ASIC
Australian Securities & Investments Commission

CONSULTATION PAPER 172

# Review of EDR jurisdiction over complaints when members commence debt recovery legal proceedings

December 2011

## About this paper

This consultation paper explains the background and scope of ASIC's review of external dispute resolution (EDR) scheme jurisdiction over complaints when members commence debt recovery legal proceedings.

The purpose of this paper is to seek the views of consumers, consumer representatives, industry, ASIC-approved EDR schemes and other interested stakeholders so that we may assess this EDR scheme jurisdiction and determine whether any refinements to the requirements in Regulatory Guide 139 *Approval and oversight of external dispute resolution schemes* (RG 139) are necessary.

**About ASIC regulatory documents**

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers**: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides**: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets**: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports**: describe ASIC compliance or relief activity or the results of a research project.

## Document history

This paper was issued on 2 December 2011 and is based on legislation and regulations as at the date of issue.

## Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

# Contents

# The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on the jurisdiction of EDR schemes over complaints when members commence debt recovery legal proceedings. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

## Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by Monday 27 February 2012 to:

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## What will happen next?

| | | |
|---|---|---|
| **Stage 1** | 2 December 2011 | ASIC consultation paper released |
| **Stage 2** | 27 February 2012 | Comments due on the consultation paper |
| | May 2012 | ASIC report on the outcome of the review and whether any refinements to RG 139 will be proposed |

# A Background to our review and EDR scheme approaches

**Key points**

ASIC-approved external dispute resolution (EDR) schemes must continue to meet the requirements in Regulatory Guide 139 *Approval and oversight of external dispute resolution schemes* (RG 139) and Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165).

On 1 January 2010, a new requirement commenced—schemes must be able to handle complaints in the early stages of debt recovery legal proceedings: see RG 139.77–RG 139.79.

We committed to reviewing the operation of this requirement after June 2011 when we approved the Financial Ombudsman Service Limited's single Terms of Reference (FOS TOR) in December 2009.

## Background to our review

### ASIC-approved EDR schemes

1 Two ASIC-approved external dispute resolution (EDR) schemes currently exist for handling financial services and credit complaints:

(a) the Financial Ombudsman Service Limited (FOS)—formed by the merger of five pre-existing ASIC-approved EDR schemes in 2008–09; and

(b) the Credit Ombudsman Service Limited (COSL).

2 ASIC has approved both FOS and COSL as EDR schemes under the *Corporations Act 2001* (Corporations Act) and the *National Consumer Credit Protection Act 2009* (National Credit Act).

### The requirements in RG 139

3 In May 2009, we conducted a major review of our dispute resolution requirements in:

(a) Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165); and

(b) Regulatory Guide 139 *Approval and oversight of external dispute resolution schemes* (RG 139).

4 When we updated RG 139 as part of this review, we had in mind the imminent transfer of responsibility for credit to the Australian Government.

This led to a new requirement in the then RG 139.53, commencing 1 January 2010, that:

> Where legal proceedings have already commenced and a complainant takes their complaint to an EDR scheme, the terms of reference must require the member to not pursue the legal proceedings beyond the minimum necessary to preserve its legal rights.

5 Before our update of RG 139 in May 2009, we were silent on the issue of access to EDR once legal proceedings had commenced. Such access occurred with COSL, where the complaint involved financial hardship, but there was no such access to FOS (or any of its predecessor schemes). Complainants were excluded from accessing FOS's predecessor schemes where legal proceedings had already commenced.

6 During our limited consultation about approving FOS's single Terms of Reference (FOS TOR), it came to our attention that the then RG 139.53 had been drafted too broadly in that it required members to set aside or stay legal proceedings, even if the legal proceedings had advanced to later, and more final, stages of the court process (i.e. to a hearing, or judgment).

> Note: FOS's single TOR consolidated its five separate predecessor scheme's Rules and procedures inherited by FOS into one process and procedure for handling complaints throughout FOS.

7 This could create uncertainty and high costs for scheme members who would have to abandon legal proceedings and start again if a consumer lodged a complaint at EDR and the EDR process was unsuccessful.

8 For these reasons, it was recognised that the requirement in then RG 139.53 needed to be pared back to allow for limited access to EDR in the early stages of debt recovery proceedings only (i.e. up to where the consumer had lodged a defence, or a defence and counterclaim).

9 This would achieve the Australian Government's intention as stated in the explanatory memoranda to the national consumer credit legislation that, wherever possible and appropriate, complaints should be resolved at internal dispute resolution (IDR) and EDR, rather than at court.

> Note: See the Explanatory Memorandum to the National Consumer Credit Protection Bill, introduced to Parliament on 25 June 2009, at paragraph 4.9, where it states: 'Wherever possible, parties will be encouraged to resolve disputes without resorting to litigation. It is expected that courts would generally only be utilised where IDR and EDR processes have not resolved the matter, or where EDR is considered inappropriate.'

10 We considered that such a limited right of access to EDR was necessary because:

(a) consumer representatives had expressed concern that consumers should not lose important rights to EDR, given the loss of access to relevant state and territory tribunals as a consequence of the national consumer

credit reforms. Under previous state and territory credit regimes, complainants could make hardship applications in the Victorian Civil and Administrative Tribunal (VCAT) and NSW's Consumer, Trader and Tenancy Tribunal (CTTT), even where the lender had already commenced legal proceedings in court to receive an outstanding debt or recover possession of an asset provided as security for a loan. In these cases, the court proceeding would be stayed while the VCAT or the CTTT exercised its exclusive jurisdiction to deal with the hardship issues. By contrast, under the new national credit regime, access to EDR would replace access to state and territory tribunals (i.e. VCAT and CTTT);

(b) complainants already had access to EDR in COSL after members commenced legal proceedings and the complaint related to financial hardship. Having a similar approach across all ASIC-approved EDR schemes would help to create a level playing field;

(c) allowing consumer access to EDR up until the point where the consumer has lodged a defence, or a defence and counterclaim, compared with at any stage of a legal proceeding, would give members greater certainty, reduce their legal costs and enable consumer access to EDR, especially when consumers are often unaware they can complain to an EDR scheme; and

Note: During our consultation to approve the FOS TOR, consumer representatives reported that eight out of ten Legal Aid Queensland clients are unaware they can complain to FOS when they are issued with a statement of claim. As Legal Aid and other consumer agencies (i.e. the Consumer Credit Legal Centre (NSW)) assist complainants to file a defence to ensure a default judgment is not issued, they can also advise their client of the availability of FOS.

(d) there may be some instances, beyond consumer credit, where consumers find that debt recovery legal proceedings have been taken against them and they are unaware they can complain to an EDR scheme (e.g. where a consumer has been unsuitably placed in a margin loan, or where financial advisers sue to recover fees before a complainant can complain to FOS).

11 As part of our approval of the FOS TOR, we announced in ASIC Report 182 *Feedback from submissions to the Financial Ombudsman Service Limited's new Terms of Reference* (REP 182) that we would update the then RG 139.53 so that from 1 January 2010 the following would apply:

> Where legal proceedings that relate to debt recovery proceedings have already commenced and a complainant or disputant takes their complaint or dispute to an EDR scheme, the Terms of Reference must require the member not to pursue the legal proceedings beyond the minimum necessary to preserve its legal rights.
>
> Such complaints or disputes should be accepted by the scheme at least up until the point where the complainant or disputant has taken no step beyond lodging a defence or defence and counterclaim (however described), unless

> otherwise excluded from the scheme's jurisdiction under the Terms of Reference.
>
> For the avoidance of doubt, the complainant or disputant will not be considered to have taken a 'step' if they attend a directions hearing or agree to consent orders of a procedural nature only being filed in those legal proceedings.

12 This requirement is now reflected in RG 139.77–RG 139.79.

13 The Australian Banking Association (ABA) and Abacus raised strong concerns about FOS's approach to RG 139.77–RG 139.79 during our limited consultation on approving the FOS TOR.

14 As a result, we set a number of conditions as part of our approval, including that we would conduct a review of the requirement in RG 139 after June 2011.

> Note: See our Letter of Approval of the FOS TOR at www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/FOS-approval-letter-1.pdf/$file/FOS-approval-letter-1.pdf.

15 We discuss the ABA's and Abacus's concerns in more detail below at paragraph 18.

## FOS's approach

16 FOS's approach to RG 139.77–RG 139.79 is reflected at paragraph 13.1(a)(ii) of its TOR, which applies to complaints received on or after 1 January 2010.

17 Paragraph 13.1(a)(ii) states that:

> … where an Applicant lodges a Dispute with FOS, the Financial Services Provider: …
>
> (ii) must not pursue legal proceedings relating to debt recovery instituted prior to the lodging of the Dispute with FOS save to the minimum extent necessary to preserve the Financial Services Provider's legal rights and, in particular, must not seek judgment in those legal proceedings provided the Dispute is lodged before the Applicant takes a step in those legal proceedings beyond lodging a defence or a defence and counterclaim (however described) …

18 The ABA and Abacus expressed concerns that paragraph 13.1(a)(ii) of the FOS TOR would create uncertainty, increase member costs, and cause delay and further problems where FOS is unable to resolve the complaint (i.e. members would need to be able to institute legal proceedings to obtain any necessary injunctions or interim orders to preserve assets that would otherwise be lost or diminished in value without court orders). Therefore, we set a number of conditions around paragraph 13.1(a)(ii) as part of our approval of the FOS TOR.

19 These conditions and how paragraph 13.1(a)(ii) operates are detailed in FOS's Operational Guidelines and FOS's Circular on *Guideline to paragraph 13.1 of the Terms of Reference* (August 2010) (FOS Circular).

> Note: See www.fos.org.au/centric/home_page/about_us/terms_of_reference_b/operational_guidelines.jsp.

20 In particular, the FOS Circular explains:

(a) how FOS will identify whether a complaint involves debt recovery legal proceedings that have already commenced;

(b) how FOS members can raise questions about FOS's jurisdiction for handling paragraph 13.1(a)(ii) complaints. This includes that where a judgment against the consumer for repayment of a debt or possession of a security property has already been obtained before the complaint is lodged with FOS, FOS will be unable to consider a complaint about the member's entitlement to recover the debt or security because paragraph 5.1(l) of the FOS TOR will apply (i.e. the complaint would be excluded from FOS's jurisdiction on grounds it has already been dealt with by a court, tribunal or other EDR scheme);

(c) how members may seek to issue proceedings to preserve their legal rights (e.g. if the limitations period is about to expire) and to preserve assets that are the subject of the complaint;

(d) that the issue of legal costs may be addressed as part of the complaint;

(e) the types of conduct that FOS would consider to be 'serious misconduct' reportable to ASIC, including where a member takes a step to enforce a judgment while FOS's file is still open, or where a member fails or refuses to stay, adjourn or discontinue proceedings when FOS has notified the member that a paragraph 13.1(a)(ii) complaint has been received; and

(f) that the expedited timeframes will no longer apply if the member fails to comply with the timeframes for the provision of a response or requests an extension of time to respond to FOS.

21 Since the commencement of paragraph 13.1(a)(ii) on 1 January 2010, we understand from FOS that:

(a) the number of complainants who have brought a complaint under this jurisdiction is significant, with a total of almost 1900 complaints received up to 30 June 2011. Of these, approximately 74% have gone through the full FOS process (the remainder are still in the process of being handled);

(b) of those completed, approximately 43% were either discontinued or were excluded from FOS's jurisdiction mainly on grounds they had been previously dealt with by a court, tribunal or other EDR scheme, or

there was a more appropriate forum for handling the complaint. The remaining completed cases, often involving financial difficulty, generally achieved a conciliated or negotiated outcome, were resolved by the member or resulted in a decision in favour of the complainant;

(c) while the majority of these complaints relate to credit products and services, a small number also relate to general insurance, investments and payment systems; and

(d) as scheme members are getting better at meeting timeframes so these complaints continue to be expedited, a higher proportion of these complaints are resolved in a shorter timeframe.

## COSL's approach

22 Since introducing RG 139.77–RG 139.79, COSL has updated its Rules (in its then *7th Edition COSL Rules*, effective from 1 January 2010, and also included in its *8th Edition COSL Rules*) to reflect the new requirement.

23 COSL's approach is reflected in Rules 17.2–17.6:

> **Rule 17.2** Once COSL records a Complaint and for as long as COSL deals with the Complaint:
>
> (a) the Member must not initiate enforcement action against the Complainant in relation to any aspect of the subject matter of the Complaint;
>
> (b) where the Member commenced such enforcement action before the Complaint was recorded as received by COSL, the Member must not continue the enforcement action and, in particular, must not:
>
> (i) seek judgment in the legal proceedings; or
>
> (ii) where default judgment has been entered, seek to enforce the default judgment;
>
> (c) the Member must not sell the debt that is 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.
>
> **Rule 17.3** Despite Rule 17.2, 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 the subject of the Complaint; 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.

**Rule 17.4** The Member must not do anything, including:

(a) initiating or resuming enforcement action; or

(b) seeking judgment 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).

**Rule 17.5** The Member may initiate or, subject to Rule 17.6, 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.

**Rule 17.6** Where the Complainant was served with a statement of claim or other initiating process before COSL recorded the Complaint, the Member may only resume enforcement action under Rule 17.5 if it first allows the Complainant 21 days in which to file a defence or a defence and counterclaim (if they have not already done so).

24 We understand from COSL that from 1 January 2010 to 30 June 2011 approximately 20% of their complaints for this period related to debt recovery legal proceedings. Of these, approximately 14.8% were outside COSL's jurisdiction and approximately 3% were made by small businesses.

# B Reviewing the requirement in RG 139

**Key points**

Our starting point is that the requirement in RG 139.77–RG 139.79 is appropriate and does not require change. However, we seek your feedback on this, including whether any refinements are necessary. In considering whether refinements should be made, we will have regard to maintaining an efficient and effective EDR system and promoting the participation of confident and informed consumers.

We are also interested in your feedback on whether you are experiencing problems or issues and, if so, where this may arise, so we can consider whether our requirement in RG 139.77–RG 139.79 needs improvement.

We also consider the Government's proposed amendments to the National Credit Act may result in EDR schemes having to deal with fewer complaints relating to debt recovery legal proceedings.

## Requirement in RG 139.77–RG 139.79

### Proposal

**B1** We propose that the requirement in RG 139.77–RG 139.79 remains in its current form.

*Your feedback*

B1Q1 Do you agree? If not, why not? We are particularly interested in statistics and feedback from EDR scheme users on this scheme jurisdiction, including examples or experiences that illustrate where the requirements may not be working so well and why: see paragraph 36.

B1Q2 If you disagree with Proposal B1, what refinements do you consider necessary to improve RG 139.77–RG 139.79, and why?

B1Q3 Do you consider any refinements necessary to RG 139.77–RG 139.79 given proposed changes to the National Credit Act? If so, how and why?

### Rationale

25 We are of the view that the current requirement in RG 139.77–RG 139.79 is appropriate and does not require change at this time. This is because we have no reason to believe that this scheme jurisdiction is not working as intended—that is, to assist Australian consumers who may need hardship assistance, often urgently.

26 We have formed this view, based on information provided by the schemes, and consumer representatives on ASIC's Consumer Advisory Panel that this jurisdiction is widely used and able to achieve relatively quick and helpful outcomes for complainants. This is in the public interest, because it reflects the Australian Government's intention that IDR and EDR be used wherever possible (instead of court) to resolve complaints and assists complainants to have their complaint handled in a forum that is intended to be a quicker, cheaper and easier-to-access alternative to court.

27 The number of complaints handled by the schemes under this jurisdiction suggests that the schemes perform a useful role and that such jurisdiction enables the schemes to continue to meet the principles of 'efficiency' and 'effectiveness' by being able to handle the vast majority of types of consumer complaints in the relevant industry (or industries) it covers: see RG 139.167.

28 Recent statistical data also indicates that the number of Australians experiencing mortgage stress is on the rise:

(a) the number of Australian households experiencing 'mild' mortgage stress remained consistent at approximately 350,000 Australian households from January 2010 to October 2011; and

(b) the number of Australian households experiencing 'severe' mortgage stress steadily rose from approximately 100,000 households in May 2009 to over 300,000 households in October 2011.

Note: 'Mild' mortgage stress means households who are maintaining repayments, but by reprioritising expenditure, borrowing more on loans or cards, and refinancing; 'severe' mortgage stress means households who are behind with their repayments, are trying to sell, are trying to refinance, or who are being foreclosed: see *Fujitsu mortgage stress report*, October 2011, pp. 2, 14 and 15.

29 An increasing number of mortgagee repossession actions in state and territory supreme courts have also been reported:

(a) lenders lodged 206 writs in the Victorian Supreme Court in June 2011 against people who had defaulted on their mortgage repayments, slightly less than the 221 writs lodged in May 2011. The last time these figures were so high was in July 2009. These figures may also under-represent the real picture because consumers may have sold their homes before lenders took court action; and

(b) in the NSW Supreme Court, there were 1715 mortgagee repossession actions lodged between January and July 2011, compared with only 1398 for the same period in 2010;

Note: See Jonathon Chancellor, *NSW mortgagee repossessions on the rise* (7 September 2011) at www.propertyobserver.com.au/mortgages/nsw-mortgagee-repossessions-on-the-rise; and Shelley Hadfield, 'Surge in home repossessions', *Herald Sun* (23 July 2011) at www.heraldsun.com.au/news/more-news/surge-in-home-repossessions/story-fn7x8me2-1226100115598.

30 When combined, these statistics suggest that hardship continues to be a significant consumer issue, and that hardship complaints may be on the rise.

31 The launch of ASIC's MoneySmart mortgage health campaign in October 2011 aims to assist consumers with a simple 'health check' so they can identify whether they are in mortgage stress and/or may need to take basic steps to get in better health. Such steps may include cutting back on spending, refinancing, approaching their lender for a hardship variation and/or even complaining to an EDR scheme. If successful, this campaign may reduce the number of RG 139.77-RG 139.79 complaints being brought to EDR, if it increases awareness of the steps consumers can take to improve their mortgage health and they take these steps earlier.

Note: See www.moneysmart.gov.au/tools-and-resources/calculators-and-tools/mortgage-health-check.

### The proposed consumer credit reforms

32 The *Exposure Draft: National Consumer Credit Protection Amendment (Enhancements) Bill 2011: enhancements of the National Credit Code and Act* proposes, among other things, to:

(a) broaden the grounds on which a hardship application may be brought under s72 of the National Credit Code by removing the $500,000 cap on the amount of credit provided (so hardship applications will be able to be made by all consumers regardless of the amount of credit provided); and

(b) introduce a new requirement so lenders must wait at least 10 business days after they have responded in writing to a hardship application or request for a postponement of enforcement proceedings, before they can commence enforcement proceedings. This requirement will *not* apply where the hardship application or request for postponement of enforcement proceedings relates to a previous application or request made within the three months before the request or application.

Note: For more information on the Exposure Draft, see www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2131.

33 These reforms, if implemented, may assist consumers with larger loan values and place greater emphasis on lenders first attempting to address hardship issues before commencing enforcement proceedings.

34 While fewer in number, we believe this jurisdiction also appears to be assisting complainants where debt recovery legal proceedings have been commenced against consumers for debts relating to other financial products and services (i.e. margin loans, financial advice, insurance and payment systems). We have no reason to believe that consumers should not continue to be assisted at EDR for these types of complaints.

35 We are mindful that we may not have complete information on how this jurisdiction is operating and that scheme users may have useful statistics or other information that may illustrate where the requirement may not be working so well and why. We are particularly interested in this information.

36 We may be persuaded to refine our requirement in RG 139.77–RG 139.79 if, for example, we receive sufficient information to suggest that:

(a) debt recovery legal proceedings relating to certain scenarios for other financial products are not able to be appropriately handled at EDR and would be more appropriately addressed in court. We may update RG 139.77–RG 139.79 to clarify that such scenarios are excluded from scheme jurisdiction;

(b) certain court processes and procedures prevent a scheme member from being able to reasonably comply with FOS and COSL's requirements on this jurisdiction, which leaves the scheme member open to being reported to ASIC for serious misconduct. We may update RG 139.77–RG 139.79 to accommodate these court processes and procedures; or

(c) a class of complainants is being allowed access to EDR under this jurisdiction when EDR can do little to resolve the complaint and the complaint would be more appropriately handled in court. We may update RG 139.77–RG 139.79 to refer to a class of complainant that may be excluded from scheme jurisdiction in limited situations.

# C Regulatory and financial impact

37 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

(a) promoting the participation of confident and informed consumers and investors through an efficient and effective dispute resolution system; and

(b) the costs to industry and the schemes in complying with their obligations.

38 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

(a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;

(b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and

(c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

39 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

40 To ensure that we are in a position to properly complete any required RIS, we ask you to provide us with as much information as you can about:

(a) the likely compliance costs;

(b) the likely effect on competition; and

(c) other impacts, costs and benefits,

of our proposals or any alternative approaches: see 'The consultation process' p. 4.

# Key terms

| Term | Meaning in this document |
|---|---|
| ABA | Australian Banking Association (an industry association comprising member banks) |
| Abacus | An industry association comprising member credit unions and mutual building societies |
| ASIC | Australian Securities and Investments Commission |
| credit | Credit to which the National Credit Code applies<br>Note: See s3 and 5–6 of the National Credit Code. |
| Corporations Act | *Corporations Act 2001*, including regulations made for the purposes of that Act |
| COSL | Credit Ombudsman Service Limited—an ASIC-approved EDR scheme |
| CTTT | Consumer Trader and Tenancy Tribunal (NSW) |
| 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 |
| FOS | Financial Ombudsman Service—an ASIC-approved EDR scheme |
| FOS Circular | FOS's Circular on *Guideline to paragraph 13.1 of the Terms of Reference* (August 2010) |
| FOS TOR (or FOS single TOR) | The Terms of Reference of the FOS that commenced on 1 January 2010 |
| IDR | Internal dispute resolution |
| margin lending financial services | A margin lending financial service is:<br>• a dealing in a margin lending facility; or<br>• the provision of financial product advice in relation to a margin lending facility |
| National Credit Act | *National Consumer Credit Protection Act 2009* |
| National Credit Code | National Credit Code at Sch 1 of the National Credit Act |
| RG 139 (for example) | An ASIC regulatory guide (in this example, numbered 139) |
| scheme member (or member) | An industry participant who is a member of an ASIC-approved EDR scheme |

| Term | Meaning in this document |
| --- | --- |
| 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' |
| VCAT | Victorian Civil and Administrative Tribunal |