

**CREDIT AND INVESTMENTS OMBUDSMAN
LIMITED**

ACN 104 961 882

**CREDIT AND INVESTMENTS
OMBUDSMAN RULES**

10th Edition

In force on and from 15 August 2016

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CREDIT AND INVESTMENTS OMBUDSMAN LIMITED

RULES OF THE CREDIT AND INVESTMENTS OMBUDSMAN

10th Edition

The definition of words appearing in italics *like this* are set out in Rule 45.

1. Introduction

- 1.1 The *scheme* is an independent *EDR scheme* established by the Credit and Investments Ombudsman Limited (**CIOL**). *Consumers* can access the *scheme* free of charge.
- 1.2 The *scheme's* operations are funded by members of *CIOL*. Its members are individuals, firms and corporations that operate in the *financial services industry*. By becoming a member of *CIOL*, they have agreed to be bound by *CIOL's* Constitution and the *Rules* and *Guidelines*.
- 1.3 The main objectives of the *scheme* are to:
 - (a) act as an *ASIC*-approved *EDR scheme* for the *financial services industry*;
 - (b) act as an *EDR scheme* recognised by the *OAIC* to deal with privacy-related *complaints*; and
 - (c) actively facilitate the resolution of *complaints* about *financial services*.
- 1.4 The *scheme deals with complaints* in accordance with *these Rules*. It seeks to resolve *complaints* in a reasonable and fair manner by one or more of the following methods:
 - (a) facilitating informal negotiations;
 - (b) conducting a *conciliation conference*;
 - (c) investigating and making *decisions* about the merits of the *complaint*.
- 1.5 The broad aim of the *scheme* is to provide for the independent and prompt resolution of *consumers' complaints* against *financial services providers*, having regard to:

- (a) relevant legal requirements and rights provided by law to *consumers*;
- (b) *applicable codes of practice*;
- (c) good industry practice in the *financial services industry*; and
- (d) fairness in all the circumstances.

2. Independence

- 2.1 The decision-making process and administration of the *scheme* are independent of its members.
- 2.2 The *Ombudsman* and staff of *CIOL* are:
 - (a) entirely responsible for *dealing with complaints*; and
 - (b) accountable only to the *CIOL board*.
- 2.3 The *CIOL board* is responsible for overseeing the operations of the *scheme*, for ensuring independent decision making by the *Ombudsman* and staff of *CIOL*, and for preserving the independence of the *scheme* and of the *scheme's* dispute resolution processes.
- 2.4 In order to ensure that the *scheme* is, and is perceived to be, independent, the *CIOL board* comprises:
 - (a) an independent Chairman; and
 - (b) an equal number of *consumer representatives* and *industry representatives*.

3. The scheme

- 3.1 The *Rules* under which the *scheme* operates set out, among other things:
 - (a) who can make a *complaint* to the *scheme*;
 - (b) what *complaints* can be *dealt with* by the *scheme*;
 - (c) what *complaints* the *scheme* cannot *deal with*;
 - (d) how a *complaint* can be made to the *scheme*; and
 - (e) how the *scheme* tries to resolve a *complaint*.
- 3.2 The *CIOL board* may from time to time approve and have published on *CIOL's website* the *Guidelines*, procedures of the *scheme*, position statements and other documents relating to the *CIO process*, but these always have to be read subject to the *CIO Rules* and *CIOL's Constitution*.
- 3.3 The *scheme* may publish a de-identified copy of any *scheme decision* on *CIOL's website*.
- 3.4 The *scheme* is not bound by any legal rule of evidence and affords all parties to a *complaint* procedural fairness. It may inform itself about a *complaint* and all matters relating to it in

whatever manner and by whatever means in its discretion it thinks appropriate.

- 3.5 Subject to *Rule 33*, the *scheme* will generally give any information or documents it receives from one party to the *complaint* to all other parties, particularly if the *scheme* relies on the information or documents in *dealing with the complaint*. However, the *scheme* need not do so if the information or documents are not relevant, are already in the possession of the parties or have been brought to the notice of the other parties and they have elected not to receive them.
- 3.6 If the *scheme* thinks that it is appropriate to refer a *complaint* or aspect of a *complaint*, and the information and documents provided by the *complainant*, to another *EDR scheme*, it will obtain the *complainant's* consent before doing so.

4. Role of the Ombudsman

- 4.1 The *CIOL board* appoints the *Ombudsman*. The *Ombudsman* is the decision-maker of the *scheme* and the person who can make any *decision* allowed for under the *CIO Rules*.
- 4.2 The *Ombudsman*:
- (a) has the powers, functions and duties conferred by *CIOL's* Constitution and *these Rules*, and as conferred and delegated by the *CIOL board* from time to time;
 - (b) has overall management responsibility for the *scheme*; and
 - (c) establishes systems and procedures to ensure the *scheme's* efficient and effective operations in accordance with *these Rules*.
- 4.3 The *Ombudsman* may delegate all or any of his or her powers, functions and duties to employees of *CIOL* and to other persons approved by the *CIOL board*, except:
- (a) the power to make a *determination or award*; and
 - (b) the *Ombudsman's* power to delegate.

5. Complaints to which the CIO Rules apply

- 5.1 Different versions of the *CIO Rules* operate in respect of a *complaint* depending on the date of its receipt.
- 5.2 This 10th Edition of the *CIO Rules* takes effect on 15 August 2016, and applies to every *complaint* received on or after that date. This 10th Edition also applies to all legal proceedings to set aside or otherwise challenge a *scheme decision* or a *board direction* commenced under *Rule 39.5* after this 10th Edition takes effect, irrespective of whether:
- (a) the subject *complaint* was received before or after this 10th Edition took effect; or

- (b) the particular *scheme decision* was made or *board direction* was issued before or after this 10th Edition took effect.

6. When a Complaint can be made

- 6.1 A *complaint* can be made to the *scheme* about a *financial services provider* if:
 - (a) the *complainant* is a *consumer*; and
 - (b) the *complaint* arises from or relates to a *financial service*.
- 6.2 The *Ombudsman* may give a written *ruling* as to whether the *complaint* or any aspect of the *complaint* can be *dealt with* under *these Rules* or about any matter that arises in the course of the *scheme dealing with the complaint*. The *ruling* is final and binding on the *complainant* and the *financial services provider* despite *Rule 39.3*.
- 6.3 The times within which a *complaint* must be made to the *scheme* are as follows:
 - (a) for those aspects of the *complaint* that relate to *financial hardship applications*, unjust transactions or unconscionable interest and other charges under the National Credit Code, the later of either:
 - (i) two years from when the *credit contract* is rescinded, discharged or otherwise comes to an end (or in the case of a *consumer lease* entered into on or after 1 March 2013, two years from when the lease is terminated, discharged or otherwise comes to an end); or
 - (ii) two years from when a *final response* is given by the *financial services provider* at *IDR*; and
 - (b) for all other *complaints* or disputes, the earlier of either:
 - (i) six years from the date that the *complainant* first became aware (or should reasonably have become aware) that they suffered the loss; or
 - (ii) two years from when a *final response* is given at *IDR*.
- 6.4 The time limits under *Rule 6.3* apply unless the *scheme* considers that exceptional circumstances apply or the *financial services provider* and the *scheme* agree to *CIO* having jurisdiction.
- 6.5 Despite any other *Rule*, the *scheme* may *deal with a complaint* which is not otherwise within its jurisdiction if all parties to the *complaint* and the *scheme* agree to this, in which case, the *scheme* will *deal with the complaint* in the manner described by *these Rules*.

7. Types of complaints covered by the scheme

- 7.1 The *scheme* will only deal with a *complaint* if, in relation to a *financial service*, the *financial services provider*:
- (a) breached relevant laws (or duties imposed by law) or did not give effect to a right provided by law to the *complainant* or, if the *financial service* was provided to a *custodian* of a *custodial arrangement*, to the *custodian*, in relation to the subject matter of the *complaint*;
 - (b) breached an *applicable code of practice*;
 - (c) did not meet standards of good practice in the *financial services industry*; or
 - (d) acted unfairly towards the *complainant* or, if the *financial service* was provided to a *custodian* of a *custodial arrangement*, towards the *custodian*.

8. New grounds of complaint

- 8.1 The *scheme* may exclude a new ground of *complaint* at the *investigation stage* if:
- (a) the *complainant* was aware of the new ground of *complaint* earlier (or should have reasonably been aware of it) and does not have a reasonable excuse for not raising it earlier; or
 - (b) there would be undue prejudice to the *financial services provider* as a result of the new ground of *complaint* being raised.
- 8.2 Once the *determination phase* of the *CIO process* commences, the *complainant* may not raise any new ground of complaint unless the *scheme* is satisfied that exceptional circumstances exist that justify the *complainant* raising a new ground of complaint.

9. Remedies and Orders available to a complainant

- 9.1 The *scheme* can deal with a *claim* if the *complainant's* loss in relation to the *claim* does not exceed or appear to the *scheme* to exceed \$500,000. However, the *scheme* can only award compensation up to its *monetary compensation limit* for loss suffered by the *complainant* in respect of the *claim*.

Note: The *scheme's monetary compensation limit* is not affected by the credit limit of a *credit contract* or amount of compensation under the small claims procedure prescribed by section 199 of the National Consumer Credit Protection Act 2009.

- 9.2 The *CIOL board* may increase the amount of the *monetary compensation limit* from time to time by amending *these Rules*. The *scheme* will publish any increase in the compensation limit on the *CIOL website*.
- 9.3 If the *complainant* accepts an offer by the *financial services provider* to settle the *complaint* or accepts a *recommendation* by *CIO* as to how the *complaint* should be resolved (and the

recommendation is also agreed to by the *financial services provider*), or accepts an *award* of compensation by CIO, the *complainant* must provide the *financial services provider* (if the *financial services provider* so requests) with a release before or at the time the *financial services provider* makes good on the offer or gives effect to the *recommendation* or *award*. The release must release the *financial services provider* and the *complainant* from any further liability in respect of the matters resolved by the settlement offer, *recommendation* or *award*. The release must, where relevant, be for the full value of the *claim* which is the subject of the *complaint*, even if this amount exceeds the amount of the settlement offer, *recommendation* or *award*.

- 9.4 The *scheme* may also award interest in addition to any compensation awarded, even if the interest, when added to the compensation awarded, exceeds the *monetary compensation limit*.
- 9.5 If interest is awarded, it will be calculated with reference to the official cash rate prescribed from time to time by the Reserve Bank of Australia from the date of the cause of action or matter giving rise to the *complainant's claim*. However, the *scheme* will have regard to any factors it considers relevant, including but not limited to, the extent to which the conduct of either party contributed to any delay.
- 9.6 The *scheme* may, where appropriate, decide that the *financial services provider* undertakes a course of action to resolve the *complaint*, including, but not limited to:
- (a) the payment of a sum of money, including compensation;
 - (b) the variation or waiver of a debt;
 - (c) the entering into a payment arrangement to repay a debt;
 - (d) the release or return of security for a debt;
 - (e) the repayment, waiver or variation of a fee or other amount paid to or owing to the *financial services provider* or its representative or agent, including the variation of the applicable interest rate on a *credit facility*;
 - (f) the discontinuation of *enforcement action* against the *complainant*;
 - (g) in relation to a default judgment, staying the execution of the default judgment* or not enforcing the default judgment;
- * - see CIO Position Statement 3
- (h) the release of the *complainant* from a contract;
 - (i) the variation of the terms of a *credit facility* in cases of financial hardship;
 - (j) affording the *complainant* a reasonable opportunity to refinance a *credit facility* or sell or dispose of property in connection with a *financial hardship application*; and

- (k) the release of documents or information relating to the *complainant* that are under the control of the *financial services provider*.
- 9.7 The *complainant* can claim compensation for loss that is:
- (a) direct financial loss, and/or
 - (b) indirect or non-financial loss.
- 9.8 The *scheme* may in its discretion decide that the *financial services provider* compensates the *complainant* for non-financial loss or damage, in circumstances where, for example, the *scheme* is satisfied that the *financial services provider* has:
- (a) unduly harassed the *complainant* or caused the *complainant* physical inconvenience, embarrassment, humiliation or distress; or
 - (b) unnecessarily delayed or extended the time taken to resolve the situation; or
 - (c) interfered with the *complainant's* privacy or expectation of peace of mind.
- 9.9 Punitive, exemplary or aggravated damages may not be awarded.
- 9.10 The *Ombudsman* can make an *order* requiring the *financial services provider* to do or to refrain from doing some act in relation to the subject matter of the *complaint*, and, in relation to privacy-related *complaints*, make an *order* that is generally consistent with the declarations available to the Information Commissioner when he or she makes a determination under section 52 of the Privacy Act 1988.

10. Complaints not covered by the scheme

- 10.1 A reference to a *complaint* in this *Rule* 10 includes any *claim* or aspect of the *complaint*. The *scheme* will not *deal with a complaint* if, at the time of receiving the *complaint* or at any time during the *CIO process*, the *scheme* is satisfied that:
- (a) the *complaint* does not relate to a *financial service* within the meaning of the *CIO Rules*;
 - (b) the *complaint* is about someone who is not a member of *CIO* at the time the *complaint* is made;
 - (c) the *complainant* is seeking compensation for a *claim* in an amount which exceeds the *scheme's monetary compensation limit*, or the *complainant's* loss in relation to the *claim* exceeds or appears to the *scheme* to exceed \$500,000;
 - (d) the *complaint* relates to a fee, charge, rental cost, commission or interest rate, unless:
 - (i) the *complaint* concerns the non-disclosure, misrepresentation, miscalculation or incorrect

- application of the fee, charge, rental cost, commission or interest rate;
 - (ii) the fee, charge, rental cost or commission is unconscionable or otherwise in breach of the law;
 - (iii) the change in the interest rate is unconscionable or the interest rate is in breach of the law; or
 - (e) the *complaint* is about:
 - (i) something done or not done by a third party (that is, someone other than the *financial services provider*), unless:
 - A. the *financial services provider* is acting pursuant to an assignment, subrogation or novation, or is otherwise responsible for the *financial services* provided by the third party; or;
 - B. the *financial services provider* is a *linked credit provider* of the third party;
 - (ii) the policies or commercial judgement of someone other than the *financial services provider*, examples of which are:
 - A. a *financier's* assessment of lending risk, or of financial or commercial criteria, or of character; or
 - B. a *financier's* decision to refuse the *complainant's* application for a *credit facility* or the release of part of the security for the *credit facility* or to approve either of them subject to conditions; or
 - C. the interest rates and fees charged by a *financier*; or
 - D. a *financier's* policy to require mortgage insurance;
- (f) (except in the case of *complaints* relating to financial hardship or responsible lending obligations under the National Consumer Credit Protection Act 2009), the *financial services provider* has done no more than exercise its commercial judgement, including but not limited to its commercial judgement about interest rates (but subject to *Rule 10.1(d)*), product design or (in relation to credit-related matters) lending or the security for a *credit facility*;
- (g) the *complaint* relates to a contract or obligation not arising under Australian law;
- (h) in the case of a secured *credit facility*, the security is situated or legally registered outside Australia or is governed by laws other than the laws of Australia;

- (i) the *complainant* is seeking an outcome or remedy for which the *scheme* cannot make an *order* or *award* against a *financial services provider*;
- (j) (except in the case of a guarantor), the person to whom the *financial services* directly relates is not:
 - (i) the *complainant*; or
 - (ii) a *custodian* of a *custodial arrangement* under which the *complainant* requested or directed the acquisition, disposal or holding of a financial product within the meaning of section 761A of the Corporations Act 2001 to which the *financial services* relate;
- (k) the time within which a *complainant* must make a *complaint* to the *scheme*, as prescribed by *Rule 6.3*, has elapsed;
- (l) (except where the *complainant* is making a *financial hardship application*) the *complainant* has previously made a *complaint* to the *scheme* about the same *financial services provider* in relation to the same subject matter, and the *scheme* is satisfied that there are no exceptional circumstances which warrant the *complaint* being re-opened;
- (m) the *complaint* has been dealt with by a court, tribunal, arbitrator, *OAIC* or another *EDR scheme*, unless:
 - (i) the *complainant* has requested a stay on the execution of a default judgment, the *financial services provider* has declined the *complainant's* request and a court, tribunal, arbitrator or other *EDR scheme* has not considered, or been asked to consider, the request; or
 - (ii) both the *complainant* and the *financial services provider* consent in writing to the *complaint* being considered by the *scheme*;
- (n) the subject matter of the *complaint* becomes the subject of proceedings brought by the *financial services provider* before a court, but only if this occurred as a result of the *financial services provider* having commenced legal proceedings in accordance with the *objection notice* procedure outlined in *Rule 29*;
- (o) it is more appropriate that the *complaint* is dealt with in another forum such as a court, tribunal, *OAIC* or another *EDR scheme*;
- (p) the *complaint* involves an issue which may have important consequences for the business of the *financial services provider* or the *financial services industry* generally, or raises an important or novel point of law, and is *dealt with* under the special procedures set out in *Rule 29*;

- (q) even if the matters set out in the *complaint* were found to be true, these matters would not constitute:
 - (i) a breach of the relevant laws (or duties imposed by law) by the *financial services provider*, or a failure by the *financial services provider* to give effect to a right provided by law to the *complainant* in relation to the subject matter of the *complaint*;
 - (ii) a breach of an *applicable code of practice* by the *financial services provider*;
 - (iii) a failure by the *financial services provider* to meet standards of good practice in the *financial services industry*; or
 - (iv) the *financial services provider* acting unfairly towards the *complainant*;
- (r) the *complaint* relates to the investment performance of an investment product, unless the *complaint* concerns non-disclosure, misrepresentation, misleading or unconscionable conduct, inappropriate advice or conduct that is otherwise in breach of the law;
- (s) the *complaint* relates to the management of a common fund or management of a managed investment scheme as a whole (e.g. the *complaint* relates to a management or commercial matter that concerns the day to day operation of the fund or scheme or applies to or affects all members of the fund or scheme);
- (t) the *financial services provider* had, before the *complaint* was received by the *scheme*, commenced legal proceedings against the *small business complainant* in relation to a *credit facility* having a credit limit of more than \$2 million*; or

* In determining whether the credit limit is reached, the *scheme* will apply the limit to the *credit facility* that is the subject of the *complaint*. This means that the value of any linked *credit facility* is not taken into account when applying the limit - ASIC's Regulatory Guide 139.76.

Note: 'Credit limit' refers to the credit limit set out in the *credit facility*.

- (u) in relation to a *Privacy Act participant*, the *complaint* does not relate to a right or obligation arising under the Privacy Act 1988; or
- (v) the *complaint* is lacking in substance or is being pursued by the *complainant* for an improper purpose.

11. Complaint at no cost to *complainant*

- 11.1 The *financial services provider* must not charge the *complainant* any fee, or seek to be reimbursed for any fee payable by it to the *scheme*, in connection with a *complaint* made to the *scheme* about it.

12. Principles CIO has regard to

- 12.1 In *dealing with a complaint* at any stage of the *CIO process*, the *scheme* will observe procedural fairness and have regard to:
- (a) relevant legal requirements or rights provided by law to the *complainant* in relation to the subject matter of the *complaint*;
 - (b) *applicable codes of practice*;
 - (c) good practice in the *financial services industry*; and
 - (d) fairness in all the circumstances.
- 12.2 *Dealing with a complaint* includes:
- (a) deciding the extent to which a *complaint* is covered by the *scheme*;
 - (b) investigating the *complaint*;
 - (c) making a *decision* about the merits of the *complaint*;
 - (d) making any other *decision* about a *complaint*, as contemplated by *these Rules*;
 - (e) making *recommendations* to the *complainant* and the *financial services provider* about resolving a *complaint*;
 - (f) making an *expedited ruling* on the merits of the *complaint*;
or
 - (g) the *Ombudsman* making a *ruling, determination, order or award*.
- 12.3 In considering what is good practice in the *financial services industry*, the *scheme* may:
- (a) consult within the *financial services industry*;
 - (b) seek, but is not bound by, advice from such persons (including but not limited to those in the *financial services industry*) that the *scheme* regards as suitably qualified to give that advice; or
 - (c) have regard to an *applicable code of practice* or industry or regulatory guideline or protocol which has application in the industry in which the *financial services provider* operates and which the *scheme* reasonably considers reflects good industry practice, even if the *financial services provider* has not subscribed to that code of practice or industry or regulatory guideline or protocol.

13. Internal Dispute Resolution

- 13.1 Every *financial services provider* (other than a *credit representative*) must have *IDR* procedures in place which comply with standards and requirements:
- (a) made or approved by *ASIC** from time to time; or

- (b) in the case of a *Privacy Act participant*, prescribed by the Privacy Act 1988 from time to time.

Note: see ASIC's Regulatory Guide 165.89 for further information on these requirements.

- 13.2 After recording a *complaint* as received, the *scheme* will only continue to *deal with the complaint* if the *complainant* has first tried to resolve the *complaint* with the *financial services provider* using the *financial services provider's IDR* process, unless:
 - (a) the *scheme* considers that the *complaint* or any aspect of the *complaint* should be *dealt with* urgently; or
 - (b) it does not appear that the *complaint* or an aspect of the *complaint* is being addressed adequately or in a timely manner by the *financial services provider*, or
 - (c) the *financial services provider* has failed to resolve the *complaint* within the *IDR* timeframes required by ASIC or the Privacy Act 1988; or
 - (d) the *scheme* reasonably considers that it is appropriate in the particular circumstances not to require the *complainant* to first try and resolve the *complaint* or an aspect of the *complaint* with the *financial services provider*.
- 13.3 A *financial services provider* may at any time refer a *complaint* to the *scheme* with the *complainant's* consent.

14. Making a complaint

- 14.1 A *complainant* may make a *complaint* to the *scheme*:
 - (a) by writing to the *scheme*;
 - (b) by completing the complaint form which can be found at CIOI's website (www.cio.org.au); or
 - (c) by phoning the *scheme* and giving details of the *complaint* to the *scheme*.
- 14.2 If the *complainant* phones the *scheme*, a written complaint setting out the *complaint* must be sent to the *scheme* afterwards.
- 14.3 If the *complainant* has any difficulty in presenting their *complaint*, the *scheme* will help them prepare it. In doing so, the *scheme* will not be 'taking sides' or providing the *complainant* with legal or financial advice, but will simply help the *complainant* present their *complaint* as clearly and concisely as possible. The *scheme* will not do anything that could impair or could be seen to impair its impartiality.
- 14.4 The *complainant* can make a *complaint* about two or more *financial services providers* in relation to the same subject matter, but must generally first of all try to resolve their *complaint* with each of the *financial services providers*

concerned. *These Rules* apply with any necessary modifications in respect of a *complaint* against two or more *financial services providers* in relation to the same subject matter.

- 14.5 When a *complainant* makes a *complaint*:
- (a) they do not need to use any formal, legal or technical language;
 - (b) they must tell the *scheme* what corrective action they want the *financial services provider* to take to resolve the *complaint*;
 - (c) subject to *Rules 33* and *19.1(b)*, the *complainant* must give the *scheme* a copy of documents that the *scheme* considers may be relevant to their *complaint* unless these can be obtained from the *financial services provider*; and
 - (d) the *complainant* must give written consent to the *scheme* to send a copy of their *complaint* and copies of their documents to the *financial services provider* they are complaining about.
- 14.6 When the *scheme* receives a written *complaint*, that *complaint* is immediately recorded as received. Then, if it has not already done so, the *scheme* assesses whether the *complaint* is one that it can *deal with* under *these Rules*. If it is not, the *scheme* writes to the *complainant* letting them know why their *complaint* is not covered by the *scheme*.*
- * see *Rule 36.3*
- 14.7 The *scheme* will also:
- (a) check whether or not the *complainant* has satisfied the requirement to try to resolve their *complaint* with the *financial services provider* as required by *Rule 13.2*; and
 - (b) consider whether or not any of *Rule 13.2(a)*, *(b)*, *(c)* or *(d)* applies in the *complainant's* case.

15. Transfer of complaints between EDR schemes

- 15.1 Where a *complaint* is referred to the *scheme* by another *EDR scheme*, the time limit for bringing the *complaint* to the *scheme* will apply from the date when the *complaint* was made to the other scheme and the *complaint* will be deemed to have been recorded as received by the *scheme* on the date that it was lodged with the other scheme.
- 15.2 If the *scheme* receives a *complaint* about a *credit representative* (who is a member of *CIOL*) in relation to credit activities that have been authorised by an *Australian Credit Licensee* which is a member of another *EDR scheme*, the *scheme* will, with the consent of the *complainant*, refer the *complaint* to the other scheme, unless the licensee has ceased to carry on business and the other scheme does not exercise its discretion to continue to handle the *complaint*, in which case the *scheme* will *deal with* the *complaint* against the *credit representative*.

16. Request for information

- 16.1 Subject to *Rules* 19.1(b) and 33, both the *complainant* and the *financial services provider* must provide the *scheme* with such information and documents that the *scheme* considers may be necessary to *deal with a complaint*. Subject to *Rule* 35.1, these must be provided within the time the *scheme* reasonably nominates.
- 16.2 The *scheme* may draw any appropriate adverse inference against a party from that party's failure to respond to a request from the *scheme* under *Rule* 16.1 (for example, that there is no evidence of disclosure of a fee or that there is no evidence of loss).
- 16.3 Where the *financial services provider* is not in possession or control of the information or documents requested by the *scheme*, the *financial services provider* must procure, to the extent it is reasonably able to, another person to give the *scheme* the information or documents, failing which the *scheme* may draw any appropriate adverse inference against the *financial services provider*.

17. Enforcement action

- 17.1 Once the *scheme* records a *complaint*, and for as long as the *scheme* deals with the *complaint*:
- (a) the *financial services provider* must not initiate *enforcement action* against the *complainant* in relation to any aspect of the subject matter of the *complaint*;
 - (b) where the *financial services provider* commenced such *enforcement action* before the *complaint* was recorded as received by the *scheme*, the *financial services provider* must not continue the *enforcement action* and, in particular, must not:
 - (i) where legal proceedings have commenced, seek judgment in the legal proceedings; or
 - (ii) where default judgment has been entered, seek to enforce the default judgment;
 - (c) the *financial services provider* must not sell the debt that is the subject of the *complaint* or otherwise deal with any right to recover the debt (including an assignment or subrogation to the *financial services provider's* lender's mortgage insurer (unless the *scheme* has consented to it)); or
 - (d) if it has not already listed a default, the *financial services provider* must not list a default on the *complainant's* credit reference file.
- 17.2 Despite *Rule* 17.1, the *scheme* may at its discretion and on such terms as it may require, permit the *financial services provider* to:

- (a) commence legal 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 *financial services provider's* legal rights; or
- (b) exercise any rights it might have to freeze or otherwise preserve assets that are 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.

17.3 Despite *Rule 17.1*, where judgment has been entered before the *complaint* was recorded as received by the *scheme*, the *scheme* may at its discretion and on such terms as it may require, permit the *financial services provider* to initiate or continue *enforcement action* if:

- (a) the issues raised by the *complainant* are not relevant to the *financial services provider's enforcement action* or proposed *enforcement action* and can be appropriately *dealt with* separately from or subsequent to the *enforcement action*; or
- (b) unless the *financial services provider* is permitted to commence or continue *enforcement action*, another mortgagee will proceed to sell the secured property held by the *financial services provider* as security for the loan.

17.4 Despite *Rule 17.1*, the *scheme* will not ask a *financial services provider*:

- (a) (where judgment has been entered before the *complaint* was recorded as received by the *scheme*) to withdraw an instruction which has already been given to a sheriff to enforce a judgment, unless the *scheme* considers that the execution of the default judgment should be stayed in the particular circumstances; or*

* - see CIO Position Statement 3

- (b) to suspend the sale of the security when the *financial services provider* has already entered into a contract with a third party for the sale of the security.

17.5 The *financial services provider* 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 the *scheme* 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 which involves a variation of the *payment terms*; or
- (iv) in the case of a *financial hardship application*, a direction by the *scheme* to the *financial services provider* to vary the terms of a *credit facility* under *Rule 9.6(i)*.

17.6 The *financial services provider* may initiate or, subject to *Rule 17.7*, resume *enforcement action* if:

- (a) the *scheme* considers it has no jurisdiction to *deal with the complaint*; or
- (b) the *scheme* considers that the *complaint* is not made out; or
- (c) the *complainant* declines to accept a *determination*.

17.7 Where the *complainant* was served with a statement of claim or other initiating process before the *scheme* recorded the *complaint*, the *financial services provider* may only resume *enforcement action* under *Rule 17.6* if it first allows the *complainant* 21 days to file a defence or a defence and counterclaim (if they have not already done so).

18. Financial hardship applications

18.1 This *Rule* applies whether or not a *credit facility* is regulated under the National Consumer Credit Protection Act 2009.

18.2 If the *financial services provider* (being a *financier*) becomes aware, or is informed by the *complainant* that the *complainant* is or may be unable to meet their obligations under a *credit facility*, the *financial services provider* is taken to have received a *financial hardship application* and must consider in good faith and within the *prescribed time*, if any, whether to agree to the *financial hardship application*, having regard to the *complainant's* financial circumstances.

18.3 The *financial services provider* must act reasonably in assessing the *complainant's financial hardship application* and must not impose unreasonable or burdensome conditions on the *complainant* before agreeing to consider, or agreeing to, the *financial hardship application*.

18.4 If the *financial services provider* decides not to agree to the *financial hardship application* or any aspect of the application, it must promptly inform the *complainant* in writing of:

- (a) its decision and the reasons for its decision; and

- (b) the borrower's right to make a *complaint* to the *scheme*; and
- (c) the contact details of the *scheme*.

18.5 If the *complainant* is able to reasonably demonstrate to the *scheme* that a *financial hardship application* should have been approved by the *financial services provider*:

- (a) at the time the *complainant* informed the *financial services provider* that they were unable to meet their obligations under the *credit facility*; or
- (b) at the time the *financial services provider* should have become aware that the *complainant* was unable to meet their obligations under the *credit facility*,

the *financial services provider* is not entitled to recover default interest and fees and enforcement costs from that time.

18.6 Where a *complainant* makes more than one *financial hardship application*, each application is treated as a new *complaint*.

19. The CIO process

19.1 Without in any way limiting what the *scheme* can do, the *scheme* can at any time, and from time to time, during the *CIO process* do all or any of the following things:

- (a) ask any party to the *complaint* questions about the *complaint*;
- (b) require any party to provide to, or procure for, the *scheme* any information and documents that the *scheme* considers necessary within a certain time, except where the party satisfies the *scheme* that:
 - (i) to provide information would breach a duty of confidentiality to a third party and, despite best endeavours, the third party's consent to the disclosure of the information has not been able to be obtained;
 - (ii) to provide the information would breach a court order or prejudice a current investigation by the police or other law enforcement agency; or
 - (iii) the information does not or no longer exists or is not within the party's reasonable possession or control;
- (c) ask any party for their comments generally on the other party's responses to the *scheme*;
- (d) subject to *Rules* 3.5 and 33.2, send to one party copies of:
 - (i) the other party's comments on the *complaint*;
 - (ii) the other party's answers to questions asked; and
 - (iii) information provided to the *scheme* by the other party;
- (e) investigate any or all aspects of the *complaint* to establish the facts and merits of the *complaint*;

- (f) ask the *complainant* and the *financial services provider* to attend a *conciliation conference* if the *scheme* considers it would assist in the resolution of the *complaint* or an aspect of the *complaint*; or
 - (g) at the expense of the *financial services provider*, obtain such specialist advice as the *scheme* reasonably considers is desirable or necessary to *deal with the complaint*.
- 19.2 At any time and from time to time during the *CIO process*, if it thinks it appropriate to do so, the *scheme* can:
- (a) refer the *complaint* back to the *financial services provider* and afford them another opportunity to reconsider their position given the *scheme's* preliminary view of the merits of the *complaint*;
 - (b) facilitate informal negotiations between the parties to resolve the *complaint* or any aspect of the *complaint*;
 - (c) suggest that the *complaint* be settled or withdrawn, with or without conditions, with the agreement of both parties in full and final settlement of the *complaint*; or
 - (d) conduct a *conciliation conference*,
- and if the *complaint* is resolved in this manner, the *scheme* will, at the request of any of the parties to the *complaint*, prepare a *settlement agreement*. If a *settlement agreement* (whether or not prepared by the *scheme*) is not signed by any party to the *complaint*, the *scheme* will continue to *deal with the complaint* in any manner permitted under *these Rules*.
- 19.3 The *scheme* will keep the parties informed of the progress of the *complaint*.
- 19.4 If a *financial services provider* informs the *scheme* that it is not the proper respondent to a *complaint*, the *scheme* may require the *financial services provider* to obtain from the person whom the *financial services provider* believes is the proper respondent, written confirmation that the person will accept responsibility for responding to the *complaint*. If the person provides the confirmation and is a member of *CIOL*, the *scheme* will instead register the *complaint* against the person. If the person is not a member of *CIOL*, the *complaint* will be transferred to the *EDR scheme* to which the person is a member. If the *financial services provider* is unable or unwilling to obtain the confirmation, the *financial services provider* must itself respond to the *scheme* in relation to the *complaint*.
- 19.5 Where a *settlement agreement* has been prepared by the *scheme*, both the *complainant* and the *financial services provider* must sign the *settlement agreement* for it to be binding on the *financial services provider*.
- 19.6 If the *scheme* is satisfied that:
- (a) the *settlement agreement* was validly signed by both the *complainant* and the *financial services provider*; and

(b) the *financial services provider* has failed to comply with the *settlement agreement*,

the *Ombudsman* can make an *award* in terms of the *settlement agreement* to enforce it.

19.7 The *Ombudsman* can make any *order* he or she thinks appropriate at any time and from time to time during the *CIO process*. An *order* can also be made to require a *financial services provider* to comply with, or rectify a breach of, the *Rules*, or give full effect to the resolution of a *complaint*, including a resolution that was agreed to by the *complainant* and the *financial services provider* (or their respective representatives) during a *conciliation conference*.

20. Recommendation on reasonable offer

20.1 Where the *scheme* reasonably considers that an offer made by a *financial services provider* to a *complainant* to resolve a *complaint* is reasonable having regard to the information before the *scheme*, the *scheme* may recommend to the *complainant* that they accept the *financial services provider's* offer in full and final settlement of the *complaint*. Any such *recommendation* must be done in writing and be accompanied with the *scheme's* reasons for making the *recommendation*.

20.2 The *scheme* will only do so after undertaking a review of the *complaint* to enable it to form a view as to the range of likely outcomes that might be achieved if the *complaint* were to proceed to *determination*.

20.3 If the *complainant* does not accept the offer, the *scheme* may close the *complaint* in the absence of further information from the *complainant* that would justify the *complaint* remaining open. If the *scheme* closes the *complaint*, it will notify the *complainant* and *financial services provider* that it has done so.

21. Expedited process

21.1 In order to expedite the resolution of a *complaint*, the *scheme* may in its discretion make an *expedited ruling* as to the merits of a *complaint* without having to conciliate the *complaint* or prepare a *complaint summary*, *recommendation* or *determination*, provided:

(a) the *scheme* has reasonably assessed the potential loss to be less than \$3,000 or the *complaint* is about a credit listing or enquiry;

(b) the *scheme* has received information from the *complainant* that it reasonably considers is sufficient for it to make an *expedited ruling* as to the merits of the *complaint*;

(c) the *scheme* has given the *financial services provider* an opportunity to provide it with such information as would

allow it to make an *expedited ruling* as to the merits of the *complaint*;

(d) the *scheme* has informed both the *complainant* and the *financial services provider* of its intention to use the expedited process described in this *Rule* and has afforded them a final opportunity to provide it with additional and relevant information; and

(e) it is otherwise appropriate for the *scheme* to make an *expedited ruling* in the circumstances.

21.2 If the *complainant* does not accept the *expedited ruling*, the *scheme* will close the *complaint*.

21.3 If the *complainant* accepts the *expedited ruling* within 14 days of being informed of it, the *financial services provider* will be bound to comply with the *expedited ruling* within 14 days of being informed of the *complainant's* acceptance of the *expedited ruling* or within such other reasonable time as the *scheme* may agree.

21.4 If the *financial services provider* does not comply with the *expedited ruling* within the required time, the Ombudsman will issue an *award* and consequential orders to give effect to the *expedited ruling*.

22. Investigation phase

22.1 Where the *scheme* progresses the *complaint* to the *investigation phase* of the *CIO process*, the *scheme* may in its discretion do any of the following:

(a) continue to seek relevant information from the parties and continue its investigation; or

(b) continue to facilitate the settlement of a *complaint* by negotiation and suggesting fair and reasonable outcomes; or

(c) prepare a *complaint summary* for the parties and tell them what the *scheme* sees as, among other things:

(i) the key issues in the case; and

(ii) the strengths and weaknesses in each party's case; or

(d) conduct a *conciliation conference*; or

(e) give the *complainant* and the *financial services provider* the *scheme's* assessment of the merits of the *complaint* and make a *recommendation* to the *complainant* and the *financial services provider* about resolving the *complaint*.

22.2 The *scheme* may also convene a hearing if it is satisfied that doing so would lead to the more efficient and effective resolution of the *complaint*. However, the *scheme* does not have power to subpoena witnesses or take evidence on oath or cross-examine witnesses, so generally the *scheme* would regard a hearing as appropriate only where the *scheme*

believed that a question and answer investigation format would help clarify issues.

22.3 The *Ombudsman* may award costs against a *financial services provider* if a hearing has been held in relation to the *complaint* because that *financial services provider* specifically asked for it. In that case, the *financial services provider* will be required to meet the *complainant's* reasonable costs of attending the hearing, including reasonable travel and accommodation costs.

22.4 If at any time the *scheme* in its discretion considers that:

- (a) it will be unable for whatever reason to further assist the parties to achieve resolution of the *complaint* in the *investigation phase*; or
- (b) the subject matter of a *complaint* against a *financial services provider* is the same as or substantially similar to that of other *complaints* before the *scheme* against the same *financial services provider*, indicating systemic, persistent or deliberate conduct on the part of the *financial services provider*,

the *scheme* may declare the *investigation phase* complete and move on to the *determination phase*.

23. The determination phase

23.1 The *Ombudsman* may make a *determination* about the *complaint* if:

- (a) the *financial services provider* has not responded to the *scheme* when required to do so under *these Rules*; or
- (b) the *scheme* has declared the *investigation phase* complete pursuant to *Rule 22.4*; or
- (c) the *Ombudsman* considers that the *complaint* can be fairly and expeditiously resolved by a *determination* made at any stage of the *CIO process*.

23.2 The *Ombudsman* will generally make his or her *determination* based upon:

- (a) the *complaint*;
- (b) the *financial services provider's* response;
- (c) the *complainant's* reply; and
- (d) information and documents the *scheme* has received during the *CIO process*, including any advice from suitably qualified people.

23.3 The *Ombudsman* will only carry out further investigation of the *complaint* if it thinks that it is absolutely necessary to do so to enable a *determination* to be made.

23.4 A *determination* will be in writing and include the *Ombudsman's* reasons for making the *determination*.

24. Agreement during determination phase

- 24.1 If the *complainant* and the *financial services provider* come to an agreement about resolving the *complaint* during the *determination phase*, and one of the parties asks for it, the *scheme* will prepare a *settlement agreement*.
- 24.2 Both the *complainant* and the *financial services provider* must sign the *settlement agreement* for it to be binding on the *financial services provider*.
- 24.3 The *Ombudsman* can make an *award* in terms of the *settlement agreement* to enforce it if the *Ombudsman* is satisfied that:
- (a) the *settlement agreement* was validly signed by both the *complainant* and the *financial services provider*;
 - (b) the *complaint* was one which could be *dealt with* by the *scheme*; and
 - (c) the *financial services provider* has failed to comply with the *settlement agreement*.

25. What determinations the Ombudsman can make

- 25.1 The *Ombudsman* may, having regard to the principles in *Rule 12.1*, make a *determination* that:
- (a) the *financial services provider* undertakes a course of action, including, but not limited to, those referred to in *Rules 9.6, 9.8 and 9.10*; and/or
 - (b) no compensation be paid and no *orders* made.
- 25.2 If the *Ombudsman* is not satisfied that the *complaint* has been made out, the *Ombudsman* will declare the *complaint* closed in the *determination*.
- 25.3 The amount of compensation will be what the *Ombudsman* believes is sufficient but not more than is required to compensate the *complainant* for their loss as a result of the act or omission of the *financial services provider*.
- 25.4 A *determination* will be binding on a *financial services provider* only if the *complainant* accepts that *determination* in full and final settlement of their *complaint* against the *financial services provider*.
- 25.5 In considering whether the *determination* should require the *financial services provider* to do or refrain from doing some act, the *Ombudsman* will have regard to what is fair and reasonable to put the *complainant* and the *financial services provider* in the respective positions they would have been in were it not for the act or omission of the *financial services provider*.
- 25.6 In doing this, the *Ombudsman* will consider what is fair and reasonable for all parties, including someone who is not a party to the *complaint* but who might be affected by the *determination*, e.g. a *financier*.

26. After the determination is made

- 26.1 The *Ombudsman* will send his or her *determination* to the *complainant* and the *financial services provider*.
- 26.2 At the same time as sending the *complainant* his or her *determination*, the *Ombudsman* will send the *complainant* a Deed of Release. If the *complainant* signs their acceptance of the *determination*, the *complainant* will also need to sign the Deed of Release.
- 26.3 The Deed of Release will have the effect and only the effect of releasing the *financial services provider* from any further legal liability to the *complainant* and precluding commencement of legal proceedings by the *complainant* against the *financial services provider* in relation to the subject matter of the *complaint* on the condition that the *financial services provider* has fully complied with the *determination*.
- 26.4 If the *complainant* signs both their acceptance of the *determination* and the Deed of Release within 28 days of the documents being sent to them by the *Ombudsman*, the *financial services provider* will be advised by the *Ombudsman* that:
- (a) the *complainant* has signed the acceptance of the *determination* and the Deed of Release; and
 - (b) the *financial services provider* must also sign an acceptance of the *determination* and send its signed acceptance to the *Ombudsman*; and
 - (c) the *financial services provider* may choose to also sign the Deed of Release the *complainant* has signed and send a copy of that signed Deed of Release to the *Ombudsman*.
- 26.5 If the *Ombudsman* has not received from the *financial services provider* its signed acceptance of the *determination*, as accepted by the *complainant*, within 28 days of sending it to the *financial services provider*, the *Ombudsman* can make a binding *award* in terms of that *determination*.
- 26.6 If the *Ombudsman* does not receive the *complainant's* signed acceptance of its *determination* and the signed Deed of Release within 28 days after the *Ombudsman* sends them to the *complainant*, the *Ombudsman* may declare the *complaint* closed.
- 26.7 If the *complainant* and the *financial services provider* have both signed acceptances of the *determination* but the *financial services provider* does not fully comply with it, then the *complainant* can ask the *Ombudsman* to make a binding *award* in terms of that *determination*.
- 26.8 Whenever the *Ombudsman* makes an *award*, the *financial services provider* must comply with it fully and within the time period specified in the *award*. If the *award* does not specify a

particular time period, then the *financial services provider* must comply with the *award* as soon as practicable.

- 26.9 Any *award* the *Ombudsman* makes will be in writing. As an *award* is based on a *determination* or on a *financial services provider's* failure to comply with a *settlement agreement*, the *award* may, but does not need to, include the *Ombudsman's* reasons for having made the *determination*.
- 26.10 A copy of the *determination* and any *award* may be given to:
- (a) the *complainant*;
 - (b) the *financial services provider*; and
 - (c) the *CIOL board*.
- 26.11 The *scheme* may publish a de-identified copy of the *determination* of the *complaint* on *CIOL's website*.

27. Not complying with a scheme requirement

- 27.1 If a party does not comply with a *scheme requirement* within the period specified by the *scheme*:
- (a) the *scheme* may give the party whatever further period the *scheme* thinks appropriate to comply; and
 - (b) if the *financial services provider* still does not comply and after providing the *financial services provider* with due warning and an opportunity to respond:
 - (i) the *Ombudsman* may, if it considers appropriate, proceed to determine the *complaint* on the basis of the information and documents then available; and/or
 - (ii) *CIOL* may suspend the *financial services provider's* membership of *CIOL* for a specified period or expel the *financial services provider* as a member of *CIOL*; and/or
 - (iii) the *scheme* may notify *ASIC* and/or the *OAIC* that the *financial services provider* has failed to comply with a *scheme requirement*; or
 - (c) if the *complainant* still does not comply, the *scheme* may declare the *complaint* closed or, where the *scheme requirement* only relates to a particular aspect of the *complaint*, the *scheme* may decline to consider that aspect further and only continue to *deal with* the other aspects of the *complaint*.
- 27.2 For the purpose of this *Rule 27*, the expression '*scheme requirement*' refers to any requirement imposed by the *scheme* or *these Rules* on the *complainant* or the *financial services provider*, including the requirement to respond to the *scheme* within a certain time or the requirement to provide the *scheme*

with such information and documents that may be requested by the *scheme* in relation to the *complaint*.

28. Enforcing an award

- 28.1 If a *financial services provider* fails to comply with an *award* after the *Ombudsman* gives the *financial services provider* 28 days' written notice to comply with it, then *CIOL* can take whatever action it thinks is necessary to enforce the *award*, including but not limited to the following things:
- (a) suspend the *financial services provider's* membership of *CIOL* for a specified period or expel the *financial services provider* as a member of *CIOL*;
 - (b) notify *ASIC* or *OAIC* that the *financial services provider* has failed to comply with an *award*;
 - (c) bring legal proceedings against the *financial services provider* to recover the amount awarded; seek court orders in terms of the *award*; and recover the costs incurred by *CIOL* in bringing the proceedings;
 - (d) bring legal proceedings for specific performance of the *financial services provider's* agreement to abide by *CIOL's* Constitution and *these Rules*, including but not limited to the *financial services provider's* obligation to comply with the *award*; or
 - (e) take such other action as *CIOL* thinks appropriate to secure compliance with the *financial services provider's* obligations under *CIOL's* Constitution and *these Rules*.

29. Objection notice from financial services provider

- 29.1 The *scheme* will suspend *dealing with a complaint* if the *financial services provider* gives an *objection notice* to the *scheme* and is able to demonstrate to the *scheme's* reasonable satisfaction:
- (a) that the *complaint* involves or may involve an issue which could have important consequences for the *financial services provider's* business or the *financial services industry* generally; or
 - (b) that the *complaint* raises an important or novel point of law.
- 29.2 A *financial services provider* who gives an *objection notice* must:
- (a) identify and describe the issues which could have important consequences for the *financial services provider's* business or the *financial services industry* generally as the issues relate to the *complaint*; or
 - (b) identify and describe the important or novel point of law as it relates to the issues raised in the *complaint*; and

- (c) advise the *scheme* of the grounds on which the *financial services provider* seeks a declaration from the court or tribunal and how the declaration being sought relates to the issues raised in the *complaint*.
- 29.3 The *scheme* will refuse to accept an *objection notice* if:
- (a) the *financial services provider* has not complied with *Rules 29.1* and *29.2*; or
 - (b) the *scheme* reasonably considers that the *financial services provider* has no or inadequate grounds for seeking a declaration from a court or tribunal; or
 - (c) having regard to all other relevant circumstances, the *scheme* is reasonably satisfied that the *financial services provider* has given the *scheme* the *objection notice* for an improper purpose; or
 - (d) the *financial services provider* previously gave the *scheme* an *objection notice* in relation to the same *complaint*, in which case, the *scheme* will give the *financial services provider* written notice of the refusal and will continue to *deal with the complaint*.
- 29.4 If the *scheme* accepts the *objection notice*, the *financial services provider* must, in order to have the issue determined:
- (a) despite *Rule 17.1*, commence proceedings in a court in Australia within 21 days of receiving notice of the *scheme's* acceptance of the *objection notice*; and
 - (b) give an undertaking to the *scheme* and the *complainant* to:
 - (i) pay the *complainant's* costs and disbursements (on a solicitor and client basis) of the proceedings and any subsequent appeal that may be commenced by the *financial services provider*;
 - (ii) make interim payments on account of such costs if and to the extent that it appears reasonable to do so; and
 - (iii) seek to prosecute the *complaint* expeditiously.
- 29.5 If the *financial services provider* does not commence these proceedings within 21 days of receiving notice of the *scheme's* acceptance of the *objection notice*, then the *scheme* will *deal with the complaint* as if the *objection notice* had not been given.
- 29.6 The *financial services provider* is not required to pay the *complainant's* costs if it is the *complainant* who institutes a subsequent appeal.

30. Joining other parties

30.1 If the *scheme* believes that:

- (a) it would not unfairly prejudice the *complainant* or the *financial services provider*; and
- (b) it would lead to a more efficient and effective resolution of the *complaint*,

the *scheme* may allow or require another member of *CIOL* (called the *third party member*) to be joined as a party to the *complaint*.

30.2 The *scheme* may impose terms and conditions on joining a *third party member*. For example, the *scheme* may require the *financial services provider* that the *complainant* has complained about to pay costs or to provide security for future costs.

30.3 Once a *third party member* has been joined in the *complaint*, the *scheme* may give directions about how the *complaint* will be dealt with.

30.4 A *third party member* has all the rights and duties under these *Rules* as if that *third party member* was the *financial services provider* as referred to in the *Rules*.

30.5 Where a *third party member* has been joined, these *Rules* are to be read to include that *third party member* with appropriate changes being made.

31. Legal or other representation

31.1 Neither party is required to have legal or other representation ('representation') while the *scheme deals with the complaint*.

31.2 If a party chooses to be legally or otherwise represented, this will be at their own cost.

31.3 However, each party must ask for the *scheme's* permission if it wishes to have representation in a hearing or *conciliation conference* convened by the *scheme*. The *scheme* may at its absolute discretion and on such terms as it considers appropriate (including the *financial services provider* paying for the *complainant's* representation if the *financial services provider* elects to be represented by a person other than its own staff), allow representation, having regard to what is procedurally fair to both the *complainant* and the *financial services provider*.

32. Statements and information made 'without prejudice'

32.1 All statements the *complainant* or *financial services provider* make and information or documents they provide to the *scheme* are on a 'without prejudice' basis. This means that anything said or done or information provided to the *scheme*

during the *CIO process* cannot be used in subsequent legal proceedings unless required by an appropriate court process.

[See *Rule 33.8* as well]

32.2 Any information obtained by the *scheme* during the *CIO process* must not be disclosed by:

- (a) the *complainant* or the *complainant's* representative;
- (b) the *financial services provider* or the *financial services provider's* representative;
- (c) the *CIOL board*; or
- (d) the *scheme*,

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

33. Confidentiality

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

33.2 If the *scheme* receives any information or document from any party to a *complaint* with a request from that party that it be treated confidentially, the *scheme* will not disclose that information or document to any other party or to any other person unless:

- (a) the party supplying the information or document has consented to the disclosure, or
- (b) the information or document is already in the public domain; or
- (c) the law or *these Rules* or *CIOL's* Constitution require or permit the disclosure.

33.3 The *scheme* will not use or rely on any confidential information or document provided by one party to make a finding adverse to any other party, unless it:

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

- (d) if appropriate, summarises the confidential information or the relevant contents of the document to any party against whom an adverse finding may be made.
- 33.4 Nothing in *Rule 33.3* prevents the *scheme* from relying on confidential information or documents supplied by one party to also make a finding adverse to that party.
- 33.5 Before the *scheme* sends any confidential information or document to another forum, the *scheme* will obtain the consent of the party claiming confidentiality.
- 33.6 Except where *these Rules*, *CIOL's Constitution* or the law prohibits it, the *scheme* may at its discretion disclose the *complaint*, the *financial services provider's* response, the *complainant's* reply and any information or document obtained by the *scheme* during the *CIO process* to any *CIOL* employee, consultant, contractor or agent to the extent that is appropriate to do so to enable the person to fully and effectively carry out their powers, functions or duties.
- 33.7 The *scheme* will not be obliged to make available to the parties any memoranda, analysis, file notes or other documents generated by *CIOL's* employees, consultants, contractors or agents.
- 33.8 Despite anything else in *these Rules*, any party to a *complaint* who receives from the *scheme* any document prepared by the *scheme* or provided to the *scheme* by another party:
 - (a) must use that document only for the purpose of dispute resolution in accordance with and as contemplated by the *CIO Rules*; and
 - (b) must not, except as required by a court process, disclose the document to any other person without the prior written consent of the *scheme*, which consent may be subject to such conditions as the *scheme* may in its absolute discretion consider appropriate,

and for the purposes of this *Rule* 'disclose' includes communicating or divulging by any means whether written, electronic or oral or otherwise, including copying by any means all or any part of the document.

34. Exemptions from these Rules

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

35. Extensions of time

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

36. Declaring a complaint closed

- 36.1 In addition to *Rules* 20.3, 21.2, 25.2, 26.6, 27.1(c) and 39.3, the *scheme* may at any time declare a *complaint* closed in any of the following cases:
- (a) the *complaint* is or becomes one not covered by the *scheme* by reason of *Rule* 10; or
 - (b) the *complaint* is withdrawn or resolved; or
 - (c) the *scheme* deems the *complaint* withdrawn by reason of the *complainant's* failure to respond to the *scheme's* communications within the period specified by the *scheme*; or
 - (d) the *scheme* makes a *decision* that the *complaint* has not been made out; or
 - (e) the *scheme* is unable to locate the *financial services provider* despite its reasonable efforts to do so; or
 - (f) subject to *Rule* 40.1(b), the *financial services provider* is or becomes during the course of the *CIO process* insolvent under administration or an externally-administered body corporate as those expressions are defined in the Corporations Act 2001.
- 36.2 Before the *scheme* closes a *complaint*, it will inform the *complainant* that it is proposing to close the *complaint* and provide its reasons for doing so.
- 36.3 Where the *complaint* is proposed to be closed under *Rules* 14.6, 36.1(a) or 36.1(d), the *scheme* will also inform the *complainant* that the *complainant* may, within 14 days of being informed of the proposed closure, notify the *scheme* that it disagrees with the reasons for the proposed closure and request the *scheme* to review its *decision* to close the *complaint*.
- 36.4 Upon receipt of such a request, the *scheme* will review its *decision* to close the *complaint* if satisfied that the *complainant's* objection may have substance, in which case, the *scheme* will continue *dealing with the complaint*.

37. Board directions

- 37.1 The *CIOL board* may from time to time issue *board directions*:

- (a) dealing with administrative and procedural matters to ensure that *complaints* are resolved efficiently and effectively;
 - (b) dealing with the *CIOL board's* reporting obligations;
 - (c) dealing with the expulsion, suspension or reinstatement of a *financial services provider* as a member of *CIOL*;
 - (d) dealing with other matters raised in relation to the *CIOL board's* powers and functions under *CIOL's* Constitution; or
 - (e) dealing with changes to the law, government regulation, and the *financial services industry* generally.
- 37.2 All *board directions* are binding on the *complainant*, the *financial services provider*, *CIO* and all parties to a *complaint*.
- 37.3 To the extent a *board direction* applies to the *complainant* or the *financial services provider* or the subject of the *complaint*, the *board direction* must be given to the *complainant* and the *financial services provider* in the manner determined by the *CIOL board*.
- 38. Previous scheme decisions**
- 38.1 No *scheme decision* creates or should be taken as creating a binding precedent when it *deals with* particular types of *complaints*. Each *complaint* will be *dealt with* and decided on its own particular facts. The *scheme* will therefore not be bound by any previous *scheme decisions*, but will be consistent in its decision-making, where appropriate.
- 39. Exceptions to scheme decisions being final and binding**
- 39.1 Subject to *Rule 39.3*, every *scheme decision* and every *board direction* is final and binding on a *financial services provider* and a *complainant*.
- 39.2 A *scheme decision* may only be reviewed or reopened in the circumstances allowed in *these Rules* or the *Guidelines*.
- 39.3 A *scheme decision* is only binding on a *complainant* if the *complainant* accepts it. If the *complainant* does not accept a *scheme decision*, the *complainant* is at liberty to pursue other remedies in relation to the subject matter of the *complaint* in the courts or any another forum. If the *complainant* does this, the *scheme* will declare the *complaint* closed and no *scheme decision* or *board direction* will have any force or effect against the *financial services provider* in relation to the *complaint*.
- 39.4 If upon the *Ombudsman's* own motion or on application by a party within 28 days after the date on which a *determination* or *award* was sent to that party, the *Ombudsman* is satisfied that in relation to that *determination* or *award*:
- (a) there is a clerical mistake; or

- (b) there is a material error, oversight or omission; or
- (c) there is a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
- (d) there is a defect in form; or
- (e) the terms of the *determination* or *award* do not reflect the *scheme's* or the *Ombudsman's* actual intentions,

the *Ombudsman* may:

- (i) re-open the *complaint*; or
- (ii) make whatever amendments to the *determination* or *award* he or she thinks appropriate; or
- (iii) re-issue the *determination* or *award*; or
- (iv) give such directions as he or she thinks appropriate (including directions about times for compliance) in connection with the *determination* or *award*.

39.5 A *financial services provider* who institutes legal proceedings to challenge any *scheme decision* or a *board direction* must comply with all the following requirements:

- (a) the legal proceedings must be instituted within 28 days of the *scheme decision* or the *board direction* being sent to the *financial services provider*; and
- (b) as a condition of commencing legal proceedings, the *financial services provider* must pay on a solicitor and client basis the legal costs of, and disbursements incurred by, the *financial services provider*, the *scheme*, *CIOL* and the *complainant* in relation to the legal proceedings and any appeal; and
- (c) if *CIOL* so specifies, the *financial services provider* must furnish security for costs and disbursements in relation to the legal proceedings and any appeal as *CIOL* reasonably requires.

39.6 A *financial services provider* who fails to institute legal proceedings within 28 days of the *scheme decision* or the *board direction* being sent to the *financial services provider*, or otherwise fails to satisfy all the requirements of this *Rule* forever waives its rights to institute legal proceedings to challenge any *scheme decision* or a *board direction*.

40. Financial services provider ceasing to carry on business

40.1 The *scheme* may at its discretion:

- (a) bypass the *financial services provider's IDR* process, whether or not the *financial services provider* has commenced considering the *complaint* within that process; and
- (b) *deal with* or continue to *deal with* a *complaint*,
if the *financial services provider*:

- (i) ceases to carry on business (e.g. *financial services provider* closes its doors to consumers or investors or sells its business); or
 - (ii) ceases to hold a *relevant licence*; or
 - (iii) becomes insolvent under administration,
- and in doing so, the *scheme* must consider the *complainant's* interests.

41. Reporting obligations and systemic issues

- 41.1 The *scheme* will collect and record comprehensive information about, among other things:
- (a) the number of *complaints* and enquiries it receives;
 - (b) the demographics of *financial services providers* (where practicable);
 - (c) the number of *complaints* it receives that are outside its jurisdiction and the reasons for this;
 - (d) the outcome of *complaints* that were resolved;
 - (e) the current caseload, including the age and status of open cases;
 - (f) the time taken to resolve *complaints*; and
 - (g) a profile of *complaints* that identifies:
 - (i) the type and purpose of the *financial service*;
 - (ii) the type of *financial services provider*;
 - (iii) the cause of the *complaint*; and
 - (iv) any systemic issues or other trends.
- 41.2 The *scheme* will produce an annual report of operations at least every twelve months for publication and this will be made available to stakeholders and the general public. The report must be a comprehensive summary and an analysis of the data collected under *Rule 41.1*, and include, among other things, the following statistical information in the appropriate context about each *financial services provider* (on a named basis):
- (a) the number of *complaints* recorded by the *scheme*;
 - (b) the number of *complaints* closed; and
 - (c) the outcome of the *complaints*.
- 41.3 *CIO* must, on a quarterly basis, provide *ASIC* with a report on the data collected under *Rule 41.1* and a report on any systemic, persistent or deliberate conduct such as:
- (a) systemic issues (being either an issue arising out of a single *complaint* but having implications which extend beyond the parties to the particular *complaint*, or an issue arising from multiple *complaints* which are similar in nature); and

- (b) serious misconduct (e.g. conduct by a *financial services provider* which involves fraud, gross negligence or inefficient conduct, or which is a wilful or flagrant breach of a relevant law or the *CIO Rules*).
- 41.4 In *conducting a systemic issue investigation*, the *scheme* will observe procedural fairness and have regard to:
 - (a) relevant laws,
 - (b) *applicable codes of practice*,
 - (c) good practice in the *financial services industry*, and
 - (d) fairness in all the circumstances.
- 41.5 *Conducting a systemic issue investigation* includes, but is not limited to:
 - (a) identifying systemic issues,
 - (b) requiring the *financial services provider* to provide to, or procure for, the *scheme* any information or documents that the *scheme* considers necessary,
 - (c) making any recommendations the *scheme* considers necessary for the resolution of a systemic issue, and
 - (d) making any *order* under *Rule 41.7*.
- 41.6 The *scheme* will refer a systemic issue to the relevant *financial services provider* for remedial action. The *financial services provider* must provide the *scheme* with a report within the time nominated by *the scheme* that details its response to the systemic issue identified by the *scheme*. The *scheme* must provide a copy of the report to *ASIC*.
- 41.7 The *Ombudsman* can make an *order* requiring the *financial services provider* to do or refrain from doing some act in relation to a systemic issue identified by the *scheme*, and which the *scheme* considers necessary to achieve any one or more of the following objectives:
 - (a) facilitating the *scheme's* investigation of the systemic issue,
 - (b) improving industry practice and communication,
 - (c) remedying loss or disadvantage suffered by consumers (not all of whom may have complained about the systemic issue),
 - (d) preventing foreseeable loss or disadvantage to consumers,
 - (e) minimising the risk of the systemic issue recurring, or
 - (f) efficiently dealing with multiple complaints or disputes related to the systemic issue.
- 41.8 *CIOL* will notify *ASIC* of its intention to:

- (a) cancel a *financial services provider's* membership with *CIOL*; or
 - (b) expel or suspend a *financial services provider* from membership with *CIOL*,
- and will again notify *ASIC* if and when either of these has occurred.

41.9 The *scheme* must provide *OAIC* with such information that it requires in relation to serious or repeated interferences with privacy and systemic issues and data on privacy-related *complaints*.

41.10 The *scheme* may also report the occurrence of any of the following to *ASIC*, *OAIC*, any government body, a relevant industry body, another *EDR scheme* or, where the *financial services provider* is a *credit representative*, the relevant *Australian Credit Licensee*:

- (a) the resignation of the *financial services provider* as a member of *CIOL*;
- (b) the cancellation of the *financial services provider's* membership of *CIOL*;
- (c) the expulsion or suspension of the *financial services provider* from membership of *CIOL*;
- (d) the non-payment of any fee by the *financial services provider*;
- (e) the failure by the *financial services provider* to comply with an *order* or an *award* issued by the *Ombudsman*; or
- (f) the failure of a *financial services provider* to comply with any provision of *CIOL's* Constitution, or obligation imposed by the *Rules*, *Guidelines* or any by-law made by the *CIOL board*.

42. Publicising the scheme

42.1 The *CIOL board* and all *financial services providers* must ensure that the *scheme* is appropriately and effectively publicised. For example, the *scheme* is publicised on *CIOL's website*. Also, copies of the *CIO Rules* are to be available on request from a *financial services provider*.

43. Immunity from liability

43.1 *CIOL*, members of the *CIOL board*, any person authorised by the *Ombudsman* to carry out any responsibilities or exercise any powers or discretions of the *scheme*, the *Ombudsman* and *CIOL* employees, contractors and agents shall not be liable to a party to a *complaint* for any loss or damage arising directly or indirectly in the course of carrying out the *scheme's* functions.

44. Protection from defamation

- 44.1 The *financial services provider* must not instigate defamation action of any kind against a *complainant* in respect of allegations made to the *scheme* by the *complainant* about the *financial services provider*.

45. Dictionary

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

applicable code of practice

means a code of conduct or practice, regulatory guidance, and accepted professional standards and protocols which apply to a *financial services provider*

ASIC

means Australian Securities and Investments Commission

ASIC Act

means the Australian Securities and Investments Commission Act 2001

Australian Credit Licensee

means a person licensed by *ASIC* to engage in credit activities, credit services or credit assistance within the meaning of the National Consumer Credit Protection Act 2009

award

means an award issued by the *Ombudsman* under *these Rules*

board direction

means a direction issued by the CIOL board under CIOL's Constitution

CIO

means the *EDR scheme* established by *CIOL*

CIO Rules or *Rules* or *these Rules* mean the Rules of the *scheme*

CIO process

means the process for *dealing with a complaint* under *these Rules*

CIOL

means the Credit and Investments Ombudsman Limited

CIOL board

means the board of directors of *CIOL*

CIOL's website

means the website maintained by *CIOL* at www.cio.org.au

claim

means a cause of action or ground of complaint that would entitle the *complainant* to seek a remedy. A *complaint* may contain more than one *claim*, with each *claim* being separately subject to the *monetary compensation limit*

complainant

means a *consumer* who makes a *complaint* to the *scheme* about a *financial services provider*

complaint

means a privacy-related *complaint* (including a request for access or correction request under the Privacy Act 1988), a *financial hardship application* or an expression of dissatisfaction made to the *scheme* about a *financial services provider* in relation to a *financial service*, whether or not the *complainant* has first tried to resolve the *complaint* with the *financial services provider* using the *financial services provider's IDR* process, and includes any *complaint* made to another *EDR scheme* which has been transferred or referred to the *scheme*

complaint summary

means a summary of the *complaint* and the *financial services provider's* response in whatever manner and form the *scheme* thinks appropriate

conciliation conference

means any meeting of the parties to the *complaint* (and their representatives, if any) with the *scheme*, whether in person, over the phone or by video conference, during which the *scheme* uses mediation, conciliation or other techniques to identify the relevant issues and the strengths and weaknesses of each party's case; provide non-binding opinions, suggestions or recommendations with reference to the applicable law, good industry practice, *applicable codes of practice* and fairness;

generates options for the settlement of the *complaint*; or otherwise assists the parties to resolve the *complaint*

consumer

means:

- (a) where a *complaint* relates to a 'credit activity', as that term is defined under the National Consumer Credit Protection Act 2009, a *natural person* or strata corporation; or
- (b) where a *complaint* relates to:
 - (i) a 'financial service' within the meaning of the Corporations Act 2001; or
 - (ii) a 'tax (financial) advice service' within the meaning of the Tax Agent Services Act 2009, a 'retail client' within the meaning of the Corporations Act 2001; or
- (c) where a *complaint* relates to a 'financial service' within the meaning of the Corporations Act 2001 that was provided in relation to a financial product within the meaning of section 761A of the Corporations Act 2001 acquired, held or disposed of under a *custodial arrangement*, the person who directed or requested the acquisition, holding or disposal is a *consumer* if the person would have been a 'retail client' within the meaning of the Corporations Act 2001 had the financial service been provided to that person directly; or
- (d) where a *complaint* relates to a *financial service* of the kind described in (g) of the definition of '*financial services*', an 'individual' within the meaning of the Privacy Act 1988; or
- (e) for all other *complaints*, a *natural person*, *partnership*, company, strata corporation, trustee (*individual* or corporate) or *small business*, provided the *complainant*:
 - (i) did not have net assets of \$2.5 million or more for each of the two financial years prior to the date of making the complaint; or
 - (ii) did not have a gross income of \$250,000 or more for each of the two financial years prior to the date of making the *complaint*.

consumer lease

means a lease regulated under the National Consumer Credit Protection Act 2009

consumer representative

means a director of *CIOOL* appointed to that office under *CIOOL's* Constitution

credit contract

means a *credit facility* regulated by Schedule 1 of the National Consumer Credit Protection Act 2001

credit facility

means a credit facility within the meaning of Regulation 2B of the ASIC Regulations 2001

credit representative

has the meaning ascribed to that term by the National Consumer Credit Protection Act 2009

custodial arrangement

has the meaning ascribed to that term in section 1012IA(1) of the Corporations Act 2001

Note: Examples of a *custodial arrangement* include an investor directed portfolio service (IDPS) under *ASIC* Class Order [CO 13/763] and an IDPS-like scheme under *ASIC* Class Order [CO 13/762].

custodian

in relation to a *custodial arrangement*, means a person that holds a financial product to which the *custodial arrangement* relates

deal with or dealing with or deals with or dealt with

is explained in *Rule* 12.2

decision

see '*scheme decision*'

determination

means the *Ombudsman's* determination of a *complaint* under *Rule* 23.1.

determination phase

means the phase during which the *Ombudsman* makes a *determination* and, as required, an *award*

EDR scheme

means an external dispute resolution scheme approved by ASIC or OAIC

enforcement action

includes any of the following conduct by a *financial services provider*, its agent, assignee or contractor:

- (a) issuing a letter of demand or a statutory notice of default;
- (b) engaging in debt recovery or repossession activities, whether or not through the court system;
- (c) advertising or arranging for any property (including property securing a debt) to be sold or disposed of;
- (d) threatening to take any *enforcement action* to recover a debt;
- (e) immobilising a vehicle securing the debt, or threatening to immobilise such a vehicle; or
- (f) seeking judgment for a debt or pre-judgment remedies, such as orders to prevent the removal of property from the jurisdiction

expedited ruling

means a ruling under *Rule 21.1*

final response

means a written response from the *financial services provider* to the *complainant* within the times prescribed by ASIC's Regulatory Guide 165 or the Privacy Act 1988 (as the case may be):

- (a) informing the *complainant* that the *financial services provider* is prepared to offer the *complainant* redress or partial redress, with or without acknowledging liability; or
- (b) informing the *complainant* that the *financial services provider* rejects the *complaint*, wholly or partially; or
- (c) otherwise informing the *complainant* of the final outcome of their *complaint* at *IDR*

financial hardship application

means an application or notice seeking a variation to the terms of the *credit facility* and, where the *financial hardship application* is made by the *complainant*, may include:

- (a) a stay of *enforcement action* by the *financier*;

- (b) a reasonable opportunity to refinance the *credit facility* or to sell or dispose of property securing the debt or other property;
- (c) a variation or waiver of the debt;
- (d) a reversal or waiver of default fees, default interest or enforcement costs

financial services

mean:

- (a) any financial service within the meaning of section 766A of the Corporations Act 2001 or section 12BAB of the ASIC Act 2001; or
- (b) any credit activity within the meaning of the National Consumer Credit Protection Act 2009; or
- (c) the exercise of rights under a *credit facility* or an assignment of a *credit facility*, by a *financial services provider* who is a lender's mortgage insurer, debt purchaser or invoice discounter; or
- (d) tax (financial) advice services within the meaning of the Tax Agent Services Act 2009; or
- (e) where the *financial services provider* is a mutual, the provision by the *financial services provider* of a financial product issued or provided by a third party through the agency of the mutual; or
- (f) debt management, budget monitoring and management, credit reporting, credit management and debt collection; or
- (g) the conduct of a *financial services provider* in relation to its obligations under the Privacy Act 1988, provided the *complaint*:
 - (i) is part of a broader *complaint* between the *financial services provider* and the *consumer* about a *financial service*; or
 - (ii) relates to or arises out of a *financial service* provided to a *consumer* by the *financial services provider*,

and includes the conduct of the *financial services provider* in relation to or arising from a *financial service*.

"*financial services*" do not include any of the following:

- (a) the preparation or auditing of accounts or financial reports for a business, company or trust; or
- (b) the preparation or submission of tax returns and business activity statements.

financial services industry

means the industry in which *financial services providers* and their related bodies corporate carry on the business of *financial services* in Australia

financial services provider

means a member of *CIOI* who is engaged in *financial services* and a reference to the *financial services provider* includes any employee, agent or contractor of the *financial services provider*, including any person who has actual, ostensible, apparent or usual authority to act on behalf of the *financial services provider* or authority to act by necessity in relation to a *financial service*

financier

means the provider of a *credit facility* or other financial accommodation (including margin lending), and includes where the context permits, a debt purchaser and lender's mortgage insurer

Guidelines

mean the Guidelines to the *Rules*

IDR

means internal dispute resolution involving a procedure adopted by a *financial services provider* to consider a *complaint*

individual

means a *natural person* (not, for example, a company)

investigation phase

means the investigation phase of the *CIO process*

industry representative

means a director of *CIOI* appointed to that office under *CIOI's Constitution*

linked credit provider

has the meaning ascribed to it in Section 2 of Schedule 2 of the Competition and Consumer Act 2010 (Cth)

monetary compensation limit

means, in relation to each *claim*, an amount not exceeding \$280,000, adjusted every three years from 1 January 2012 using the higher of the increase in the Consumer Price Index (CPI) or Male Total Average Weekly Earnings (MTAWE), with rounding to the nearest \$500

Note: Separate *claims* by the same *complainant* will not be aggregated for the purpose of determining a maximum *claim*.

natural person

includes one acting as a trustee, legal or personal representative or otherwise

OAIC

means the Office of the Australian Information Commissioner

objection notice

means a notice given by a *financial services provider* under *Rule 29*

Ombudsman

means the person appointed to that role in accordance with *Rule 4.1*

order

means an *order* made by the *Ombudsman* under *Rule 9.10* or *Rule 41.7*.

partnership

means a partnership comprising of individuals – if the *partnership* carries on a business, the business must be a *small business*

payment terms

mean the payment terms described in a *complainant's credit facility*

prescribed time

means the relevant time or times prescribed by the National Consumer Credit Protection Act 2009 or the *scheme*, as the case may be

Privacy Act participant

means a *financial services provider* that:

- (a) is a credit provider within the meaning of section 6G(1)(c), 6G(2) and 6G(3) of the Privacy Act 1988; and

- (b) is not required to be a member of an *EDR scheme* under the Corporations Act 2001 or the National Consumer Credit Protection Act 2009

recommendation

means making a recommendation to the *complainant* and the *financial services provider* under *Rule 22.1(e)* about resolving the *complaint* or making a recommendation to the *complainant* under *Rule 20.1* that they accept the *financial services provider's* offer in full and final settlement of the *complaint*

relevant licence

means an Australian Financial Services licence or an Australian Credit licence

Rules

see '*CIO Rules*'

ruling

means a ruling made by the *Ombudsman* under *Rule 6.2*, but does not include an *expedited ruling* made by the *scheme* under *Rule 21.1*

scheme

means the *Credit and Investments Ombudsman* and, unless the context indicates the contrary, includes the *Ombudsman*

scheme decision or *decision*

means any decision made or discretion exercised by the *scheme* or the *Ombudsman* under *these Rules*, including, but not limited to, decisions or discretions in relation to declaring a *complaint* closed under *Rule 36.1*, *expedited rulings*, *recommendations*, *determinations*, *awards* or *orders*

scheme requirement

is defined in *Rule 27.2*

settlement agreement

means the agreement for withdrawing or resolving the *complaint* reached between the *complainant* and the *financial services provider* in whatever form the *scheme* regards as appropriate to the circumstances

small business

means a business (whether a sole trader or constituted as a company, *partnership*, trust or otherwise), that, at the time of the act or omission by the *financial services provider* that gave rise to the *complaint*, employed fewer than:

- (a) 100 full-time (or equivalent) employees, if the business is or includes the manufacture of goods; or
- (b) otherwise, 20 full-time (or equivalent) employees

third party member

means a member of *CIOL* joined as a party to the *complaint* by the *scheme* under *Rule 30*.

- 45.2 Unless the context suggests otherwise:
- (a) the singular includes the plural and vice versa;
 - (b) any reference to a party to a *complaint* includes that party's executors, administrators or permitted assignees;
 - (c) a reference to one gender includes every gender;
 - (d) headings are for reference purposes only; and
 - (e) references to any Act of Parliament or other law include regulations and other instruments made under it and to consolidations, re-enactments, amendments or replacements of it.
- 45.3 In calculating compliance with a time period by reference to a number of 'days', include weekends but disregard any public holiday.
- 45.4 Whenever *these Rules* refer to information, they include information or evidence in any form and from any source, but do not include information or evidence that has been or appears to be illegally obtained.
- 45.5 If any provision in *these Rules* is inconsistent with any provision of *CIOL's* Constitution, the provision of the Constitution will always prevail.