ASIC
Australian Securities & Investments Commission

Review of the financial system external dispute resolution and complaints framework

Submission by the Australian Securities and Investments Commission on the Interim Report

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Overview

Background

1 On 6 December 2016, the panel responsible for reviewing the financial system's external dispute resolution and complaints schemes (the Panel) published the Interim Report of the *Review of the financial system external dispute resolution and complaints framework* (the Interim Report).

2 ASIC made two earlier submissions to the Panel's Issues Paper, which was released on 9 September 2016. The first of these submissions set out ASIC's broad views about the operation of the external dispute resolution (EDR) framework. A supplementary submission raised related findings and observations from an industry-wide review of life insurance claims practices and outcomes.

3 ASIC now welcomes the opportunity to make this submission on the Interim Report.

4 In responding to the findings of the Interim Report, ASIC's priority has been to consider what framework delivers the best outcomes for consumers and small businesses who have suffered loss, now and into the future. Treating these consumers fairly and quickly also gives industry the best opportunity to build and preserve trusted relationships with their customers.

Our approach to this submission

5 The format of this submission follows the draft recommendations, and information requests in the Interim Report.

6 Part A addresses draft recommendations 1, 4, 5 and 7 relating to a future state of the dispute resolution framework. This includes ombudsman scheme consolidation, superannuation disputes and code of practice, legislative amendments necessary to achieve changes to the framework, and increased oversight of the framework. This section also responds to the Panel's information requests about an ASIC directions power and credit representatives.

7 Part B addresses draft recommendations 2 and 3 relating to scheme jurisdiction. This includes monetary limits, compensation caps and jurisdiction for small business disputes. This section also responds to the Panel's information requests on monetary limits, compensation caps for consumers and small businesses.

8 Part C addresses draft recommendations 6, 8, 9 and 10 relating to scheme accountability, the use of decision making panels and internal dispute resolution (IDR) and related information requests

9 Part D responds to draft recommendation 11 concerning debt management firms and the Panel's observation on a last resort compensation scheme. This section also addresses some transition and implementation issues.

A Future framework

Key points

This section deals with a future dispute resolution framework, including ombudsman scheme consolidation, superannuation disputes and code of practice, legislative amendments necessary to achieve changes to the framework, and increased oversight of the framework.

Specifically, the following draft recommendations are addressed:

- Recommendation 1: A new industry ombudsman scheme for financial, credit and investment disputes;
- Recommendation 4: A new industry ombudsman scheme for superannuation disputes;
- Recommendation 5: A superannuation code of practice; and
- Recommendation 7: Increased oversight of industry ombudsman schemes.

This section also responds to the Panel's information requests about an ASIC directions power, scheme powers, and credit representatives.

Ombudsman scheme consolidation

Draft recommendation 1: A new industry ombudsman scheme for financial, credit and investment disputes

10 The Interim Report recommends a new industry ombudsman scheme for financial, credit and investment disputes to replace the Financial Ombudsman Service (FOS) and Credit and Investment Ombudsman (CIO) (draft recommendation 1).

11 ASIC agrees with the draft Panel finding that:

> (t)he need to establish and run and, in the case of the regulator, approve and oversee multiple schemes results in unnecessary duplicative costs and an inefficient allocation of resources.[1]

and considers that the benefits of scheme consolidation outweigh the potential negatives.

12 ASIC also agrees with the Panel's observation that the current framework is a product of history rather than design, and this review represents an

[1] Treasury, Interim Report of the *Review of the financial system external dispute resolution and complaints framework*, December 2016, p. 103.

important opportunity to design a framework that best meets the needs of all users into the future.

13 As noted in our first submission, commencing with the merger of the three major financial services EDR schemes (i.e. Australian Banking Industry Ombudsman, Insurance Ombudsman Service and Financial Industry Complaints Service) on 1 July 2008, ASIC has successfully supervised the consolidation of six approved EDR schemes into one: the current FOS. This process involved bringing together schemes whose membership ranged from the largest banking and insurance institutions, through to small financial advisers and insurance brokers.

14 In each case, consolidation improved scheme efficiencies, removed uncertainty for consumers and reduced jurisdictional boundary issues. While scheme consolidation is an intensive process involving consultation, oversight and clear communication about the impacts and timing of change, the Panel's recommendation builds on a strong history and proven success of rationalisation in the sector.

15 We do not expect that consolidation of the CIO and FOS would create an unwieldy or excessively bureaucratic EDR scheme, given the relative size and number of complaints that these two schemes currently deal with.

16 The Interim Report notes that the FOS currently deals with 83% of all financial services EDR disputes[2], and based on 2015–16 figures a consolidated CIO/FOS would have received 14% more disputes than what FOS dealt with on its own (i.e. an increase from 34,095 disputes to 38,855 disputes). We also note that there is currently direct overlap between FOS and CIO in the nature of disputes across the two schemes.

17 Scheme consolidation, combined with a review of the merits for the separate requirement that credit representatives maintain individual scheme membership, in fact has the potential to deliver a more compact and efficient broad-based ombudsman scheme as well as reducing financial and administrative costs for small businesses: see paragraph 26.

18 We are therefore confident that an effective transition that supports existing and prospective scheme members and consumers can be achieved. However, it will require cooperation between the schemes and legislative change to clarify and enhance a consolidated scheme's powers and accountability.

[2] Interim Report, paragraph 4.8.

Superannuation disputes

Draft recommendation 4: A new industry ombudsman scheme for superannuation disputes

19 The Interim Report also recommends a new industry ombudsman scheme for superannuation disputes.

20 In support of that recommendation, the Panel made a number of findings about the operation and structure of the Superannuation Complaints Tribunal (SCT). In the interests of delivering the best outcomes for superannuation members, ASIC broadly supports the draft Panel findings about the SCT and agrees that reform is needed. These findings include the need to address delays in complaints handling, adequacy of funding and process and governance reform.

21 ASIC also endorses the Panel's observation that SCT staff, tribunal members and Executive are held in high regard by scheme and industry stakeholders.

22 While it would appear that there are many aspects of the established ombudsman structure that could be applied fairly readily to superannuation disputes, we acknowledge that there are also important legal and policy issues to consider in moving from the current statutory model and designing the jurisdiction of a superannuation ombudsman scheme.

23 These issues include: how decisions are made, what remedies are available, and how and which parties can be joined, bound by decisions and compelled to produce documents. These would need to be subject to legal analysis to ensure they can be resolved to deliver good outcomes for scheme users, in addition to stakeholder consultation and consideration of transitional arrangements.

Transitional arrangements

24 If the Panel's draft recommendation to transition the SCT into a separate superannuation ombudsman scheme via a two-step process is ultimately accepted, it would create additional legislative and transitional complexity. In particular, a two-step process would:

(a) involve significant policy/legal work to develop a superannuation ombudsman model;

(b) potentially require initial dual scheme membership for some firms (e.g. life insurers and firms providing financial advice about superannuation);

(c) involve separate regulatory oversight of multiple schemes, and

(d) require separate legislative processes to bring about a superannuation ombudsman in the first place (Step 1) and, subsequently, a single scheme with single membership requirements for all licensees (Step 2).

25 In our first submission, ASIC noted the nature of the current overlap between FOS and the SCT, and this was also covered in more detail in the individual submissions of each of those schemes.

26 If the final recommendation of the Panel is that superannuation disputes be dealt with under an industry ombudsman model, ASIC believes it would be more efficient, and ultimately less complex for consumers and members, to make the transition directly into an appropriately constituted superannuation division of the broader consolidated scheme. This would create a single industry ombudsman for the entire financial services sector.

Superannuation code of practice

Draft recommendation 5: A superannuation code of practice

27 The Panel has recommended that the superannuation industry should develop a superannuation code of practice.

28 In our submission to the Issues Paper, ASIC commented on the important role that effective codes of practice play in setting industry standards and providing a benchmark or guide for ombudsman decisions about good industry practice when considering disputes.

29 ASIC has a voluntary power to approve codes of conduct. We have set out guidance about this power in Regulatory Guide 183 *Approval of financial services sector codes of conduct* (RG 183). One of ASIC's threshold criteria for approving a code is that it must do more than restate the law. For example, it should set standards that exceed a legislative minimum or set out in more detail what firms should do to comply with principles-based requirements. We think that this holds as a minimum benchmark of effectiveness for any industry code.

30 There are regulatory gaps in relation to life insurance that have resulted in poor consumer outcomes in the Australian market. These include in relation to advice, claims handling and complaints handling. These gaps have been highlighted in recent ASIC Reports. See Report 413 *Review of retail life insurance advice* (REP 403) and Report 498 *Life insurance claims: An industry review* (REP 498).

31 ASIC strongly supports the current industry focus on developing codes dealing with life insurance inside and outside of superannuation. This includes the Financial Service Council's Life Insurance Code of Practice (effective from 1 July 2017) and the Insurance in Superannuation Working Group (Working Group) established in November 2016 and charged with

developing a code of practice for life insurance in superannuation, which is intended to be finalised before the end of 2017.

32 It is essential that these codes set appropriate standards, are harmonised and effectively monitored and enforced. An industry estimate suggests that more than 70%[3] of life insurance policies in Australia are held through superannuation, the current work of the Working Group is, therefore, particularly important and would directly support decision-making by a superannuation ombudsman scheme.

33 ASIC has not considered whether there is also a need to develop a broader code for superannuation. This would need to be considered with key stakeholders including the Australian Prudential Regulation Authority (APRA) and industry and consumer stakeholders with experience in issues affecting superannuation members. In particular, such discussions should seek to identify any regulatory gaps that are shown to be driving or permitting poor member outcomes.

Legislative amendments to support consolidation

34 Legislative amendments would be necessary to give full effect to draft recommendations 1 and 4.

35 Section 912A(2) of the *Corporations Act 2001* (Corporations Act) states that a 'dispute resolution system' must consist of membership of 'one or more external dispute resolution schemes that is or are approved by ASIC' that together cover complaints made by retail clients of the licensee.[4] It then provides a carve-out for complaints that may be dealt with by the SCT.

36 In our initial submission, ASIC raised the importance of the licensing hook as a regulatory lever to promote compliance with EDR scheme procedures and decisions. The framing of the general obligations of Australian Financial Services (AFS) licensees and Australian credit licensees (credit licensees) must be consistent with final government policy about EDR scheme membership.

37 As the Interim Report notes, superannuation trustees become subject to the SCT when they become regulated under the *Superannuation Industry (Supervision) Act 1993* (SIS Act),[5] and so are not actively required to join the Tribunal. If the SCT is to transition to an industry ombudsman model, trustees would need to join the new scheme—similar to the current contractual membership model for AFS licensees and credit licensees. It is

[3] Rice Warner, *Insurance through superannuation*, media release, 20 April 2016.
[4] See also s47 and s11 of the *National Consumer Credit Protection Act 2009*.
[5] Interim Report, paragraph 4.152.

likely that this will also need to be effected as a licence obligation. For the small number of financial service providers who are not required to be licensed, the obligation would need to be imposed via legislation

ASIC directions power

The Interim Report included the following information request regarding an ASIC directions power:

Information request: ASIC directions power

On what matters should ASIC have the power to give directions? For example, should ASIC be able to give directions in relation to governance and funding arrangements and monetary limits?

38 Regulation 7.6.02 of the Corporations Regulation 2001 sets out the matters that ASIC must take into account when considering whether to approve an EDR scheme, as well as our current powers of approval and revocation.

39 ASIC believes that it is important to retain the matters set out in reg 7.6.02(3) (accessibility, independence, fairness, accountability, efficiency, effectiveness). As noted in our initial submission these form the basis of Regulatory Guide 139 *Approval and oversight of external complaints resolution schemes* (RG 139) and are based on Treasury's *Benchmarks for industry-based customer dispute resolution*.

Draft recommendation 7: Increased oversight of industry ombudsman schemes

40 The Panel has recommended that:

> ASIC's oversight powers in relation to industry ombudsman schemes should be enhanced by providing ASIC with more specific powers to allow it to compel performance where the schemes to do not comply with EDR benchmarks (draft recommendation 7).

41 We agree that the oversight of and confidence in industry ombudsman schemes would be enhanced by additional statutory powers for ASIC, beyond those of approval and revocation.

42 We recommend that ASIC be given a general directions power in relation to the operation and performance of the financial services ombudsman scheme/s. This power could be exercised if ASIC is of the view that a direction is necessary to ensure that a scheme continues to meet the approval requirements

43 Without limiting the generality of such a power, examples of when it would be exercised include directing a scheme to:

(a) conduct independent audits and reviews;

(b) raise additional funds to ensure adequacy of resourcing;

(c) report certain information to ASIC, including about systemic issues; and

(d) change monetary and compensation limits.

44 We would also support a clear statutory statement that ASIC's role and powers do not extend to reviewing the merits of individual EDR decisions.

Scheme powers

The Interim Report included the following information request regarding scheme powers:

Information request: scheme powers

Should schemes be provided with additional powers and, if so, what additional powers should be provided? How should any change in powers be implemented?

45 The Interim Report said that a number of stakeholders submitted that the powers of the schemes should be increased, including having powers to compel documents and obtain information. FOS stated in its submission that its ability to 'efficiently and effectively resolve disputes would be enhanced by having certain powers backed by statute'.[6]

46 ASIC also supports enhanced scheme powers that promote better outcomes for scheme users. We consider that in most cases there would be no legal barriers to providing these powers by statute, however the scope and nature of each power would need to be subject to legal and policy analysis.

Credit representatives

The Interim Report included the following information request regarding credit representatives:

Information request: credit representatives

Does EDR scheme membership by credit representatives provide an additional or necessary layer of consumer protection that is not already met through the licensees' membership?

47 ASIC's view is that the current requirement that credit representatives join an approved EDR scheme does not provide an additional or necessary layer of consumer protection that is not already met through the credit licensee

[6] FOS submission to the Review of the financial system external dispute resolution framework, October 2016, p. 36.

membership requirement, and that therefore it does not justify the associated industry and regulatory costs.

48 Under s64 and 65 of the *National Consumer Credit Protection Act 2009* (National Credit Act), each credit representative must be a member of an ASIC-approved EDR scheme, in addition to the membership of the credit licensee they represent.

49 If the credit representative does not have EDR scheme membership at the time of authorisation, then the authorisation has no effect. If a credit representative ceases to be a member of an approved EDR scheme, the authorisation also ceases to have effect.[7] In comparison, under the AFS licensing regime, authorised representatives of an AFS licence holder are covered by the licensee's EDR membership and are not required to hold EDR membership separately.

50 While credit representatives are required to be EDR scheme members in their own right, they do not need to have separate IDR procedures that meet ASIC's requirements: 'This is because a credit licensee's IDR procedures must cover disputes relating to its credit representatives'.[8]

Rationale for mandating EDR membership for credit representatives

51 The Revised Explanatory Memorandum to the National Credit Act does not set out the reasons for requiring a credit representative to maintain their own EDR membership.

52 ASIC understands that the underlying policy rationale at the time was to ensure that there were no gaps in coverage or access to EDR for consumer complainants—effectively to avoid doubt where, for example, a representative or intermediary was acting for a number of licensees.

53 There were concerns at the time about broker and intermediary conduct, and uncertainty about the effectiveness of prevailing state-based regulatory regimes to ensure that credit providers or broker firms were responsible for the conduct of their agents.

54 ASIC's view is that the subsequent national credit reforms resolved any uncertainty about this agency issue, and that the risks that this requirement was designed to address have not materialised. More specifically, that:

[7] One exemption applies to this general obligation for credit representatives to hold EDR membership. It applies to employees or directors who are sub-authorised credit representatives of a body corporate. Further detail can be found in relation to this exemption at Appendix 2.
[8] RG 139.8.

(a) The National Credit Act provides that a licensee will be responsible and liable for any conduct of its credit representatives.[9] This applies equally to conduct of a representative that is outside of the authority of the licensee. Where the credit representative acts for more than one licensee, those licensees are jointly and severally liable for the conduct of the credit representative. Licensees must also have adequate compensation arrangements that cover the conduct of their representatives. In ASIC's view, these provisions are drafted sufficiently broadly to ensure that a client of a credit representative who does not hold EDR membership will be able to seek recourse for any misconduct by that representative, against their licensee.

(b) The requirement under the National Credit Act for a credit representative to have EDR membership could theoretically provide a consumer with an alternative option for recourse if a licensee became insolvent. However, because a credit representative is not required to have adequate compensation arrangements (e.g. professional indemnity insurance) in their own right, this protection is less significant.

Movement of credit representatives

55 There is a high level of movement among credit representatives in and out of the industry and EDR schemes. This imposes an administrative burden on ASIC as noted in our first submission:

(a) In financial year 2015–16, ASIC received 2,786 member notifications from CIO of which 343 related to licensees and 2,443 to credit representatives; and

(b) In 2015–16, ASIC received 526 member notifications from FOS relating to both licensees and credit representatives.[10]

Scheme funding implications

56 ASIC acknowledges that there will be budgetary and funding mix implications to a consolidated scheme if credit representatives are no longer required to join in their own right.

57 According to the Issues Paper, CIO earned 71.4% of total revenue from annual membership fees in 2015–16 and 26.3% from complaints fees, while FOS earned 10.8% of revenue from membership levies and 84.2% from user charges and dispute resolution fees. In 2015–16 disputes were lodged

[9] This refers to a credit activity, on which a client could be reasonably expected to rely, and upon which a client does rely in good faith.
[10] There are differences in how schemes make notifications to ASIC and in how ASIC captures and reports this data. For example, FOS may separately report a member expulsion and a member re-instatement which means the FOS figures may include multiple notifications in relation to some members.

against 2.2% (or 514) of CIO's members and 6% (or 835) of FOS' members[11].

58 However, ASIC believes the Panel should give serious consideration to the potential industry and scheme savings arising from a more targeted licensee membership under a consolidated scheme.

59 Based on the information available to ASIC as at September 2016, a consolidated financial, credit and investment ombudsman—without credit representatives—would have approximately 10,690 licensee (and other) members with no real diminution of coverage for consumers. This would represent a reduction in membership of about 70% from the current two-scheme model.

[11] See Interim Report, pages 69 and 80.

B Expanding scheme jurisdiction

Key points

This section deals with the proposed expansion of the dispute resolution scheme jurisdiction. This includes monetary limits, compensation caps and jurisdiction for small business disputes.

The following draft recommendations are addressed:

- Recommendation 2: Consumer monetary limits and compensation caps; and
- Recommendation 3: Small business monetary limits and compensation caps

This section also responds to the Panel's information requests on monetary limits, compensation caps for consumers and small businesses.

60 The Panel made two recommendations on expanding the jurisdiction of the consolidated scheme: in terms of the value of disputes that have access to the scheme and the quantum of compensation it can award.

Monetary limits and compensation caps

Draft recommendation 2: Consumer monetary limits and compensation caps

61 In the Interim Report, the Panel found that the current monetary limits for consumers are outdated, and recommended increasing the monetary limits and compensation caps that would apply to a new industry ombudsman scheme for financial, credit and investment disputes. The Panel also recommended that these limits be subject to regular indexation.[12]

62 The SCT has an unlimited monetary claims jurisdiction.

63 Section 912A of the Corporations Act requires AFS licensees to join an EDR scheme that covers 'complaints … against the licensee made by retail clients in connection with the provision of all financial services covered by the licensee'. Sections 47 and 11 of the National Credit Act have the effect that a credit licensee must be a member of an ASIC approved EDR scheme that covers disputes in relation to the credit activities of the licensee or its representatives. RG 139 provides further guidance about what is an

[12] The current overarching monetary limit of $500,000 that applies to FOS and CIO is based on the value of the retail client test under s761G of the Corporations Act. (See Corporations Act s761G 7(a) and reg 7.1.19(2)). The monetary limit sets a ceiling on the value of a claim that can be made to an approved EDR scheme.

appropriate scheme coverage, which includes permitting reasonable exclusions.

64 On monetary limits, RG 139 states that

> A scheme's coverage … must be sufficient to deal with (a) *the vast majority of types of consumers complaints* or disputes in the relevant industry (or industries); and …(b) … must be able to award compensation up to a capped amount that is *consistent with the nature, extent and value of consumer transactions* in the relevant industry (or industries).[13] (emphasis added)

65 The statistics published by the CIO and FOS suggest that the vast majority of types of consumer complaints that are lodged with the schemes are currently being dealt with by the schemes (see below).

66 However ASIC agrees with the Panel that the current monetary limits and compensation caps have not kept pace with the nature, extent and value of consumer transactions across the financial services sector. In addition there will be some complainants who did not lodge a claim with a scheme because it was over limit, and who are therefore not accounted for in the statistics.

> In 2015–16 there were 5,692 disputes at the FOS which were classified as Outside Terms of Reference (OTR). This represents a proportion of 17% of all disputes closed. Seventy nine disputes or 1% of matters were closed because the claim exceed the scheme's monetary limits, five disputes (less than 1% of small business disputes) were closed where the credit facility exceeds $2 million and three disputes were closed because the complainant was not a retail client.[14]
>
> In 2015–16, there were 441 complaints that CIO could not consider as they were out of jurisdiction. This represented 10.6% of the complaints closed. Only 1 complaint (0.1%) was out of jurisdiction on the basis that the compensation sought exceeded the compensation cap of $309,000.[15]

Monetary limits

The Interim Report included the following information requests regarding monetary limits:

[13] RG 139.164.
[14] FOS 2015–16 Annual Report, p. 58. FOS notes that some disputes may have more than one OTR reason.
[15] CIO Annual Report on Operations, 2015–16, p. 66.

Information requests: Monetary limits

What principles should guide the levels at which the monetary limits and compensation caps are set? What indexation arrangements should apply to ensure the monetary limits and compensation caps remain fit-for-purpose?

What should be the monetary limits and compensation caps for the new scheme? Should they be different for small business disputes?

ASIC's experience in reviewing monetary limits

67 ASIC's experience is that efforts to increase EDR scheme compensation caps and/or monetary limits typically give rise to strongly held and often polarised stakeholder views. As the final arbiter, ASIC then needs to determine a series of trade-offs, about such issues as:

(a) current views and evidence about what constitutes a 'consumer' and 'small business' transaction in practice;

(b) what are appropriate limits for consideration by a scheme that is designed to be a low-cost, more efficient alternative to the courts; and

(c) the cost, availability and limitations of professional indemnity insurance (PI insurance) and the significance of this for smaller licensees as distinct from a prudentially regulated institution that can self-insure.

68 These trade-offs will still arise under a more consolidated framework.

69 Over 2008–09 ASIC led a large-scale review of RG 139 and Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165).[16] This was when the concept of a compensation cap—and the capacity to waive amounts in excess of that cap—was introduced, along with proposals to increase caps from current limits. A review of the public consultation documents reveals the extent of industry opposition to then raising effective limits up to $280,000.[17] Conversely, a Joint Consumer submission at the time supported this increase on the basis that the limit would be subsequently raised to $500,000 by 2012.

70 We note that this review was undertaken in the immediate aftermath of the Global Financial Crisis, which may have intensified some industry opposition.

Changes to the current monetary and compensation limits

71 ASIC agrees that the monetary limits and compensation caps that currently apply to FOS and CIO should be raised, and that it is now time to prioritise

[16] Consultation Paper 102 *Dispute resolution: Review of RG 139 and RG 165* (CP 102).
[17] Note the exceptions to this limit.

the setting of limits that are more directly referable to evidence about the value of consumer and small business transactions, facilities and assets. While we don't have a determined view about what these limits should be, we believe that guiding principles should:

(a) retain the concept of a *vast majority* of complaints being covered (i.e. that there are some disputes which, by their nature, may be more appropriately deal with in another forum including the courts).

(b) reflect that we need an *evidence base* to assess and determine appropriate limits based on the nature, extent and value of consumer transactions, facilities and assets, and that there is an expectation that industry will supply appropriate data to ASIC to support this assessment. Such evidence would be likely to include current data about:

  (i) home loans;

  (ii) value of residential and investment properties across Australia;

  (iii) personal credit exposures;

  (iv) small business facilities and exposures;

  (v) value of funds under advice;

  (vi) sum insured of life insurance policies; and

  (vii) superannuation balances.

(c) take into account that increasing the compensation cap has implications for scheme members who rely on PI insurance to meet claims (and satisfy their compensation arrangements requirements under s912B of the Corporations Act and s47 of the National Credit Act).

  As an indicator, 344 out of 4191[18] licensees have self-reported to ASIC that they are APRA-regulated and therefore exempt from the need to hold PI insurance or alternative compensation arrangements. The cost and limitations of PI insurance has previously acted as a barrier to significantly increasing compensation caps across the board, and in particular to having a higher, single compensation cap.

72 Submissions to the Interim Report reveal that a universally supported feature of the SCT is its unlimited monetary jurisdiction. ASIC also supports a new superannuation ombudsman or reformed Tribunal retaining unlimited monetary limits so as not to reduce the existing coverage that superannuation members have through the SCT. However, we note that this perpetuates the issue of differential coverage, in particular for life insureds depending on whether they purchased their policy inside or outside of superannuation.

[18] Licensees who are authorised to provide financial services to retail clients as at 9 December 2016.

73 ASIC considers that there is limited policy justification for this differential treatment on consumer protection grounds. We would ask the life insurance industry to demonstrate why all insureds should not have access to the higher jurisdiction under current or proposed ombudsman schemes.

74 In paragraph 42 of this submission, we propose that ASIC should have a directions power which could include directing changes to monetary and/or compensation limits. In most if not all cases this would still be subject to review and consultation. ASIC also believes it would be preferable to apply indexation to both the monetary and compensation limits rather than prescribe a fixed schedule for reviewing monetary limits.

Differential consumer and small business limits

75 The Joint Consumer Groups submission to the Issues Paper argued that there is a need to increase current limits at CIO and FOS and recommended that 'The same jurisdictional and compensatory limits should apply to small business and consumer disputes'.[19]

76 This submission addresses the issue of small business access to EDR in more detail below, however ASIC is of the view that consumer and small business monetary limits may not necessarily be aligned, and that consideration of the three guiding principles in paragraph 71 may justify a differential approach.

Small business jurisdiction

Draft recommendation 3: Small business monetary limits and compensation caps

77 The Interim Report states that the current dispute resolution arrangements for small businesses in the financial system are inadequate. The Panel recommends that:

> the new industry ombudsman scheme for financial, credit and investment disputes should provide small business with monetary limits and compensation caps that are higher than the current arrangements, and that are subject to regular indexation (draft recommendation 3).

78 Currently, small business access to financial services EDR is bounded by the definition of a small business and applicable scheme monetary limits.

79 Section 761G of the Corporations Act contains the definition of 'retail client' around which the minimum jurisdiction of financial services EDR is

[19] Joint Consumer Groups submission to the Review of the financial system external dispute resolution framework, October 2016, p. 5.

based. It defines a small business as one employing less than 100 people (if the business is or includes the manufacture of goods) or otherwise 20 people.[20] Both CIO and FOS apply this definition in their respective Rules and Terms of Reference.[21] The National Credit Act does not apply to business or commercial lending, and this creates inconsistencies in EDR coverage that are discussed in more detail at paragraphs 89–96.

80 RG 139 confirms the minimum jurisdiction for an approved EDR scheme—in terms of types of complainant who can access the scheme—and also states that:

> (w)here appropriate, we encourage EDR schemes to accept complaints or disputes for a broader range of complainants or disputants than set out in the retail client definition or those who are provided with credit or credit services and guarantors under the National Credit Act.[22]

81 The Interim Report cites Australian Bureau of Statistics data that suggests approximately 98% of Australian businesses have less than 20 employees.[23]

82 The Interim Report also refers to the concurrent reviews of issues relating to small business lending being conducted by FOS and the Australian Small Business and Family Enterprise Ombudsman (ASBFEO). We deal briefly with each of these below, although we note that at the date of lodgement of this submission no public outcomes have been announced.

FOS consultation on small business jurisdiction

83 In August 2016, FOS issued a consultation paper, *Expansion of FOS's Small Business Jurisdiction*.

84 FOS received and published 17 submissions, most of which supported an expansion of the small business jurisdiction. There were, however, a range of views about what is an appropriate definition of a small business for EDR purposes and what are appropriate monetary/compensation limits for this jurisdiction.

ASBFEO report into small business lending

85 On 31 August 2016, the Government announced an Inquiry into small business lending to be conducted by the ASBFEO. The Terms of Reference included consideration of any regulatory or other deficiencies relating to the treatment by banks of their small business customers. The ASBFEO provided interim findings to the Panel on 8 November 2016, however the final report has not been publicly released.

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[20] Corporations Act, s761G(12).
[21] Although we note that CIO specifies full time (or equivalent) employees.
[22] RG 139.87.
[23] Interim report, paragraph 5.59.

Approving changes to the Terms of Reference

86 The FOS review—and, potentially, the ASBFEO report—will recommend changes to the FOS Terms of Reference.

87 RG 139 requires an approved scheme to consult with stakeholders before implementing any proposed changes to its Terms of Reference (that are not 'minor' in nature). The scheme must also consult with ASIC about these proposed changes.[24]

88 We note that, while ASIC effectively 'approves' jurisdictional changes of approved EDR schemes, our practical capacity to exercise this power is currently limited by the very broad nature of ASIC's overarching approval and revocation powers under reg 7.2.02. A directions power, as proposed in paragraph 42 of this submission, would provide greater certainty about ASIC's role in ensuring that a scheme's jurisdiction is and remains adequate.

Regulation of small business lending

The Interim Report included the following information request regarding the regulation of small business lending:

Information request: Regulation of small business lending

Should the national consumer credit protection law be extended to small business?

89 The Interim Report notes that because the National Credit Act does not apply to loans for business purposes, lenders that do not provide consumer credit are not required to hold a credit licence or to join an approved EDR scheme. This is a gap for small business borrowers, as access to remedies through EDR will depend on whether or not the lender is licensed or has voluntarily elected to join a scheme.

90 Where a lender is already a member of an EDR scheme, either because they hold an AFS licence or a credit licence, then the scheme will have jurisdiction over disputes relating to aspects of small business lending taking into account the consumer protection provisions in the ASIC Act and the recently effected unfair contract terms small business provisions. The scheme can also take into account relevant lending standards or conduct rules set out in industry codes of conduct.

[24] RG 139.105 to RG 139.109.

91 Issues relating to the effectiveness of the regulatory framework for small business lending have been considered in a number of Government inquiries including the:

(a) Senate Economics Reference Committee Inquiry into the Post-GFC Banking Sector (Report issued 28 November 2012); and

(b) Parliamentary Joint Committee on Corporations and Financial Services, Impairment of Customer Loans (Report issued 4 May 2016).

92 Included in the recommendations of these inquiries have been the extension of the National Credit Act provisions to small business, and enhanced or new industry codes dealing specifically with issues affecting small business borrowers. In respect of the latter, there have also been calls for government intervention if industry fails to take the lead on developing/enhancing industry codes.

93 ASIC's view is that there is opportunity to increase protection for small business borrowers. In our submission to the Impairment of Customer Loans inquiry, ASIC said:

> The current inquiry could also consider whether other aspects of existing lending regulation (e.g. those relating to enforcement of credit contracts under the National Credit Code) could be extended to small business lending. In considering whether the more prescriptive requirements of the National Credit Act are extended to small business lending, careful regard will have to be had to the possible impact on the cost and availability of credit to business.[25]

94 In the absence of a licensing requirement for commercial or business lenders, the current EDR access gap described in paragraph 89 will persist. While it is open to these lenders to voluntarily join an EDR scheme at any time, it would appear that an alternative way to have uniform membership of EDR would be through a mandatory industry code that includes appropriate dispute resolution obligations. As stated above, ASIC's industry code approval power only applies where an industry or industry sector submits a code for approval.

95 ASIC also notes that a targeted approach to regulation of small business was developed by Treasury in 2012, as part of the Phase 2 Credit Reforms. Treasury released an Exposure Draft of a Bill[26] in 2012 that:

(a) had simpler entry requirements for regulated entities: small business credit activity providers would need to hold a permit, which could be obtained if the provider confirmed that they were members of an ASIC-approved EDR scheme, and that no disqualifying criteria applied;

[25] See ASIC's submission to the Impairment of Customer Loans inquiry, paragraph 75.
[26] National Consumer Credit Protection Amendment (Credit Reform Phase 2) Bill 2012; see http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2012/Credit-Reform-Phase-2-Bill-2012.

(b) imposed fewer ongoing obligations: permit holders only had a continuing obligation to be a member of an ASIC-approved EDR scheme while holding the permit; and

(c) applied specific responses to identified problems. For example, instead of applying responsible lending obligations to all transactions, permit holders would have been required to meet modified obligations where there was a risk of equity stripping (that is, where a small business person was refinancing a debt using their home as security when they had already defaulted under existing loans and there was a significant risk that they would lose further equity in their home without receiving any compensating benefit).

96 Whilst this Bill did not proceed, the approach taken in the Exposure Draft demonstrates the need to balance appropriate and directed reforms with the policy objective of not unduly restricting access to credit for small businesses.

C Accountability and internal dispute resolution

Key points

This section deals with the funding and transparency of schemes, independent reviews, and the proposed establishment of an independent assessor.

The following draft recommendations, and related information requests, are addressed:

- Recommendation 6: Ensuring schemes are accountable to their users;
- Recommendation 8: Use of panels;
- Recommendation 9: Internal dispute resolution; and
- Recommendation 10: Schemes to monitor IDR

Accountability

97 The Issues Paper makes a number of specific recommendations to enhance scheme accountability to their users and to ASIC (see draft recommendations 6 and 8) which the Panel suggests could be provided for under ASIC's regulatory guidance. We respond to each of these specific recommendations below:

Sufficient funding and transparency

Draft recommendation 6: Ensuring schemes are accountable to their users

98 The Interim Report recommends that schemes 'ensure they have sufficient funding and flexible processes to allow them to deal with unforeseen events in the system, such as an increase in complaints following a financial crisis or natural disaster' and 'provide an appropriate level of financial transparency to ensure they remain accountable to users and the wider public' (draft recommendation 6)

99 As noted in paragraph 42, we recommend that ASIC be given a general directions power in relation to the operation and performance of a consolidated ombudsman scheme.

100 We suggest that this power include reference to ASIC's ability to direct the scheme to increase its budget, for example where there are unacceptable delays in dealing with disputes or an external shock or high-scale misconduct that has generated a significant increase in disputes.

101 ASIC also supports greater transparency of the scheme's annual budget and membership/case fee funding mix, and acknowledges that the current multi-scheme environment has not been conducive to full transparency of scheme funding. ASIC is not seeking a role in approving annual scheme budgets.

Independent reviews

Draft recommendation 6: Ensuring schemes are accountable to users

102 The Interim Report recommends that schemes 'be subject to more frequent, periodic independent reviews and provide detailed responses in relation to recommendations of independent reviews, including updates on the implementation of actions taken in response to the reviews and a detailed explanation when a recommendation of an independent review is not accepted by the scheme' (draft recommendation 6).

103 ASIC accepts the Panel's recommendations, and believes that these changes can be accommodated by amending RG 139.

104 ASIC policy initially required approved EDR schemes to undertake independent reviews every three years. When ASIC consulted on a broad range of changes to RG 139[27] in 2008–09, the independent review timeframe was then extended to five years. This decision reflected the significant effort and investment involved for the schemes, industry and ASIC in conducting reviews, which at that time was exacerbated by having duplicate reviews across multiple schemes with overlapping jurisdiction.

105 We agree that, in a consolidated scheme environment, it would be desirable to reduce the interval for independent reviews (possibly to the former three-year interval) and to provide ASIC with a power to direct a scheme to conduct more focused or targeted reviews or audits as necessary.

106 ASIC will also amend RG 139 to clarify that a scheme must effectively report on its response to and implementation of independent review recommendations, as recommended by the Panel.

[27] CP 102, paragraphs 203–211.

Decision making panels

Draft recommendation 8: Use of panels

107 The Interim Report recommends that:

> The new industry ombudsman schemes should consider the use of panels for resolving complex disputes. Users should be provided with enhanced information regarding under what circumstances the schemes will use a panel to resolve a dispute (draft recommendation 8)

108 ASIC supports both aspects of this recommendation, although would defer to scheme experts/decision makers about the specific circumstances or types of disputes in which a panel should be used.

109 The appropriate use of panels—which typically bring in industry, consumer and/or specialist subject matter expertise—may also ameliorate potential concerns about schemes dealing with disputes of increased complexity if monetary and/or compensation limits are increased.

Independent assessor

110 The Interim Report recommends that the schemes:

> establish an independent assessor to review the handling of complaints by the scheme but not to review the outcome of individual disputes (draft recommendation 6)

111 ASIC supports this recommendation. Rules around the appointment, Terms of Reference and powers of the independent assessor should be contained in RG 139 as well as the scheme's own constituent documents. We also propose that the independent assessor would report to ASIC as well as to the scheme's board.

Enhancements to systemic issues reporting

112 In ASIC's first submission, we argued that the systemic issues role of the approved industry-based schemes has proven to be a powerful and effective mechanism to compensate many thousands of consumers who may not otherwise have made an individual complaint to a scheme. The Panel has recommended that a new superannuation ombudsman should have similar powers to deal with and report systemic issues. This is not currently a feature of the SCT, which has a focus on resolving individual disputes.

113 Under ASIC's current policy settings, approved EDR schemes must identify, seek to resolve and report on systemic issues and cases of serious

misconduct.[28] Systemic issues reports are anonymous. Schemes will generally only identify the licensee to ASIC where there is non-compliance with a systemic issues investigation or determination, or in cases of serious misconduct.

114 Serious misconduct may involve fraudulent conduct, grossly negligent or inefficient conduct, or wilful or flagrant breaches of relevant laws. In practice, the majority of serious misconduct reports to ASIC have related to non-compliance with scheme decisions (mainly where the member is insolvent or unable to pay a scheme determination) or scheme decision making processes including non-compliance with systemic issues investigations.

115 In the context of the broader changes to the EDR framework, ASIC's view is that it is now time to require EDR schemes to identify the names of member firms in their systemic and serious misconduct reports to ASIC. ASIC is currently able to obtain identifying details of the scheme member through the issue of a statutory notice on the relevant schemes, so this represents an opportunity to enhance transparency and to remove the administrative costs associated with serving and responding to statutory notices. These costs are incurred by ASIC and the schemes.

116 ASIC will seek to give effect to this change through consultation and update of RG 139. It will not only generate administrative efficiencies but also help to avoid duplication where ASIC and the scheme may both be reviewing the same conduct by a scheme member. ASIC will also pursue changes in statistical reporting by schemes to ASIC to allow enhanced analysis. This would include obtaining disaggregated data from the schemes.

Internal dispute resolution

Draft recommendation 9: Internal dispute resolution

117 ASIC agrees with the Panel's recommendation that:

> financial firms should be required to publish information and report to ASIC on their IDR activity and the outcomes consumers receive in relation to IDR complaints. ASIC should have the power to determine the content and format of IDR reporting (draft recommendation 9)

118 In our first submission, ASIC set out the current state of limited and inconsistent reporting of IDR data. Improving reporting of dispute data at both IDR and EDR can assist:

(a) ASIC to inform regulatory priorities;

[28] See RG 139.119.

(b) firms to benchmark their performance against peers; and

(c) consumers to compare a firm's performance.

119 We believe that are two key reasons for supporting this recommendation.

120 First, enhanced IDR data will allow ASIC to monitor a licensee's IDR performance and their compliance with the law. It will also help ASIC identify problem products, services or sectors that are generating relatively high levels of disputes. ASIC would seek disaggregated IDR data from firms.

121 Second, publication of appropriate IDR data provides an opportunity for consumers to assess the complaints-handling performance of the firms they deal with (or may deal with). It also has the potential to act as a 'sunlight remedy' to improve IDR performance. It is important to remember that going through IDR is a mandatory step for consumers who are seeking redress, and failures in IDR will inevitably compromise the effectiveness of EDR.

122 A related benefit of IDR reporting is that it will also provide an evidence base for reviewing and setting IDR timeframes across the financial services sector. The Panel notes in the Interim Report that 'there are a range of different time limits for IDR processes, which vary depending on the category of complaint'.[29]

123 To give effect to this recommendation, ASIC would need an explicit power in the Corporations Act to collect and also to publish licensee IDR data.

124 The Interim Report included the following information requests regarding IDR:

Information requests: Internal dispute resolution

What IDR metrics should financial firms be required to report on?

Should ASIC publish details of non-compliance or poor performance IDR including identifying financial firms?

125 ASIC believes that the key high level IDR metrics financial firms should report on are:

(a) number of complaints received;

(b) nature of the complaint (e.g. product/problem);

(c) time taken to resolve or finalise the complaint at IDR; and

(d) outcome of the complaint.

[29] Interim Report, paragraph 5.189.

126 We acknowledge that there would be significant work involved in developing a consistent reporting framework, however we note that the Financial Conduct Authority (FCA) in the United Kingdom has been collecting and reporting on such firm level IDR data for many years.

127 By way of overview, in the United Kingdom:

(a) financial firms (with a few exceptions) must report information directly to the FCA twice yearly on the number, type and outcome of complaints they have received in the reporting period;

(b) data on all complaints reported to the FCA by regulated firms is available on a complaints data webpage. This includes both firm level data and aggregate data; and

(c) data is captured by product (e.g. mortgages), type of firm and the nature of the complaint (e.g. advice or customer service).[30]

128 While we agree that IDR data should be published naming the firm involved, we do not support a universal requirement that ASIC publish other details of non-compliance with IDR requirements, including identifying financial firms. Actually establishing non-compliance would typically require further investigation and regulatory judgement by ASIC (i.e. it would not be confirmed merely on the basis of analysis of high level data).

129 ASIC's view is that transparency about regulatory action and outcomes is desirable and supports improved industry conduct, however we would want to retain discretion about how and whether to publish details of such conduct, particularly if it did not result in an actual breach of legal requirements.

Draft recommendation 10: Schemes to monitor IDR

130 ASIC also supports the Panel's recommendation that EDR schemes should register and track the progress of complaints referred back to IDR. The capacity to monitor potential drop-out rates and timely referrals is particularly warranted in the superannuation sector, given longer time frames and the relative incidence of complex disputes.

[30] FCA, 'Complaints data', webpage, www.fca.org.uk.

D Other issues

Key points

This section addresses the Panel's observations on the introduction of a last resort compensation scheme, and draft recommendation 11: Debt management firms.

This section also addresses some transition and implementation issues.

Last resort compensation scheme

131 In the Interim Report the Panel observed that 'there is considerable merit in introducing an industry-funded compensation scheme of last resort'[31] (LRCS).

132 The Panel noted that compensation schemes protecting against certain classes of losses already exist in other areas of financial services. This includes, for example, provision for superannuation funds to be compensated for losses as a result of fraud or theft at the discretion of the Minster, subject to a public interest test.[32] This provision does not, however, extend to self-managed superannuation funds or other financial services consumers, which highlights the limited and patchwork approach to compensation.

133 The Panel also said that it 'received a large number of submissions which supported establishing an industry-funded compensation scheme of last resort, although there were some differences around the scheme's design details'.[33]

134 As previously stated, in the absence of a LRCS, uncompensated losses within the EDR framework will continue to occur, and the broader financial services sector bears the consequences of the resulting lack of trust and confidence.

135 We also repeat the observation that the reason that uncompensated losses have arisen is not because of failure to enforce decisions by schemes, but because of the underlying insolvency/inability to pay by the firm. It is far less likely, for example, that a prudentially regulated firm such as a superannuation trustee will fail to comply, than it is for a small-to-medium advice firm relying on PI insurance.

[31] Interim Report, paragraph 5.84.
[32] SIS Act 1993, Pt 23.
[33] Interim Report, paragraph 7.11.

136 The Interim Report notes that the Australian Banker's Association and FOS are working with other key stakeholders to 'identify any issues that would impede implementation' of a LRCS.[34]

137 ASIC believes that, notwithstanding different views about the details of a LRCS, it is possible to design a model that will ultimately benefit funding industry members and appropriately compensate consumers and increase consumer and investor trust and confidence.

138 ASIC's preferred outcome is that there be a broad-based LRCS that covers uncompensated losses arising across the financial services dispute resolution jurisdiction including credit. The prospect of consolidation and harmonisation of the EDR framework arising out of this review presents an opportunity to consider and design such a scheme.

139 If there is industry support to implement and fund a more targeted scheme as a first step (e.g. one that focuses on advice related losses) this could address the current acute area of uncompensated EDR loss. However it would still need to be sufficiently comprehensive and consistent to support consumer trust and confidence. A principle should be that the scheme covers the same advice activity regardless of who provides it.

140 ASIC will continue to work with stakeholders on this issue.

Debt management firms

Draft recommendation 11: Debt management firms

141 The Panel recommended that:

> Debt management firms should be required to be a member of an industry ombudsman scheme. One mechanism to ensure access to EDR is a requirement for debt management firms to be licensed (draft recommendation 11).

142 In January 2016 ASIC issued Report 465, *Paying to get out of debt or clear your record: The promise of debt management firms* (REP 465). Key findings included:

(a) the growth of this sector has coincided with significant change to the regulation of consumer credit and credit reporting in Australia;

(b) debt management firms typically offer a range of credit repair, budgeting and debt negotiation services;

(c) fees and costs are often high, heavily 'front loaded' and opaque to consumers;

[34] Interim Report, paragraph 7.17.

(d) sales techniques may create a high pressure sales environment; and

(e) firms rarely referred consumers in financial hardship direct to free, alternative sources of help (including ombudsman schemes).

143 The problems consumers experience are illustrated by the following case studies from the report:

(a) *Charging excessive prices*—Ms X paid Firm D $1,100 to remove a credit default listing of $120. The firm provided no services, and refused to refund the $1,100 as they insisted Ms X had entered a contract with them. Ms X contacted the Telecommunications Industry Ombudsman and removed the listing herself.

(b) *Failure to make payments to creditors on time*—Mr S paid his income into the bank account of a budgeting service, together with a $1,975 establishment fee. The firm gave Mr S $30 per week for living expenses, but repeatedly failed to make payments to Mr S's creditors on time. Mr S received calls and letters from creditors about overdue debts.

(c) *Not assessing capacity to make payments to creditors*—Firm Z provided debt negotiation services to Ms R for a total cost of $9,815. The firm pursued moratoriums and made offers to creditors that Ms R was never in a position to fulfil. Several creditors listed defaults on Ms R's credit file and threatened to commence proceedings.

(d) *Misrepresentations as to services offered*—Firm X advertised 'no interest debt consolidation' services on its flyers and website. Over two face-to-face meetings, Firm X did not inform Ms C that it would actually arrange a debt agreement, and that the firm did not arrange loans.

144 ASIC's view is that the financial harm caused by these entities is likely to increase as lenders increasingly move towards rating for risk pricing models, and the state of a consumer's credit report has a greater impact on the cost of credit.

145 ASIC agrees with and supports the Panel's recommendation that debt management firms be required to join an approved EDR scheme, as this would provide consumers with a means of having complaints heard without incurring the costs of litigation.

146 However, there are some complex issues in relation to how membership of an EDR scheme would be enforced, including whether licensing is the appropriate vehicle.

147 First, any enforcement mechanism would need to be simple and efficient for ASIC to take action. This would likely mean infringement notices and the capacity to take action against the directors or individuals running the business.

148 Second, the services offered by debt management firms are different from those provided by entities that are required to hold either a credit licence or an AFS licence. It would therefore be likely that new conduct obligations would need to be introduced under any licensing regime, rather than simply extending the existing obligations under either the Corporations Act or the National Credit Act. Experience suggests that the Australian Consumer Law has not been adequate to address some of the issues raised.

149 By comparison, the FCA regulates debt management services in the United Kingdom, and applies obligations that are based on the firm's particular business model. Firms must receive authorisation from the FCA to provide debt administration services and are required to meet such obligations as: providing suitable advice; ensuring fees are fair and transparent; and, in their first communication with customers, informing them about free debt services.[35]

150 In the absence of obligations such as those adopted in the United Kingdom, it is not apparent to ASIC that requiring debt management firms to be members of an EDR scheme would comprehensively address the range of problems identified in REP 465.

151 In summary, ASIC's view is that, if it is accepted that there is a need for greater regulation of debt management firms (as is implicit in the draft recommendation) then new and additional a conduct obligations should be introduced to address the specific problems created by these entities.

Transition and implementation

152 The recommendations in the Issues Paper would profoundly change the financial services EDR sector. If the recommendations are adopted, legislative amendment, public consultation, amendments to RG 139, and careful consideration of transitional and implementation issues would be required.

153 Any successful transition of the current framework would require the cooperation and goodwill of the existing schemes, as well as industry and consumer stakeholders. ASIC is committed to ensuring that the framework effectively meets the needs of scheme users into the future.

[35] FCA, *Debt management firms must raise their game, says FCA*, media release, 22 September 2014.

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an Australia financial services licence under s913B of the Corporations Act. Note: This is a definition contained in s761A of the Corporations Act.
AS ISO 10002-2006	Australian Standard AS ISO 10002-2006 *Customer satisfaction – Guidelines for complaints handling in organizations* (ISO 10002:2004, MOD)
complainant	A person or company who at any time has: • made a complaint to an AFS licensee, credit licensee, unlicensed product issuer, unlicensed secondary, seller, unlicensed COI lender or any other person or business who must have IDR procedures that meet ASIC's approved standards and requirements; or • lodged a complaints with a scheme about a scheme member that falls within the scheme's Terms of Reference or Rules
complaint	Has the meaning given in AS ISO 10002-2006
Corporations Act	*Corporations Act 2011,* including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
credit	Credit to which the National Credit Code applies Note: See s3 and 5-6 of the National Credit Code
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
credit representative	A person authorised to engage in specified credit activities on behalf of a credit licensee under s64(2) or s65(2) of the National Credit Act
credit service provider	A person who provides credit
dispute	Has the same meaning as complaint

Term	Meaning in this document
DIST Benchmarks	The Benchmarks for Industry-Based Customer Dispute Resolution Schemes, published by the then Department of Industry, Science and Tourism in August 1997
EDR	External dispute resolution
EDR scheme (or scheme)	An external dispute resolution scheme approved by ASIC under the Corporations Act (see s912A(2)(b) and 1017G(2)(b)) and/or the National Credit Act (see s11(1)(a)) in accordance with our requirements in RG 139
final response	A response in writing required to be given to the complainant under RG 165, setting out the final outcome offered to the complainant at IDR, the right to complain to an ASIC-approved EDR scheme and the relevant name and contact details of the scheme
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
hardship notice	Means: • for credit contracts entered into before 1 March 2013, to which the National Credit Code applies, an application for a change to the terms of the contract for hardship; and • for credit contracts or leases entered into on or after 1 March 2013, to which the National Credit Code applies, a hardship notice under s72 or 177B (as modified by the *National Consumer Credit Protection Amendment (Enhancements) Act 2012)*.
IDR	Internal dispute resolution
IDR procedures, IDR processes or IDR	Internal dispute resolution procedures/processes that meet the requirement and approved standards of ASIC under RG 165
licensee	An AFS licensee or a credit licensee
National Credit Act	*National Consumer Credit Protection Act 2009*
National Credit Regulations	National Consumer Credit Protection Regulations 2010
reg 7.6.04 (for example)	A regulation of the Corporations Regulations 2001 (in this example numbered 7.6.04)
retail client	A client as defined in s716G of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations
RG 126 (for example)	An ASIC regulatory guide (in the example numbered 126)
s64 (for example)	A section of an Act or Code as specified (in this example numbered 64)

Term	Meaning in this document
s766E (for example)	A section of the Corporations Act (in this example numbered 766E), unless otherwise specified
SCT	Superannuation Complaints Tribunal, established under the *Superannuation (Resolution of Complaints) Act 1993*
SIS Act	*Superannuation Industry (Supervision) Act 1993*
SRC Act	*Superannuation (Resolution of Complaints) Act 1993*
small business	A small business as defined in s71G of the Corporations Act
Terms of Reference	The document that sets out an EDR scheme's jurisdiction and procedures, and to which scheme members agree to be bound. In some circumstances it might also be referred to as the scheme's 'Rules'
Unlicensed product issuer	An issuer of a financial product who is not an AFS licensee
Unlicensed secondary seller	A person who offers the secondary sale of a financial product under s1012C(5), (6), or (8) of the Corporations Act and who is not an AFS licensee