Credit Ombudsman Service - and this expression includes the Scheme Manager and Credit Ombudsman except where the context indicates otherwise

“COSL Referral”	means a complaint referred to the MIAA Tribunal, a Recognized Industry Body, the disciplinary process of a Recognized Disciplinary Process, or another tribunal or process (whether as an arm of Government or otherwise) having power to make orders of a disciplinary nature against the Member (a "Disciplinary Tribunal") pursuant to these Rules in connection with a complaint made by a consumer about the conduct of a Member and which complaint specifically calls for some disciplinary action to be taken against the Member by the Disciplinary Tribunal, the suspension of a Member’s membership of MIAA or a Recognized Industry Body, the expulsion from membership of MIAA or a Recognized Industry Body of a Member, or other disciplinary action permitted under the rules or processes of the Disciplinary Tribunal
“Credit”	any form of credit or financial accommodation
“Credit Industry”	the marketplace for Credit generally including the various individuals, firms and corporations dealing with Credit whether as Mortgage Brokers, Mortgage Managers, Aggregators, Credit Providers, Finance Brokers or otherwise
“Credit Ombudsman”	the Credit Ombudsman appointed in accordance with the Company’s Constitution
“Credit Provider”	a person who provides any form of Credit to another person
“Determination Phase”	the dispute resolution phase dealt with by the Credit Ombudsman
“Determination Settlement”	the settlement of your complaint proposed by the Credit Ombudsman during the Determination Phase
“Direct Loss”	direct loss suffered by the complainant including but not limited to costs incurred in having to obtain Credit or alternative Credit
“Finance Broker”	a person who operates as such in the Credit Industry and includes a person who negotiates or arranges any form of Credit for another person
“Lender”	a Credit Provider
“Loan”	the provision of Credit
“Loan Guarantor”	a person who guarantees a Borrower’s obligations to a Credit Provider
“Member”	a person, firm or corporation which is a member of the Company

“Member Representative”	a director of the Company appointed to that office under the Company’s Constitution
“Member Services”	the services provided by a Mortgage Broker, Finance Broker, Aggregator, or other person who (whether as principal, employee, agent or independent contractor), as an intermediary, negotiates or arranges Credit for or on behalf of a Consumer, or by a Credit Provider or Mortgage Manager, and includes financial products and financial services directly incidental to the Credit negotiated, arranged, provided or managed by the Member
“MIAA”	the Mortgage Industry Association of Australia
“MIAA Code of Practice”	the Code of Practice promulgated by the MIAA as in force from time to time
“MIAA Disciplinary Rules”	the Disciplinary Rules promulgated by MIAA and in operation from time to time
“MIAA Tribunal”	the tribunal established by MIAA pursuant to the Constitution of MIAA and the MIAA Disciplinary Rules
“Mortgage Broker”	means a person who operates as such in the Credit Industry and includes a person who negotiates or arranges any form of Credit for another person
“Mortgage Manager”	means a person who manages mortgages on behalf of a Credit Provider
“Objection Notice”	a notice given by a Member under Rule 70
“Recognized Code of Practice”	a code of good practice in the Credit Industry approved as such by the Board
“Recognized Disciplinary Process”	a body, tribunal or process that has the power to discipline its members or other persons subject to the rules of that body, tribunal or process approved as such by the Board
“Recognized Industry Body”	a body whether incorporated or unincorporated that represents or purports to represent persons carrying on Credit related business in the Credit Industry approved as such by the Board
“Rules” or “these Rules”	the Credit Ombudsman Rules;
“Ruling”	a decision by the Credit Ombudsman under Rule 83

“Scheme Manager”	the persons or body appointed by the Board appointed to carry out the day to day functions of COS
“Settlement Agreement”	the agreement for settling your complaint reached between you and the Member during the Determination Phase
“Small business”	has the meaning given to that expression in Part 7.1 of the Corporations Act 2001 of the Commonwealth
“State”	includes any territory of the Commonwealth of Australia
“Third Party Member”	a Member joined as a party to your complaint by COS.

93. Unless the context suggests otherwise:
- (a) the singular includes the plural and vice versa
 - (b) any reference to a party to a complaint includes that party’s executors, administrators or permitted assigns
 - (c) a reference to one gender includes every gender
 - (d) headings are for reference purposes only.

Footnote

Note: Credit Ombudsman Rules — Second Edition: 1 January 2006.