

Credit  
Ombudsman  
Service

COSL  
Rules

March 29

2010

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Sixth  
Edition



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## 1 Introduction

- 1.1 The Credit Ombudsman Service is an independent external dispute resolution (EDR) scheme established by Credit Ombudsman Service Limited (COSL).
- 1.2 The main objectives of COSL are to:
- (a) provide Consumers free of charge with an accessible alternative to legal proceedings for the resolution of their complaints against its members (Members);
  - (b) act as an ASIC-approved complaints resolution body for the Financial Services Industry; and
  - (c) actively facilitate the resolution of Complaints about Financial Services.
- 1.3 The broad aim of COSL is to provide for the independent and prompt resolution of Consumers' complaints against Members, having regard to:
- (a) relevant legal requirements and rights provided by law to consumers;
  - (b) applicable codes of practice\*;
  - (c) good industry practice in the Financial Services Industry; and
  - (d) fairness in all the circumstances.
- \*see Rule 44.1 for definition*
- 1.4 The Credit Ombudsman Service deals with complaints from Consumers against Members in accordance with these Rules and looks to resolve Complaints by:
- (a) agreement between the parties; or
  - (b) making a recommendation to the parties; or
  - (c) making an expedited ruling under Rule 20.1; or
  - (d) making a Ruling or Determination; or
  - (e) making an Award; or
  - (f) some other appropriate means.
- 1.5 COSL does not provide general information about Members, Members' business operations or services, or the Financial Services Industry.
- 1.6 A COSL decision is not binding on a Complainant unless the Complainant accepts it.

*[Refer to Rule 38.1 to 38.4]*



## 2 Independence

- 2.1 The Credit Ombudsman Service Limited ("COSL") is an incorporated company. The Members of COSL are individuals, firms and corporations that operate in the Financial Services Industry and who agree to be bound by the Credit Ombudsman Service Rules and applicable codes of practice.
- 2.2 The decision-making process and administration of COSL are independent of its Members and sectors of the industry which fall within its jurisdiction and which provide its funding.
- 2.3 The Credit Ombudsman and staff of COSL are:
- (a) entirely responsible for the handling and determination of complaints; and
  - (b) accountable only to the COSL Board.
- 2.4 The COSL Board is responsible for overseeing the operations of the Credit Ombudsman Service, for ensuring independent decision making by the Credit Ombudsman and staff of COSL, and for preserving the independence of the scheme and of the COSL dispute resolution processes.
- 2.5 In order to ensure that COSL is, and is perceived to be, independent, the COSL Board comprises:
- (a) an independent Chairman; and
  - (b) an equal number of Consumer Representatives and Member Representatives.

## 3 Credit Ombudsman Service

- 3.1 COSL has established and supervises the Credit Ombudsman Service. The Credit Ombudsman Service operates under a set of rules called the Credit Ombudsman Service Rules ("COSL Rules"). These Rules set out, among other things:
- (a) who can make a Complaint to the Credit Ombudsman Service;
  - (b) what Complaints can be dealt with by Credit Ombudsman Service;
  - (c) what Complaints the Credit Ombudsman Service cannot deal with; and
  - (d) how a Complaint can be made to the Credit Ombudsman Service; and
  - (e) how the Credit Ombudsman Service tries to resolve a Complaint.
- 3.2 The Board may from time to time approve and have published on COSL's web site the Guidelines to these Rules, procedures of the Credit Ombudsman Service, position statements and other documents relating



to the Credit Ombudsman Service process, but these always have to be read subject to the COSL Rules and Constitution.

- 3.3 The Credit Ombudsman Service is not bound by any legal rule of evidence and may inform itself about the Complaint and all matters relating to it in whatever manner and by whatever means in its discretion it thinks appropriate.
- 3.4 Subject to Rule 32, a Member against whom a Complaint has been made must:
- (a) provide COSL; or
  - (b) to the extent the Member is reasonably able to, cause another person (not the Complainant) to give COSL, any information or document that COSL considers necessary to deal with the Complaint in accordance with the COSL Rules, failing which, and in the absence of a reasonable explanation, COSL may draw such inferences as it considers appropriate.
- 3.5 Subject to Rule 32, COSL may at its discretion give all relevant information and documents it receives to all other parties. However, COSL need not give other parties any information or document that COSL receives and relies upon provided it is identified in COSL's written reasons and is made available to the other parties when requested.
- 3.6 If COSL thinks that it is appropriate to refer a Complaint or part of a Complaint, and the information and documents provided by the Complainant, to another ASIC-approved EDR scheme, it will obtain the Complainant's consent before doing so.

## 4 Role of the Credit Ombudsman

- 4.1 The Board appoints the Credit Ombudsman. The Credit Ombudsman is the decision-maker of the Credit Ombudsman Service and the person who can make:
- (a) any decision allowed for under the COSL Rules, including a review of whether a Complaint is within the jurisdiction of the Credit Ombudsman Service;
  - (b) any Order allowed for under the COSL Rules;
  - (c) a Determination; and
  - (d) a binding Award.
- 4.2 The Credit Ombudsman:
- (a) has the powers, functions and duties conferred by COSL's Constitution and these Rules, and as conferred and delegated by the Board from time to time;
  - (b) has overall management responsibility for the Credit Ombudsman Service; and



- (c) establishes systems and procedures to ensure COSL's efficient and effective operations in accordance with the COSL Rules.
- 4.3 The Credit Ombudsman may delegate all or any of his or her powers, functions and duties to employees of COSL and to other persons approved by the Board, except:
- (a) the power to make a Determination or Award; and
  - (b) the Credit Ombudsman's power to delegate.

## **5 Complaints to which these COSL Rules apply**

- 5.1 Different versions of the COSL Rules operate in respect of a Complaint depending on the date of its receipt.
- 5.2 This Sixth Edition of the COSL Rules takes effect on 29 March 2010, and applies to every Complaint received on or after that date. This Sixth Edition also applies to all legal proceedings to set aside or otherwise challenge a decision of the Credit Ombudsman or a Board Direction commenced after this Sixth Edition takes effect, irrespective of whether:
- (a) the subject Complaint was received before or after this Sixth Edition took effect; and
  - (b) the particular decision of the Credit Ombudsman was made or Board Direction was issued before or after this Sixth Edition took effect.

## **6 When a Complaint can be made**

- 6.1 A Complaint can be made to the Credit Ombudsman Service about a Member if:
- (a) the Complainant is a Consumer; and
  - (b) the Complaint is about a Financial Service; and
  - (c) the Complaint is otherwise one that COSL can deal with under these Rules.
- 6.2 The Credit Ombudsman may give a written Ruling as to whether the Complaint or any aspect of the Complaint can be dealt with under these Rules or about any matter that arises in the course of COSL dealing with the Complaint. The Ruling is final and binding on the Complainant and the Member.
- 6.3 Despite any other Rule, COSL may consider a Complaint where all parties to the Complaint and COSL agree, in which case, the COSL Rules will apply to the handling of the Complaint.



## 7 Types of complaints covered by COSL

- 7.1 COSL will deal with a Complaint if, in relation to a Financial Service, the Member:
- (a) breached relevant laws (or duties imposed by law) or did not give effect to a right provided by law to the Complainant in relation to the subject matter of the Complaint;
  - (b) breached an applicable code of practice;
  - (c) did not meet standards of good practice in the Financial Services Industry; or
  - (d) acted unfairly towards the Complainant.

## 8 New grounds of complaint

- 8.1 Once the Conciliation and Investigation Phase of the Credit Ombudsman Service process commences but before the start of the Determination Phase, the Complainant may only raise new grounds of complaint with COSL's approval.
- 8.2 COSL will generally give its approval unless it considers that the Complainant has been tardy in raising the new grounds of complaint or it has by then become unreasonable for the Member to have to respond to the new grounds of complaint.
- 8.3 Once the Determination Phase of the Credit Ombudsman Service process commences, the Complainant may not raise any new ground of complaint unless:
- (a) COSL is satisfied that exceptional circumstances exist that justify the Complainant raising a new ground of complaint; and
  - (b) the Member consents in writing; and
  - (c) COSL consents in writing on such terms and conditions as it regards as appropriate.

## 9 Compensation and Orders available to a Complainant

- 9.1 COSL can deal with a Complaint if the Complainant's loss resulting from the Member's conduct does not exceed or appear to COSL to exceed \$500,000. However, COSL can only award compensation up to its monetary compensation limit for loss suffered by the Complainant in respect of the Complaint.
- 9.2 The Board may on its own volition increase the amount of the monetary compensation limit from time to time. COSL will publish any increase in the compensation limit on its web site.



- 9.3 If the Complainant accepts the compensation awarded by COSL, the Complainant must provide the Member (if the Member so requests) with a binding release of the Member from liability in respect of the matters resolved by the award of compensation. The release must be for the full value of the claim the subject of the Complaint, even if this amount exceeds the amount of the remedy decided upon by COSL.
- 9.4 COSL may also award interest or earnings in addition to any compensation awarded, even if the interest or earnings, when added to the compensation awarded, exceeds the monetary compensation limit.
- 9.5 If interest or earnings is awarded, it will be calculated from the date of the cause of action or matter giving rise to the Complainant's claim, by COSL will have regard to any factors it considers relevant, including but not limited to, the extent to which the conduct of either party contributed to any delay.
- 9.6 COSL may, where appropriate, decide that the Member undertake a course of action to resolve the Complaint, including, but not limited to:
- (a) the payment of a sum of money;
  - (b) the variation of a debt;
  - (c) the release of security for debt;
  - (d) the repayment, waiver or variation of a fee or other amount paid to or owing to the Member or its representative or agent, including the variation in the applicable interest rate on a loan;
  - (e) the discontinuation of enforcement action against the Complainant;
  - (f) in relation to a default judgment, not enforcing the default judgment;
  - (g) the release of the Complainant from a contract; and
  - (h) the variation of the terms of a Credit Contract in cases of financial hardship.
- 9.7 The Complainant can claim compensation for loss that is:
- (a) Direct Loss, or
  - (b) other indirect or non-financial loss or disadvantage as the Board specifies as recoverable from time to time and publishes on COSL's web site.
- 9.8 Punitive, exemplary or aggravated damages may not be awarded.
- 9.9 Alternatively or in addition, the Credit Ombudsman can make an Order requiring the Member to do or to refrain from doing some act in relation to the subject matter of the Complaint.

## 10 Complaints not covered by Credit Ombudsman Service

- 10.1 A reference to a Complaint in this Rule 10 includes any aspect of the Complaint. COSL will not deal with a Complaint if, at the time of receiving the Complaint or at any time during the Credit Ombudsman Service process, COSL is satisfied that:
- (a) the Complaint is about a Member's acts or omissions that do not comprise or are not otherwise directly related to the Financial Services;
  - (b) the Complaint is about someone who is not a Member at the time the Complaint is made;
  - (c) the Complainant is seeking compensation in an amount in excess of COSL's monetary compensation limit in respect of the Complaint;
  - (d) the Complaint relates to a fee, charge, commission or interest rate, unless:
    - (i) the Complaint concerns the non-disclosure, misrepresentation, miscalculation or incorrect application of the fee, charge, commission or interest rate; or
    - (ii) the charging of the fee, charge, commission or interest rate is in breach of the law or is unconscionable;
  - (e) the Complaint is about something done or not done by, or the policies or commercial judgment of, someone other than the Member the Complainant is complaining about, examples of which are:
    - (i) a lender's assessment of lending risk, or of financial or commercial criteria, or of character; or
    - (ii) a lender's decision to refuse the Complainant's loan application or the release of part of the security for the loan or to approve either of them subject to conditions; or
    - (iii) the loan interest rates and fees charged by a lender; or
    - (iv) a lender's policy to require mortgage insurance;
  - (f) (except where the Complainant is making a financial hardship application) the Member has done no more than exercise its commercial judgement, including but not limited to its commercial judgement about interest rates, product design or (in relation to credit matters) lending or the security for a loan, examples of which are:
    - (i) the Member's assessment of the credit risk or security; or
    - (ii) the Member's lending criteria or valuation of the security; or
    - (iii) the Member's decision to refuse the Complainant's loan application or the release of part of the security for the loan or to approve either of them subject to conditions; or
    - (iv) the Member's loan interest rates; or



- (v) the Member's policy to require mortgage insurance or additional security;
- (g) the Complaint relates to a contract or obligation not arising under Australian law;
- (h) in the case of a secured loan, the security is situated or legally registered outside Australia or is governed by laws other than the laws of Australia;
- (i) the Complainant is not seeking compensation or Orders (see Rule 9) against a Member;
- (j) the Complainant is seeking redress other than compensation for loss (see Rule 9);
- (k) the Complainant is not the person to whom the Financial Services directly relate;
- (l) six years have elapsed since the time the Complainant appears to have first become aware, or should reasonably have become aware, of the loss they claim they suffered as a result of an act or omission of the Member, unless the Member nonetheless agrees to COSL dealing with the Complaint or COSL considers that there are exceptional circumstances that warrant its dealing with the Complaint;
- (m) (except where the Complainant is making a financial hardship application) the Complainant has previously made a Complaint about the same Member in relation to the same subject matter which has been considered by the Credit Ombudsman Service and there is insufficient relevant new information to warrant COSL's consideration of the new Complaint;
- (n) the Complaint has been dealt with by a court, tribunal, arbitrator or another ASIC-approved EDR scheme, unless:
  - (i) a decision about the merits of the Complaint has not been made; or
  - (ii) both the Complainant and the Member consent in writing to the Complaint being considered by COSL;
- (o) the subject matter of the Complaint becomes the subject of proceedings brought by the Member before a Court, but only if this occurred as a result of the Member having commenced legal proceedings in accordance with the Objection Notice procedure outlined in Rule 28;
- (p) it is more appropriate that the Complaint is dealt with in another forum such as a Court, tribunal or another ASIC-approved EDR scheme;
- (q) the Complaint involves an issue which may have important consequences for the business of the Member or the Financial Services Industry generally, or raises an important or novel point of

law, and is dealt with under the special procedures set out in Rule 28;

- (r) even if the matters set out in the Complaint were found to be true, these matters would not constitute:
  - (i) a breach of relevant laws (or duties imposed by law) by the Member, or a failure by the Member to give effect to a right provided by law to the Complainant in relation to the subject matter of the Complaint;
  - (ii) a breach of the applicable code of practice by the Member;
  - (iii) a failure by the Member to meet standards of good practice in the Financial Services Industry; or
  - (iv) the Member acting unfairly towards the Complainant;
- (s) the Complaint relates to the investment performance of an investment product, unless the Complaint concerns non-disclosure or misrepresentation or misleading conduct; or
- (t) the Complaint is lacking in substance or is being pursued by the Complainant for an improper purpose.

10.2 If the Complaint or any aspect of the Complaint is not covered by the Credit Ombudsman Service, COSL will write to the Complainant advising them of this and setting out the reasons why the Complaint or relevant aspect of the Complaint is not covered by the Credit Ombudsman Service.

## 11 Complaint at no cost to Complainant

11.1 The Complainant does not have to pay any fee if they are a Consumer.

## 12 Principles COSL has regard to

12.1 In dealing with a Complaint at any stage of the Credit Ombudsman Service process, COSL will observe procedural fairness and have regard to:

- (a) relevant legal requirements or rights provided by law to the Complainant in relation to the subject matter of the Complaint;
- (b) applicable codes of practice;
- (c) good practice in the Financial Services Industry; and
- (d) fairness in all the circumstances.

12.2 Dealing with a Complaint includes:

- (a) deciding the extent to which a Complaint is covered by the Credit Ombudsman Service;
- (b) assessing the merits of the Complaint;



- (c) making recommendations to the Complainant and the Member about resolving it;
- (d) making an expedited ruling on the merits of the Complaint under Rule 20.1; or
- (e) making a Ruling by the Credit Ombudsman under Rule 6.2;
- (f) making a Determination;
- (g) making an Order; or
- (h) making an Award.

12.3 In considering what is good practice in the Financial Services Industry, COSL may:

- (a) consult within the Financial Services Industry;
- (b) seek, but is not bound by, advice from such persons (including but not limited to those in the Financial Services Industry) as COSL regards as suitably qualified to give that advice; or
- (c) have regard to an applicable code of practice or industry or regulatory guideline or protocol which has application in the industry in which the Member operates and which COSL reasonably considers reflects good industry practice, even if the Member has not subscribed to that code of practice or industry or regulatory guideline or protocol.

## 13 Member to be given opportunity to resolve Complaint

13.1 COSL will only deal with a Complaint if the Complainant has first tried to resolve the Complaint with the Member using the Member's IDR process, unless:

- (a) COSL considers that the Complaint or any aspect of the Complaint should be dealt with urgently (for example, because the Complaint or an aspect of the Complaint is about a financial hardship application); or
- (b) it does not appear that the Complaint or an aspect of the Complaint is being addressed or addressed adequately by the Member; or
- (c) COSL reasonably considers that it is appropriate in the particular circumstances not to require the Complainant to first try to resolve the Complaint or an aspect of the Complaint with the Member,

in which case, COSL will accept the Complaint and commence the Credit Ombudsman Service process, whether or not a substantive response has been provided by the Member in relation to the Complaint or an aspect of the Complaint.

13.2 Every Member must have IDR procedures in place which comply with standards and requirements made or approved by ASIC from time to time.



- 13.3 A Member must provide a substantive response to a Complaint at IDR within 45 days of receiving the Complaint, or within a shorter time as may be prescribed by an applicable code of practice.
- 13.4 If the Member cannot do this, the Member must:
- (a) give the Complainant reasons for the delay; and
  - (b) inform the Complainant of their right to take the Complaint to COSL.
- 13.5 COSL regards the Member as having given the Complainant a substantive response if the Member:
- (a) accepts the Complaint and, if appropriate, offers the Complainant redress; or
  - (b) offers the Complainant redress without accepting the Complaint; or
  - (c) rejects the Complaint.
- 13.6 If:
- (a) the Member does not give the Complainant a substantive response to their Complaint within 45 days, or within a shorter time as may be prescribed by an applicable code of practice; or
  - (b) the Member gives a substantive response but the Complainant considers that the response does not satisfactorily resolve their Complaint,
- the Complainant may make a Complaint to COSL or the Member may refer the Complaint to COSL with the Complainant's consent.

## 14 Making a Complaint

- 14.1 A Complainant may make a Complaint to the Credit Ombudsman Service:
- (a) by writing to COSL;
  - (b) by completing the complaint form which can be found at COSL's website ([www.cosl.com.au](http://www.cosl.com.au)); or
  - (c) by phoning COSL and giving details of the Complaint to COSL.
- 14.2 If the Complainant phones COSL, a written complaint setting out the Complaint must be sent to COSL afterwards.
- 14.3 If the Complainant has any difficulty in presenting their Complaint, COSL will help them prepare it. In doing so, COSL will not be "taking sides" but will simply help the Complainant present their Complaint as clearly and concisely as possible. COSL will not do anything that could impair or could be seen to impair its impartiality.



- 14.4 If the Complainant wants to make a Complaint about two or more Members in relation to the same subject matter, the Complainant can do so. But the Complainant must generally first of all try to resolve their Complaint with each of the Members concerned. These Rules apply with any necessary modifications in respect of a Complaint against two or more Members in relation to the same subject matter.
- 14.5 When a Complainant makes a Complaint:
- (a) they do not need to use any formal, legal or technical language;
  - (b) they must tell COSL what compensation they want the Member to give them, or what corrective action the Complainant wants the Member to take to resolve the Complaint;
  - (c) the Complainant must give COSL a copy of every document relevant to their Complaint; and
  - (d) the Complainant must give written consent to COSL sending a copy of their Complaint and copies of their documents to the Member they are complaining about.
- 14.6 When COSL receives a written Complaint, that Complaint is immediately recorded as received. Then, if it has not done so already, COSL assesses whether the Complaint is within the jurisdiction of the Credit Ombudsman Service. If it is not, COSL writes to the Complainant letting them know why their Complaint is not covered by the Credit Ombudsman Service.
- 14.7 COSL will also:
- (a) check whether or not the Complainant has satisfied the requirement to try to resolve their Complaint with the Member as required by Rule 13.1; and
  - (b) consider whether or not any of sub-Rule 13.1 (a),(b) or (c) applies in the Complainant's case.

## 15 Acceptance of Complaint

- 15.1 Provided that the Complainant has given all necessary consents, COSL is satisfied that Rule 13.1 has been complied with and the Complaint is within the jurisdiction of the Credit Ombudsman Service, COSL:
- (a) records the Complaint as accepted;
  - (b) sends the Complaint and the information and documents the Complainant has provided COSL to the Member concerned; and
  - (c) tells the Member it is required to provide COSL with a response within 21 days.
- 15.2 The Member's response must comply with the requirements COSL specifies.

- 15.3 The Member must give COSL its response to the Complaint within 21 days after COSL has sent the Member a copy of the Complaint. COSL may, under Rule 34.1, extend the period within which the Member must respond to the Complaint.
- 15.4 Subject to Rule 32.2, when COSL receives the Member's response, it will send the response to the Complainant for their consideration.
- 15.5 If the Complainant is not satisfied with the Member's response and has provided COSL with reasons for this, the Complainant may, within 21 days of COSL sending the Complainant the Member's response, request COSL to deal with the Complaint. COSL will advise the Complainant of their right to do this.

## 16 Enforcement action\*

*\*see definition in Rule 44*

- 16.1 In this Rule 16, a Complaint includes, but is not limited to, an application by the Complainant in which the Complainant claims they are unable to meet the payment terms described in their loan agreement or lease ("payment terms") or seeks a variation to the payment terms on grounds of financial hardship or impending financial hardship ("financial hardship application").
- 16.2 Once COSL records a Complaint and for as long as COSL deals with the Complaint:
- (a) the Member must not initiate enforcement action except in relation to Rule 28.4;
  - (b) where the Member commenced enforcement action before the Complaint was recorded by COSL, the Member must not continue the enforcement action and, in particular, must not:
    - (i) seek judgement in the legal proceedings; or
    - (ii) where default judgement has been entered, seek to enforce the default judgement;
  - (c) the Member must not sell the debt the subject of the complaint to a debt buy-out business or otherwise assign any right to recover the debt; or
  - (d) if it has not already listed a default, the Member must not list a default on the Complainant's credit reference file.
- 16.3 Despite Rule 16.2, COSL may at its discretion and on such terms as it may require, permit the Member to:
- (a) issue proceedings, but only where the relevant limitation period for the proceedings will shortly expire, and then only to the minimum extent necessary to preserve the Member's legal rights; or
  - (b) exercise any rights it might have to freeze or otherwise preserve assets; or

- (c) continue or resume legal proceedings if the Complainant has taken a step in the legal proceedings beyond lodging a defence or a defence and counterclaim (however described).

[Note: The Complainant will not be considered to have taken a 'step' if they merely attended a directions hearing or agreed to consent orders of a procedural nature being filed in the proceedings.]

16.4 The Member must not do anything, including:

- (a) initiating or resuming enforcement action; or
- (b) seeking judgement for the debt or taking possession of an asset securing the debt; or
- (c) assigning any right to recover the debt; or
- (d) listing a default on the Complainant's credit reference file,

which is inconsistent with:

- (i) a decision by COSL in the Complainant's favour; or
- (ii) an agreement by the parties to the complaint to settle the complaint on agreed terms; or
- (iii) in the case of a financial hardship application, an agreement between the parties on a variation of the payment terms; or
- (iv) in the case of a financial hardship application, a direction by COSL to the Member to vary the terms of a Credit Contract under Rule 9.6(h).

16.5 The Member may initiate or, subject to Rule 16.6, resume enforcement action if:

- (a) COSL determines it has no jurisdiction to deal with the complaint; or
- (b) COSL considers that the complaint is not made out; or
- (c) the Complainant declines to accept COSL's determination of the complaint.

16.6 The Member may only resume enforcement action under Rule 16.5 if the Member allows the Complainant 14 days in which to file a defence or a defence and counterclaim (if they have not already done so).

## 17 Financial hardship applications

17.1 This Rule applies whether or not the Complainant (being a borrower) has a right to seek a variation of payment terms under the Uniform Consumer Credit Code or the National Consumer Credit Protection Act 2009.

17.2 If the Member (being a lender) becomes aware, or is advised by the Complainant that they are or may be in financial difficulties, the Member must consider in good faith and within a reasonable time whether it is



reasonably appropriate to vary the payment terms, having regard to the borrower's financial circumstances.

- 17.3 The Member is only required to do so if the Complainant provides the Member with the financial information and documents the Member may reasonably need to assess the Complainant's financial situation. The Member must allow the Complainant a reasonable time to provide these.
- 17.4 The Member must act reasonably in assessing the Complainant's request to vary the payment terms and must not impose unreasonable or burdensome conditions on the Complainant before agreeing to consider whether to, or agreeing to, vary the payment terms.
- 17.5 If the Member decides to vary the payment terms, it must promptly give to the borrower and any guarantor of the credit facility a written notice setting out particulars of the varied payment terms.
- 17.6 If the Member decides not to vary the payment terms, it must promptly inform the borrower in writing of:
- (a) its decision and the reasons for its decision; and
  - (b) the borrower's right to make a complaint to COSL; and
  - (c) the contact particulars of COSL.
- 17.7 If the Complainant is able to reasonably demonstrate to COSL that a financial hardship application should have been approved by the Member at the time the Complainant made the Member aware, or at the time the Member ought to have become aware, that the Complainant was experiencing financial hardship, the Member is not entitled to recover default interest and fees and enforcement costs from that time.

## 18 The Credit Ombudsman Process

- 18.1 Without in any way limiting what COSL can do, COSL can at any time and from time to time during the Credit Ombudsman Service process do all or any of the following things:
- (a) ask any party questions about the Complaint;
  - (b) require any party to provide to, or procure for, COSL any information and documents that COSL considers necessary within a certain time, except where the party satisfies COSL that:
    - (i) to provide information would breach a duty of confidentiality to a third party and, despite best endeavours, the third party's consent to the disclosure of the information has not been able to be obtained;
    - (ii) to provide the information would breach a Court order or prejudice a current investigation by the police or other law enforcement agency; or
    - (iii) the information does not or no longer exists or is not within the party's reasonable possession or control;



- (c) ask any party for their comments generally on the other party's responses to COSL;
- (d) subject to Rule 32.2, send to one party copies of:
  - (i) the other party's comments on the Complaint;
  - (ii) the other party's answers to questions asked; and
  - (iii) information provided to COSL by the other party; or
- (e) obtain whatever advice from whatever source COSL thinks will assist in dealing with the Complaint.

18.2 At any time and from time to time during the Credit Ombudsman Service process, if it thinks it appropriate to do so, COSL can:

- (a) refer the complaint back to the Member and afford them another opportunity to reconsider their position given COSL's preliminary view of the merits of the complaint;
- (b) facilitate informal negotiations between the parties to resolve the Complaint or any aspect of the Complaint;
- (c) suggest that the Complaint be settled or withdrawn, with or without conditions, with the agreement of both parties in full and final settlement of the Complaint
- (d) conduct a Conciliation Conference,

and if the Complaint is resolved in this manner, COSL will, at the request of the parties, prepare a Settlement Agreement; if not, COSL will continue to deal with the Complaint in any manner permitted under these Rules.

18.3 Where a Settlement Agreement has been prepared by COSL, both the Complainant and the Member must sign the Settlement Agreement for it to be binding on the Member.

18.4 If COSL is satisfied that:

- (a) the Settlement Agreement was validly signed by both the Complainant and the Member;
  - (b) the Complaint was one which could be dealt with by the Credit Ombudsman Service; and
  - (c) the Member has failed to comply with the Settlement Agreement,
- the Credit Ombudsman can make an Award in terms of the Settlement Agreement to enforce it.

18.5 The Credit Ombudsman can make any Order he or she thinks appropriate at any time and from time to time during the Credit Ombudsman Service process. An Order can also be made to give full effect to the resolution of a Complaint.



## 19 Recommendation on reasonable offer

- 19.1 Where COSL reasonably considers that an offer made by a Member to a Complainant to resolve a Complaint is reasonable having regard to the information before COSL, COSL may recommend to the Complainant that they accept the Member's offer in full and final settlement of the Complaint.
- 19.2 If the Complainant does not accept the offer, COSL may close the Complaint in the absence of further information from the Complainant that would justify the Complaint remaining open. If COSL closes the Complaint, it will notify the Complainant and Member that it has done so.

## 20 Expedited process

- 20.1 In order to expedite the resolution of a complaint, COSL may in its discretion make an expedited ruling as to the merits of a complaint without having to conciliate the complaint or prepare a case summary, case assessment or Determination, provided:
- (a) COSL has reasonably assessed the loss alleged to have been incurred by the Complainant to be less than \$3,000;
  - (b) COSL has received information from the Complainant that it reasonably considers is sufficient for it to make an expedited ruling as to the merits of the complaint;
  - (c) COSL has informed both the Complainant and the Member of its intention to use the expedited process described in this Rule and has afforded them a final opportunity to provide it with additional and relevant information; and
  - (d) it is otherwise appropriate for COSL to make an expedited ruling in the circumstances.
- 20.2 If the Complainant does not accept the expedited ruling, COSL will close the complaint.
- 20.3 If the Complainant accepts the expedited ruling within 14 days of being informed of it, the Member will be bound to comply with the expedited ruling within 14 days of being informed of the Complainant's acceptance of the expedited ruling or within such other reasonable time as COSL may agree.
- 20.4 If the Member does not comply with the expedited ruling within the required time, the Ombudsman will issue an Award and consequential Orders to give effect to the expedited ruling.

## 21 Conciliation and Investigation Phase

- 21.1 Where COSL progresses the Complaint to the Conciliation and Investigation Phase of the Credit Ombudsman Service process, it can



carry out whatever conciliation and investigation process it thinks appropriate to deal with the Complaint, including the following:

- (a) prepare a complaint summary for the parties and tell them what COSL sees as, among other things:
  - (i) the key issues in the case; and
  - (ii) the strengths and weaknesses in each party's case;
- (b) continue to carry out the investigation process until COSL is reasonably satisfied that it is in possession of all relevant information;
- (c) having completed its investigation:
  - (i) give the Complainant and the Member COSL's assessment of the merits of the Complaint; and
  - (ii) make a recommendation to the Complainant and the Member about resolving the Complaint.

21.2 COSL may also convene a hearing if it is satisfied that doing so would lead to the more efficient and effective resolution of the Complaint. However, COSL does not have power to subpoena witnesses or take evidence on oath or cross-examine witnesses, so generally COSL would regard a hearing as appropriate only where COSL believed that a question and answer investigation format would help clarify issues.

21.3 The Credit Ombudsman may award costs against a Member if a hearing has been held in relation to the Complaint because that Member specifically asked for it. In that case, the Member will be required to meet the Complainant's reasonable costs of attending the hearing, including reasonable travel and accommodation costs.

21.4 COSL will try to complete the Conciliation and Investigation Phase within 90 days (but it can take longer, particularly if any party is given extra time to provide the information, documents and response requested by COSL). COSL will keep the parties informed of the progress of the Complaint during this period.

21.5 If at any time COSL in its discretion considers that:

- (a) it will be unable for whatever reason to further assist the parties to achieve resolution of the Complaint in the Conciliation and Investigation Phase; or
- (b) the subject matter of a Complaint against a Member is the same as or substantially similar to that of other Complaints before COSL against the same Member, indicating systemic, persistent or deliberate conduct on the part of the Member,

COSL may declare the Conciliation and Investigation Phase completed and move on to the Determination Phase.

## 22 The Determination Phase

- 22.1 The Credit Ombudsman can make a Determination about the Complaint if:
- (a) the Complaint is not resolved by the end of the Conciliation and Investigation Phase; or
  - (b) the Member has not responded to COSL when required to do so under these Rules; or
  - (c) COSL has declared the Conciliation and Investigation Phase completed pursuant to Rule 21.5.
- 22.2 The Credit Ombudsman will generally make its Determination based upon:
- (a) the Complaint;
  - (b) the Member's response;
  - (c) the Complainant's reply; and
  - (d) information and documents COSL has received during the Credit Ombudsman Service process, including any advice from suitably qualified people.
- 22.3 The Credit Ombudsman will only carry out further investigation of the Complaint if it thinks that it is absolutely necessary to do so to enable a Determination to be made.
- 22.4 The Credit Ombudsman's Determination of the Complaint will be in writing and include the Credit Ombudsman's reasons for making the Determination.

## 23 Agreement during Determination phase

- 23.1 If the Complainant and the Member come to an agreement about resolving the Complaint during the Determination Phase, and one of the parties asks for it, COSL will prepare a Settlement Agreement.
- 23.2 Both the Complainant and the Member must sign the Settlement Agreement for it to be binding on the Member.
- 23.3 The Credit Ombudsman can make an Award in terms of the Settlement Agreement to enforce it if the Credit Ombudsman is satisfied that:
- (a) the Settlement Agreement was validly signed by both the Complainant and the Member;
  - (b) the Complaint was one which could be dealt with by the Credit Ombudsman Service; and
  - (c) the Member has failed to comply with the Settlement Agreement.

## 24 What Determinations the Credit Ombudsman can make

- 24.1 The Credit Ombudsman may, having regard to the principles in Rule 12.1, make a Determination that:
- (a) the Member pay the Complainant compensation for any loss the Complainant has suffered up to the monetary compensation limit (plus interest calculated in accordance with Rule 9.5, if applicable); and/or
  - (b) the Member do some act or refrain from doing some act in relation to the subject matter of the Complaint; or
  - (c) no compensation be paid and no Orders made.
- 24.2 If the Credit Ombudsman is not satisfied that the Complaint has been made out, the Credit Ombudsman will declare the Complaint closed.
- 24.3 The amount of compensation will be what the Credit Ombudsman believes is sufficient but not more than is required to compensate the Complainant for their loss as a result of the act or omission of the Member.
- 24.4 The Credit Ombudsman's Determination will be binding on a Member only if the Complainant accepts that determination in full and final settlement of their Complaint against the Member.
- 24.5 In considering whether the Determination should require the Member to do or refrain from doing some act, the Credit Ombudsman will have regard to what is fair and reasonable to put the Complainant and the Member in the position the Complainant and the Member would have been in were it not for the act or omission of the Member.
- 24.6 In doing this, the Credit Ombudsman will consider what is fair and reasonable for all parties, including someone who is not a party to the Complaint but who might be affected by the Credit Ombudsman's Determination, e.g. a lender.

## 25 After Determination is made

- 25.1 The Credit Ombudsman will send its Determination to the Complainant and the Member.
- 25.2 At the same time as sending the Complainant its Determination, the Credit Ombudsman sends the Complainant a Deed of Release. If the Complainant signs their acceptance of the Credit Ombudsman's Determination, the Complainant also needs to sign the Deed of Release.
- 25.3 The Deed of Release will have the effect and only the effect of releasing the Member from any further legal liability to the Complainant and precluding commencement of legal proceedings by the Complainant



against the Member in relation to the subject matter of the Complaint on condition that the Member has fully complied with the Determination.

- 25.4 If the Complainant signs both the acceptance of the Credit Ombudsman's Determination and the Deed of Release within 28 days of the documents being sent to them by the Credit Ombudsman, the Member will be advised by the Credit Ombudsman that:
- (a) the Complainant has signed the acceptance of the Credit Ombudsman's Determination and the Deed of Release; and
  - (b) the Member must also sign an acceptance of the Credit Ombudsman's Determination and send the signed acceptance to the Credit Ombudsman; and
  - (c) the Member may choose to also sign the Deed of Release the Complainant has signed and send a copy of that signed Deed of Release to the Credit Ombudsman.
- 25.5 If the Credit Ombudsman has not received from the Member its signed acceptance of the Credit Ombudsman's Determination as accepted by the Complainant within 28 days of sending it to the Member, the Credit Ombudsman can make a binding Award in terms of that Determination.
- 25.6 If the Credit Ombudsman does not receive the Complainant's signed acceptance of its Determination and the signed Deed of Release within 28 days after the Credit Ombudsman sends them to the Complainant, the Credit Ombudsman may declare the Complaint closed.
- 25.7 If the Complainant and the Member have both signed acceptances of the Credit Ombudsman's Determination but the Member does not fully comply with it, then the Complainant can ask the Credit Ombudsman to make a binding Award in terms of that Determination.
- 25.8 Whenever the Credit Ombudsman makes an Award, the Member must comply with it fully and within the time period specified in the Award. If the Credit Ombudsman's Award does not specify a particular time period, then the Member must comply with the Award as soon as practicable.
- 25.9 Any Award the Credit Ombudsman makes will be in writing. As an Award is based upon the Credit Ombudsman's Determination or upon a Member's failure to comply with a Settlement Agreement, the Award may, but does not need to, include the Credit Ombudsman's reasons for having made the Determination.
- 25.10 A copy of the Determination and any Award may be given to:
- (a) the Complainant;
  - (b) the Member; and
  - (c) the Board.



- 25.11 COSL may publish a non-identifying copy of the Credit Ombudsman's Determination of the Complaint on COSL's web site.

## 26 Not complying with a COSL requirement

- 26.1 If a party does not comply with a COSL requirement within the period specified:
- (a) COSL may give the party whatever further period COSL thinks appropriate to comply; and
  - (b) if the Member still does not comply, the Credit Ombudsman may, if it considers appropriate, proceed to determine the Complaint on the basis of the information and documents then available; or
  - (c) if the Complainant still does not comply, COSL may declare the Complaint closed or, where the COSL requirement only relates to a particular aspect of the Complaint, COSL may decline to consider that aspect further and continue to deal with the other aspects of the Complaint.
- 26.2 For the purpose of this Rule 26, the expression "COSL requirement" refers to any requirement imposed by COSL or these Rules on the Complainant or the Member, including the requirement to respond to COSL within a certain time or the requirement to provide COSL with such information and documents that may be requested by COSL in relation to the Complaint.

## 27 Enforcing an Award

- 27.1 If a Member fails to comply with an Award after the Credit Ombudsman gives the Member 28 days' written notice to comply with it, then COSL can take whatever action it thinks is necessary to enforce the Award, including but not limited to the following things:
- (a) take action to suspend or cancel the Member's membership of COSL;
  - (b) bring legal proceedings against the Member to recover the amount awarded; seek Court orders in terms of the Award and recover the costs incurred by COSL in bringing the proceedings;
  - (c) bring legal proceedings for specific performance of the Member's agreement to abide by COSL's Constitution and these Rules, including but not limited to the Member's obligation to comply with the Award; or
  - (d) take such other action as COSL thinks appropriate to secure compliance with the Member's obligations under COSL's Constitution and these Rules.

## 28 Objection Notice from Member

- 28.1 COSL will suspend dealing with a Complaint if the Member gives an Objection Notice to COSL and is able to demonstrate to COSL's reasonable satisfaction:
- (a) that the Complaint involves or may involve an issue which could have important consequences for the Member's business or the Financial Services Industry generally; or
  - (b) that the Complaint raises an important or novel point of law.
- 28.2 A Member who gives an Objection Notice must:
- (a) identify and describe the issues which could have important consequences for the Member's business or the Financial Services Industry generally as the issues relate to the Complaint;
  - (b) identify and describe the important or novel point of law as it relates to the issues raised in the Complaint; and
  - (c) advise COSL of the grounds on which the Member seeks a declaration from the Court or Tribunal and how the declaration being sought relates to the issues raised in the Complaint.
- 28.3 COSL will refuse to accept an Objection Notice if:
- (a) the Member has not complied with sub-Rules 28.1 and 28.2; or
  - (b) COSL reasonably considers that the Member has no or inadequate grounds for seeking a declaration from a Court or Tribunal; or
  - (c) having regard to all other relevant circumstances, COSL is reasonably satisfied that the Member has given COSL the Objection Notice for an improper purpose; or
  - (d) the Member previously gave COSL an Objection Notice in relation to the same Complaint,
- in which case, COSL will give the Member written notice of the refusal and will continue to deal with the Complaint.
- 28.4 If COSL accepts the Objection Notice, the Member must, in order to have the issue determined:
- (a) commence proceedings in a Court in Australia within 14 days of giving the Objection Notice to COSL; and
  - (b) give an undertaking to COSL and the Complainant to:
    - (i) pay the Complainant's costs and disbursements (on a solicitor and client basis) of the proceedings and any subsequent appeal that may be commenced by the Member;
    - (ii) make interim payments of account of such costs if and to the extent that it appears reasonable to do so; and
    - (iii) seek to prosecute the Complaint expeditiously.

- 28.5 If the Member does not commence these proceedings within 14 days of giving the Objection Notice to COSL, then COSL will deal with the Complaint as if the Objection Notice had not been given.
- 28.6 The Member is not required to pay the Complainant's costs if it is the Complainant that institutes a subsequent appeal.

## 29 Joining other parties

- 29.1 If COSL believes that:
- (a) it would not unfairly prejudice the Complainant or the Member; and
  - (b) it would lead to a more efficient and effective resolution of the Complaint,
- COSL may allow or require another Member (called the Third Party Member) to be joined as a party to the Complaint.
- 29.2 COSL may impose terms and conditions on joining a Third Party Member. For example, COSL may require the Member the Complainant has complained about to pay costs or to provide security for future costs.
- 29.3 Once a Third Party Member has been joined in the Complaint, COSL may give directions about how the Complaint will be dealt with.
- 29.4 A Third Party Member has all the rights and duties under these Rules as if that Third Party Member were the Member as referred to in the Rules.
- 29.5 Where a Third Party Member has been joined, these Rules are to be read to include that Third Party Member with appropriate changes being made.

## 30 Legal or other representation

- 30.1 Neither party is required to have legal or other representation ("representation") while COSL deals with the Complaint.
- 30.2 If a party chooses to be legally or otherwise represented, this will be at their own cost.
- 30.3 However, each party must ask COSL permission if it wishes to have representation in a hearing or Conciliation Conference convened by COSL. COSL may at its absolute discretion and on such terms as it considers appropriate (including the Member paying for the Complainant's representation if the Member elects to be represented by a person other than its own staff), allow representation, having regard to what is procedurally fair to both the Complainant and the Member.

## 31 Statements and information made 'without prejudice'

- 31.1 All statements the Complainant or Member makes and information or documents they provide to COSL are on a "without prejudice" basis. This means that anything said or done or information as provided to COSL during the Credit Ombudsman Service process cannot be used in subsequent legal proceedings unless required by an appropriate court process.

*[See Rule 32.7 as well]*

- 31.2 Any information obtained by COSL during the Credit Ombudsman Service process must not be disclosed by:

- (a) the Complainant;
- (b) the Member;
- (c) the COSL Board; or
- (d) COSL,

to anyone else unless disclosure is required by law or required or permitted by these Rules or COSL's Constitution.

## 32 Confidentiality

- 32.1 Any party to a Complaint who believes that disclosure of any information or document to COSL will place them in breach of a duty of confidentiality they owe to someone else may tell COSL this. The party claiming confidentiality must use their best endeavours to obtain the consent of the person to whom the duty is owed to disclosure of the information or document. If the consent is not given within a reasonable time, then the party claiming confidentiality will not be required to comply with any direction from COSL that the information or document be provided.

- 32.2 If COSL receives any information or document from any party to a Complaint with a request from that party that it be treated confidentially, COSL will not disclose that information or document to any other party or to any other person except:

- (a) with the consent of the person supplying the information or document, or
- (b) as required by law or required or permitted by these Rules or COSL's Constitution.

- 32.3 COSL will not use or rely on any confidential information or document provided by one party to make a finding adverse to any other party, unless it:

- (a) reasonably considers that the information or document is genuine and credible; and
- (b) informs any party against whom an adverse finding may be made that it is in receipt of the confidential information or document; and



- (c) identifies the confidential information or document to any party against whom an adverse finding may be made; and
  - (d) if appropriate, summarises the confidential information or the relevant contents of the document to any party against whom an adverse finding may be made.
- 32.4 Before COSL sends any confidential information or document to another forum, COSL will obtain the consent of the party claiming confidentiality.
- 32.5 Except where these Rules, COSL's Constitution or the law prohibits it, COSL may at its discretion disclose the Complaint, the Member's response, the Complainant's reply and any information or document obtained by COSL during the Credit Ombudsman Service process to any COSL employee, consultant, contractor or agent to the extent that is appropriate to do so to enable the person to fully and effectively carry out their powers, functions or duties.
- 32.6 COSL will not be obliged to make available to the parties any memoranda, analysis, file notes or other documents generated by COSL's employees, consultants, contractors or agents.
- 32.7 Despite anything else in these Rules, any party to a Complaint who receives from COSL any document prepared by COSL or provided to COSL by another party:
- (a) must use that document only for the purpose of dispute resolution in accordance with and as contemplated by the COSL Rules; and
  - (b) must not, except as required by a court process, disclose the document to any other person without the prior written consent of COSL, which consent may be subject to such conditions as COSL may in its absolute discretion consider appropriate,
- and for the purposes of this Rule "disclose" includes communicating or divulging by any means whether written, electronic or oral or otherwise, including copying by any means the whole or any part of the document.

### 33 Exemptions from these Rules

- 33.1 COSL may of its own volition or on the application of a party at any time and from time to time at its discretion and on whatever conditions it sees fit to impose, exempt a party from any one or more of these Rules. Before COSL grants any exemption, it must satisfy itself that doing so:
- (a) is necessary to ensure the efficient and effective resolution of the Complaint; and
  - (b) would not be unfair to or impose an unreasonable burden or disadvantage on any party.



## 34 Extensions of time

- 34.1 COSL may of its own volition or on the application of a party at its discretion and on whatever conditions it sees fit to impose extend any time for compliance with any matter under these Rules. Before COSL grants any extension of time, it must satisfy itself that doing so would not be unfair to or impose an unreasonable burden or disadvantage on any party.

## 35 Declaring a Complaint closed

- 35.1 COSL may at any time declare a Complaint closed in any of the following cases:
- (a) the Complaint is or becomes one not covered by COSL by reason of Rule 10; or
  - (b) the Complaint is withdrawn or resolved; or
  - (c) COSL deems the Complaint withdrawn by reason of the Complainant's failure to respond to COSL's communications within the period specified by COSL; or
  - (d) COSL determines that the Complaint has not been made out; or
  - (e) COSL is unable to locate the Member despite its reasonable efforts to do so; or
  - (f) subject to Rule 39.1, the Member is or becomes during the course of the Credit Ombudsman Service process an insolvent under administration or an externally-administered body corporate as those expressions are defined in the Corporations Act 2001.

## 36 Board directions

- 36.1 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 COSL's Constitution; or
  - (e) dealing with changes to the law, Government regulation, and the Financial Services Industry generally.
- 36.2 All Board Directions are binding on the Complainant, the Member, COSL and all other parties to a Complaint to COSL.

- 36.3 To the extent to which a Board Direction applies to the Complainant or the Member or the subject of the Complaint, the Board Direction must in the manner determined by the Board be given to the Complainant and the Member.

### **37 Previous COSL decisions**

- 37.1 COSL will not be bound by any previous COSL decisions, but will endeavour to be consistent in its decision-making.
- 37.2 A previous COSL decision includes but is not limited to a Ruling, Determination, an Award or an expedited ruling under Rule 20.1.
- 37.3 If COSL thinks it is appropriate, COSL will send the Complainant and the Member a copy of or extract from a COSL policy that COSL thinks is relevant to their Complaint.

### **38 Exceptions to COSL decisions being final and binding**

- 38.1 Subject to Rule 38.3, every COSL decision and every Board Direction is final and binding on a Member and a Complainant.
- 38.2 A COSL decision may only be reviewed or reopened in the circumstances allowed in these Rules or the COSL Guidelines.
- 38.3 A COSL decision is only binding on a Complainant if the Complainant accepts it. If the Complainant does not accept a COSL decision, the Complainant is at liberty to pursue other remedies in relation to the subject matter of the Complaint in the Courts or any another forum. If the Complainant does this, COSL can declare the Complaint closed and no COSL decision or Board Direction will have any force or effect against the Member in relation to the Complaint.
- 38.4 A COSL decision includes but is not limited to an expedited ruling under Rule 20.1 or a Ruling, Determination or an Award by the Credit Ombudsman.
- 38.5 If upon the Credit Ombudsman's own motion or upon application by a party within 28 days after the date on which a Determination or Award was sent to that party, the Credit Ombudsman is satisfied that in relation to that Determination or Award:
- (a) there is a clerical mistake; or
  - (b) there is an error from an accidental slip or omission; or
  - (c) there is a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
  - (d) there is a defect in form; or
  - (e) the terms of the Determination or Award do not reflect the Credit Ombudsman's actual intentions,

the Credit Ombudsman may:

- (i) make whatever amendments to the Determination or Award it thinks appropriate; or
- (ii) re-issue the Determination or Award; or
- (iii) give such directions as it thinks appropriate (including directions about times for compliance) in connection with the Determination or Award.

38.6 A Member who institutes legal proceedings to challenge any COSL decision or a Board Direction must comply with all the following requirements:

- (a) the legal proceedings must be instituted within 28 days after the Credit Ombudsman sends the Member the Determination or Award or COSL notifies the Member about the COSL decision or the 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 disbursements incurred by, the Member, COSL and the Complainant in relation to the legal proceedings and any appeal; and
- (c) if COSL so specifies, the Member must furnish security for costs and disbursements in relation to the legal proceedings and any appeal as COSL reasonably requires.

38.7 A Member who fails to institute legal proceedings within 28 days or otherwise fails to satisfy all the requirements of this Rule forever waives its rights to institute legal proceedings to challenge any COSL decision or a Board Direction.

## 39 Member ceasing to carry on business

39.1 COSL may in its discretion:

- (a) by-pass the Member's IDR process, whether or not the Member has commenced considering the Complaint within that process; and
- (b) deal with or continue to deal with a Complaint,

if the Member:

- (i) ceases to carry on business (e.g. Member closes its doors to consumers or investors or sells its business); or
- (ii) ceases to hold a relevant licence; or
- (iii) becomes insolvent under administration,

and in doing so, COSL must consider the Complainant's interests.



## 40 Reporting obligations

- 40.1 COSL will collect and record comprehensive information about, among things:
- (a) the number of Complaints and enquiries it receives;
  - (b) the demographics of Members (where practicable);
  - (c) the number of Complaints it receives that are outside its jurisdiction and the reasons for this;
  - (d) the outcome of Complaints that were resolved;
  - (e) the current caseload, including the age and status of open cases;
  - (f) the time taken to resolve Complaints; and
  - (g) a profile of Complaints that identifies:
    - (i) the type and purpose of the Financial Service;
    - (ii) the type of Member;
    - (iii) the cause of the Complaint; and
    - (iv) any systemic issues or other trends.
- 40.2 COSL will produce an annual report of operations at least every twelve months for publication and provision to ASIC, its Members and the public. The report must be a comprehensive summary and an analysis of the data collected and include, among other things, the following statistical information in the appropriate context about each Member:
- (a) the number of Complaints recorded by COSL;
  - (b) the number of Complaints closed; and
  - (c) the outcome of the Complaints.
- 40.3 The Credit Ombudsman must, on a quarterly basis, report to ASIC in relation to any systemic, persistent or deliberate conduct such as:
- (a) systemic issues (being either an issue arising out of a single complaint but having implications which extend beyond the parties to the particular complaint (e.g. how interest is calculated or a fee applied), or an issue arising from multiple complaints which are similar in nature (e.g. inadequate disclosure, improper interpretation or application of standard terms, or where a particular intermediary has mis-sold financial products to a number of consumers); and
  - (b) serious misconduct (e.g. conduct by a Member which involves fraud, gross negligence or inefficient conduct, or which is a wilful or flagrant breach of a relevant law).
- 40.4 COSL will notify ASIC of its intention to:
- (a) cancel a Member's membership with COSL; or

- (b) expel or suspend a Member from membership with COSL,
  - (c) and will again notify ASIC if and when either of these has occurred.
- 40.5 COSL may also report to ASIC, a government body, a relevant industry body or another external dispute resolution scheme, the occurrence of any of the following:
- (a) the resignation of the Member as a member of COSL;
  - (b) the cancellation of the Member's membership of COSL;
  - (c) the expulsion or suspension of the Member from membership of COSL;
  - (d) the non-payment of any fee by the Member;
  - (e) the failure by the Member to comply with an Order, Direction to Comply or an Award issued by the Credit Ombudsman; or
  - (f) the failure of a Member to comply with any provision of COSL's Constitution, or obligation imposed by the Credit Ombudsman Service Rules, Guidelines to the Credit Ombudsman's Rules or any By-law made by the Board.

## **41 Publicising the Credit Ombudsman Service**

- 41.1 The Board and all Members must ensure that the Credit Ombudsman Service is appropriately and effectively publicised. For example, the Credit Ombudsman Service is publicised on COSL's web site. Also, copies of the COSL Rules are to be available on request from a Member.

## **42 Immunity from liability**

- 42.1 COSL, members of the COSL Board, any person authorised by the Credit Ombudsman to carry out any responsibilities or exercise any powers or discretions of COSL or the Credit Ombudsman and COSL employees, contractors and agents shall not be liable to a party to a Complaint for any loss or damage arising directly or indirectly in the course of carrying out the COSL function.

## **43 Protection from defamation**

- 43.1 The Member must not instigate defamation action of any kind against a Complainant in respect of allegations made to COSL by the Complainant about the Member.

## 44 Dictionary

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

"applicable code of practice"	means a code of conduct or practice, regulatory guidance, and accepted professional standards and protocols applicable in the Financial Services Industry
"ASIC"	means Australian Securities and Investments Commission
"ASIC Act"	means the Australian Securities and Investments Commission Act 2001
"Award"	means the binding Determination made by the Credit Ombudsman
"Board"	means the board of directors of COSL
"Board Direction"	means a direction issued by the Board under COSL's Constitution
"Complainant"	means a Consumer who makes a Complaint to COSL about a Member or Members, but does not include a person who is a member of COSL unless the person did not, at the time the event complained about occurred, have a business relationship with the Member against whom the Complaint is made
"Complaint"	means: <ul style="list-style-type: none"> <li>(a) for the purpose of IDR, an expression of dissatisfaction made to a Member, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected; and</li> <li>(b) for the purpose of EDR, an expression of dissatisfaction about a Financial Service that has been recorded by COSL as a complaint</li> </ul>
"Complaint Summary"	means a summary of the Complaint and the Member's response in whatever manner and form COSL thinks appropriate
"Conciliation and Investigation Phase"	means the conciliation and investigation phase of the Credit Ombudsman Service process



<p>"Conciliation Conference"</p>	<p>means any meeting of the parties to the Complaint (and their representatives, if any) with COSL, whether in person, over the phone or by video conference, during which COSL uses mediation, conciliation or other techniques to identify the relevant issues and the strengths and weaknesses of each party's case; provide non-binding opinions, suggestions or recommendations with reference to the applicable law, good industry practice, applicable codes of practice and fairness; generate options for the settlement of the Complaint; or otherwise assist the parties to resolve the Complaint</p>
<p>"Consumer"</p>	<p>means an individual or individuals (whether acting as a trustee or otherwise), a partnership comprising individuals or a Small Business, but does not include:</p> <ul style="list-style-type: none"> <li>(a) an individual that COSL determines is not a consumer for the purposes of the COSL Rules or Guidelines because of the assets, wealth, or both, that the person has, holds or controls; or</li> <li>(b) a Member of COSL if, at the time the events complained about occurred, the person, its directors or employees, had a business relationship with the Member against whom the complaint is made.</li> </ul>
<p>"Consumer Representative"</p>	<p>means a director of COSL appointed to that office under COSL's Constitution</p>
<p>"COSL"</p>	<p>means the Credit Ombudsman Service Limited and, unless the context indicates the contrary, includes the Credit Ombudsman</p>
<p>"COSL decision"</p>	<p>is defined in Rule 38.4.</p>
<p>"COSL Rules" or "Rules" or "these Rules"</p>	<p>mean the Credit Ombudsman Service Rules</p>
<p>"COSL's website"</p>	<p>means the web site maintained by COSL at <a href="http://www.cosl.com.au">www.cosl.com.au</a></p>
<p>"Credit"</p>	<p>means any form of credit or financial accommodation, including pawn broking and margin lending</p>



"Credit Contract"	means a loan regulated by the Uniform Consumer Credit Code or the National Consumer Credit Protection Act 2009
"Credit Ombudsman"	see Rules 20 to 22
"Credit Ombudsman Service process"	means the process for dealing with a Complaint under these Rules
"Credit Provider"	means a person who provides any form of Credit to another person
"Deal with a Complaint"	is explained in Rule 12.2
"Determination"	means the Credit Ombudsman's Determination of a Complaint.
"Determination Phase"	means the phase during which the Credit Ombudsman makes a Determination and, as required, an Award
"Direct Loss"	means direct loss suffered by the Complainant including but not limited to costs incurred in having to obtain Credit or alternative Credit
"EDR"	means external dispute resolution - a process for resolving complaints without resorting to legal proceedings
"enforcement action"	<p>means, in relation to any demand made by a Member or its assignee for the recovery of an alleged debt or possession of an asset securing the debt:</p> <p>(a) legal proceedings in a court to recover the alleged debt or take possession of the asset; or</p> <p>(b) any action (other than legal proceedings) to recover the alleged debt or take possession of the asset,</p> <p>but does not include issuing a statutory notice of default to the Complainant.</p>
"expedited ruling"	means a ruling under Rule 20.1

<p>“financial hardship application”</p>	<p>means an application by a Complainant (or a Consumer, if the financial hardship application has not yet been made to COSL), in which the Complainant (or Consumer) claims that they are unable to meet the payment terms described in their loan agreement or lease or seeks a variation to the payment terms on grounds of financial hardship</p>
<p>“Financial Services”</p>	<p>mean:</p> <ul style="list-style-type: none"> <li>(a) any financial service within the meaning of section 766A of the Corporations Act 2001 or 12BAB of the ASIC Act; or</li> <li>(b) any credit activity, credit service or credit assistance within the meaning of the National Consumer Credit Protection Act 2009; or</li> <li>(c) the taking of, or the conduct of the Member in relation to, a guarantee or security for financial accommodation provided by the Member; or</li> <li>(d) the exercise of rights under a loan agreement or guarantee by, or the conduct of, a Member who is a debt collection agency, invoice discounter, factor or debt agreement administrator; or</li> <li>(e) where the Member is a mutual, the provision of, or the conduct of the Member in relation to, a financial product issued or provided by a third party through the agency of the mutual; or</li> <li>(f) the provision of, or the conduct of the Member in relation to budget monitoring, mortgage minimisation services, credit management and debt recovery.</li> </ul>
<p>“Financial Services Industry”</p>	<p>means the Financial Services industry in Australia and any similar or related or associated industries in which Members and their related bodies corporate carry on business;</p>
<p>“IDR”</p>	<p>means internal dispute resolution involving a procedure adopted by a Member to consider a Complaint</p>
<p>“lender”</p>	<p>means a Credit Provider</p>
<p>“loan”</p>	<p>means the provision of Credit</p>



"loss"	see Rules 31 and 32
"Member"	means a person, firm or corporation which is a member of COSL
"Member Representative"	means a director of COSL appointed to that office under COSL's Constitution
"MFAA"	means the Mortgage and Finance Association of Australia (formerly the Mortgage Industry Association of Australia)
"monetary compensation limit"	means an amount not exceeding \$250,000, increasing to \$280,000 on and from 1 January 2012, and thereafter adjusted every three years using the higher of the increase in the Consumer Price Index (CPI) or Male Total Average Weekly Earnings (MTAWE), with rounding to the nearest \$500
"Objection Notice"	means a notice given by a Member under Rule 28
"payment terms"	mean the payment terms described in a Complainant's (or Consumer's) loan agreement or lease
"relevant licence"	means an Australian Financial Services licence or an Australian Credit licence
"Ruling"	means a Ruling by the Credit Ombudsman as to whether a Complaint or any aspect of a Complaint can be dealt with under these Rules or about any matter that arises in the course of COSL dealing with the Complaint, but does not include an expedited ruling made by COSL under Rule 20.1
"Settlement Agreement"	means the agreement for withdrawing or resolving the Complaint reached between the Complainant and the Member in whatever form COSL regards as appropriate to the circumstances
"Small business"	means a business employing fewer than: <ul style="list-style-type: none"> <li>(a) 100 full-time (or equivalent) employees, if the business is or includes the manufacture of goods; or</li> <li>(b) otherwise, 20 full-time (or equivalent) employees</li> </ul>

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"Third Party Member"	means a Member joined as a party to the Complaint by COSL under Rule 29
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- 44.2 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; and
  - (e) references to any Act of Parliament or other law include regulations and other instruments made under it and to consolidations, re-enactments, amendments or replacements of it.
- 44.3 In calculating compliance with a time period by reference to a number of "days", include weekends but disregard any public holiday.
- 44.4 Whenever these Rules refer to information, they include information or evidence in any form and from any source, but do not include information or evidence that has been or appears to be illegally obtained.
- 44.5 If any provision in these Rules is inconsistent with any provision of COSL's Constitution, the provision of the Constitution will always prevail.