



# Proposed legislation for crowd-sourced equity funding

Financial Ombudsman Service Australia Submission

February 2016



## Contents

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Executive summary	3
1 Introduction	3
2 Overview of FOS	4
2.1 <i>Our role</i>	4
2.2 <i>Our approach</i>	4
2.3 <i>Further information</i>	5
3 Resolving disputes about crowd funding services	5
3.1 <i>How FOS plans to assist CSF Intermediaries</i>	5
3.2 <i>FOS jurisdiction for CSF disputes</i>	5
4 Informing consumers about dispute resolution arrangements	6
4.1 <i>Comparison with requirements for product disclosure statements</i>	6
4.2 <i>Requirements for financial services guides</i>	6
Appendix 1- About FOS	7

## Executive summary

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Financial Ombudsman Service Australia (FOS) is an ASIC-approved independent external dispute resolution (EDR) scheme that covers disputes across the financial sector.<sup>1</sup>

FOS welcomes the opportunity to comment on the *Corporations Amendment (Crowd-sourced Funding) Bill 2015* and the exposure draft of the *Corporations Amendment (Crowd-sourced Funding) Regulation 2015*. This submission<sup>2</sup> comments on both the Bill and the regulation, focussing on dispute resolution matters.<sup>3</sup>

This submission:

- explains the role FOS expects to play by providing EDR services in relation to crowd-sourced funding regulated by the proposed legislation (CSF) and

We anticipate that most intermediaries providing crowd funding services under the proposed legislation will be members of FOS, meaning that FOS will play a key role in the resolution, and reduction, of disputes relating to CSF.

- suggests an addition to the proposed legislation to ensure that consumers are adequately informed of their right to access EDR services that will be available to them free of charge.

We suggest that a provision be added to proposed regulation 6D.3A.06 requiring section 3 of a CSF offer document to contain information about the dispute resolution system that covers complaints by holders of the product offered and how the system may be accessed.

As we may need to amend our Terms of Reference to extend our services to cover CSF, we would appreciate receiving updates of developments in the proposed legislation.

If we can provide further input or assistance, please do not hesitate to contact us.

## 1 Introduction

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The proposed legislation establishes a regulatory framework to facilitate CSF by small unlisted public companies. The legislation only permits CSF where an offer document is published on a platform of an intermediary that holds an Australian

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<sup>1</sup> FOS is approved by ASIC under its Regulatory Guide 139 *Approval and oversight of external dispute resolution schemes* available on [www.asic.gov.au](http://www.asic.gov.au) under "Regulatory Resources".

<sup>2</sup> This submission has been prepared by the Office of the Chief Ombudsman and does not necessarily represent the views of the Board of FOS. It draws on the experience of FOS and its predecessor schemes in the resolution of disputes about financial services.

<sup>3</sup> This submission refers to the Bill and regulation together as the 'proposed legislation'.

Financial Services Licence (AFSL) expressly authorising provision of crowd funding services (CSF Intermediary).

As holders of an AFSL are required to be members of an ASIC-approved EDR scheme, every CSF Intermediary will require membership of such a dispute resolution scheme.

FOS is the largest ASIC-approved EDR scheme in Australia. Based on our current membership, we anticipate that most financial services providers authorised to operate as CSF Intermediaries will become members of FOS.

## 2 Overview of FOS

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The overview information below explains the current role of FOS in relation to disputes about financial services.

### 2.1 Our role

We serve the community by resolving disputes between consumers, including small businesses, and their financial services providers in a way people can trust. FOS is an independent organisation and our service is free to consumers who lodge disputes with FOS about the conduct of their financial services provider. FOS and other industry-based dispute resolution schemes have been developed to give the Australian community a cheaper, quicker and less formal alternative to the courts.

In performing our role as an ASIC-approved EDR scheme for financial services we:

- act as an impartial and independent third party in resolving disputes between consumers and their financial services providers
- share our experience to help prevent future disputes
- identify systemic issues and work with financial services providers to address the effect these systemic issues have beyond the consumer who brought the dispute to FOS and
- play a role in the way financial services providers serve their customers.

Our [Terms of Reference](#) outline the types of disputes we can consider and form the contract between us and our members. FOS is approved and overseen by ASIC.

### 2.2 Our approach

We share our experience with all our stakeholders to help reduce the number of disputes that arise in the future. This collaborative approach is one of the strengths of the current arrangements for EDR which have evolved over the last 25 years in Australia.

## 2.3 Further information

Information about FOS is set out in full on our website at [www.fos.org.au](http://www.fos.org.au). Appendix 1 summarises key points.

## 3 Resolving disputes about crowd funding services

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One of the consumer protection measures in the proposed legislation is the requirement for a CSF Intermediary to be a member of an EDR scheme. The Explanatory Memorandum for the Bill explains the basis of this requirement.<sup>4</sup>

FOS agrees that consumers involved in CSF should have access to EDR and is well placed to expand its membership to include CFS Intermediaries.

Several times, in recent years, FOS's jurisdiction has been updated in response to regulatory changes. For example, our jurisdiction was amended to cover disputes about services provided by accountants and traditional trustee company services.

### 3.1 How FOS plans to assist CSF Intermediaries

FOS actively works with our members and their industry bodies. We would work with CSF Intermediaries and their industry associations to help them understand their obligations for handling any complaints that might arise, including the role of FOS in this process. We also work with industry participants to help them avoid complaints wherever possible.

We undertake a range of activities to assist our members including open forums, webinars and workshops and provide extensive information on our website.

### 3.2 FOS jurisdiction for CSF disputes

When CSF is undertaken, crowd funding services will be provided to both the person seeking to apply for CSF securities and the company making the CSF offer.<sup>5</sup> We therefore envisage that we may need to provide dispute resolution services to both of these categories of consumers.

These changes may require amendments to our Terms of Reference. We are currently considering what amendments may be needed. Terms of Reference amendments can only be made in accordance with the process specified in our [Constitution](#), which requires consultation with ASIC, our members and other stakeholders.

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<sup>4</sup> See paragraph 3.18 of *Corporations Amendment (Crowd-sourced Funding) Bill 2015 Explanatory Memorandum* (Explanatory Memorandum).

<sup>5</sup> See paragraph 3.15 of the Explanatory Memorandum.

## **4 Informing consumers about dispute resolution arrangements**

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The proposed legislation ensures that retail clients provided with crowd funding services can access internal dispute resolution processes meeting standards set by ASIC and an ASIC-approved EDR scheme. However, the legislation does not require an offer document for CSF to include information about these dispute resolution arrangements. In our view, such a requirement should be added to ensure that consumers are aware of, and able to exercise, their rights.

We suggest that a provision be added to proposed regulation 6D.3A.06 requiring section 3 of a CSF offer document to contain information about the dispute resolution system that covers complaints by holders of the product offered and how the system may be accessed.

### **4.1 Comparison with requirements for product disclosure statements**

Paragraph 1013D(1)(g) of the *Corporations Act 2001*<sup>6</sup> requires a product disclosure statement for a financial product to include information about the dispute resolution system that covers complaints by holders of the product and how the system may be accessed.

For a CSF offer, the proposed legislation requires consumers to be given a particular type of offer document instead of a product disclosure statement. The proposed legislation specifies content requirements for CSF offer documents, but does not include any equivalent of paragraph 1013D(1)(g).

We consider that consumers involved in CSF have the same need for information about dispute resolution arrangements as consumers of other financial services. Accordingly, CSF offer documents should be required to contain that information.

### **4.2 Requirements for financial services guides**

Making the amendment suggested above would make the offer document requirements more consistent with the financial services guide requirements.

For a CSF offer, the proposed legislation requires a CSF Intermediary to provide a financial services guide to a CSF applicant or issuer that is a retail client.<sup>7</sup> Paragraphs 942B(2)(h) and 942C(2)(i) require a financial services guide for a financial product to contain information about the dispute resolution system that covers complaints by holders of the product and how the system may be accessed.

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<sup>6</sup> This and all later references to specific legislative provisions are references to provisions of the *Corporations Act 2001*.

<sup>7</sup> See paragraph 3.18 of the Explanatory Memorandum.

## Appendix 1- About FOS

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FOS was formed in 2008 from the merger of three predecessor schemes organised largely along industry sector lines. The original participants were:

- the Banking and Financial Services Ombudsman
- the Financial Industry Complaints Service, and
- the Insurance Ombudsman Service.

On 1 January 2009, two other schemes joined FOS, namely:

- the Credit Union Dispute Resolution Centre, and
- Insurance Brokers Disputes Ltd.

FOS is an ASIC-approved independent EDR scheme that covers disputes across the financial sector. Our service is free to consumers and is funded through a combination of levies and case fees paid by our members, which are financial services providers.

Our operations are governed by our Terms of Reference that form a contract with our members. The Terms of Reference are available on our website.

FOS and its predecessor schemes have over 20 years' experience in providing dispute resolution services in the financial services sector. FOS provides services to resolve disputes between member financial services providers and consumers, including certain small businesses, about financial services such as:

- banking
- credit
- loans
- general insurance
- life insurance
- financial planning
- investments
- stock broking
- managed funds, and
- pooled superannuation trusts.

As well as its functions in relation to dispute resolution, FOS has responsibilities to identify and resolve systemic issues and obligations to make certain reports to ASIC. FOS also provides code monitoring, administration and secretariat services to four Code Compliance Committees who monitor financial services providers' compliance with industry codes of practice.

FOS is governed by a board with an independent chair and:

- four 'industry directors' appointed based on their expertise in and knowledge of the financial services industry, independence and capacity and willingness to consult with the industry, and
- four 'consumer directors' appointed based on their expertise in consumer affairs, knowledge of issues pertaining to the industry, independence and capacity and willingness to consult with consumer organisations.