

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

**Budget Estimates**

29 May – 31 May 2012

**Question: BET 261-266**

**Topic: Dispute Resolution Agencies**

**Hansard Page: Written**

**Senator BUSHBY asked:**

261. What is ASIC's role in the regulation of dispute resolution agencies (DRA's) which were established as part of the Financial Services Reform Act (FSRA)?
262. What policy statement has ASIC formulated with regard to DRA's?
263. What are the requirements for DRA's in disclosing information on their performance and operations?
264. What has been the performance of these agencies in relation to disclosure of this information?
265. What has been the performance of these agencies in relation to the objective as set out in FSRA and ASIC policy?
266. Does ASIC require these agencies to publish information on financial accounts and director and executive remuneration? If not, why not?

**Answers:**

261. ASIC has an initial approval and on-going oversight role over ASIC-approved external dispute resolution (EDR) schemes.

Currently, there are two ASIC-approved EDR schemes in existence:

1. the Financial Ombudsman Service Limited (FOS); and
2. the Credit Ombudsman Service Limited (COSL).

Both schemes are initially approved by ASIC to handle financial product and service complaints under the Corporations Act 2001 (Cth) (Corporations Act) and credit complaints under the National Consumer Credit Protection Act 2009 (Cth) (Credit Act).

In order to be initially approved, the schemes must apply for approval and demonstrate that they meet the detailed requirements in ASIC Regulatory Guide 139 Approval and oversight of external dispute resolution schemes (RG 139) and Regulatory Guide 165 Licensing: internal and external dispute resolution (RG 165). The schemes must also continue to meet RG 139 and RG 165 requirements to remain ASIC-approved. This a condition of both FOS and COSL's approvals.

The detailed requirements in RG 139 are set according to the principles of accessibility, independence, fairness, efficiency and effectiveness which ASIC must have regard to under both the Corporations and Credit laws when approving the schemes. Under both the Corporations and Credit

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laws, ASIC may also consider any other matter it considers relevant when approving the schemes. To date, ASIC has set its requirements in RG 139 around the 5 principles.

As part of our ongoing oversight role, senior ASIC staff regularly meet with the schemes to discuss current complaints trends and issues, serious misconduct and systemic issues and other matters of priority.

262. ASIC's policies regarding dispute resolution are set out in RG 139 and RG 165.

Both RG 139 and RG 165 are available on ASIC's website at [www.asic.gov.au/rq](http://www.asic.gov.au/rq)

263. ASIC-approved EDR schemes formally report their performance and operations in a number of ways:

1. at the start of the national credit regime in special credit reports to ASIC
2. as required by RG 139 in quarterly reports to ASIC
3. as required by RG 139 as part of their Independent Review
4. in their publicly available Annual Reports

They also informally update ASIC on their performance in separate quarterly liaison meetings.

#### Special Credit Reports:

As part of both FOS' and COSL's approval for credit, both schemes were required to provide initial special reports to ASIC on complaints volumes, complaints issues and other matters so ASIC could see how the schemes were going once the national consumer credit regime commenced.

#### RG 139 – Quarterly Reports:

Under RG 139, both schemes are required to report complaints statistics and serious misconduct and systemic issues to ASIC on a quarterly basis. These reports are provided to ASIC in-confidence and also give information as to how both schemes are performing in terms of handling the complaints they receive (i.e. complaints volumes, complaints issues, and the time taken to handle complaints, etc).

#### RG 139 – Independent Reviews:

Under RG 139, both schemes are also required to conduct regular independent reviews of their performance and operations. Under RG 139, the frequency of these reviews must be within the first 5 years of a scheme's approval and once every 3 years thereafter.

COSL recently conducted their first independent review since the commencement of the national credit regime. The reviewer's report is publicly available on COSL's website at [www.cosl.com.au](http://www.cosl.com.au). We will meet with COSL in July to discuss how they propose to respond to the Recommendations in the Reviewer's Report.

FOS' first full Independent Review since their approval in 2009 has been deferred to at least July 2014 following a limited operations review in 2011. ASIC is comfortable with this timing.

#### Annual Reports:

As both FOS and COSL are also not-for-profit Limited by Guarantee companies, they also publish annual reports which comment on their operations and performance in terms of complaints handling for each financial year. These reports are publicly available on each scheme's website – for FOS [www.fos.org.au](http://www.fos.org.au); for COSL [www.cosl.com.au](http://www.cosl.com.au).

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264. Both schemes are meeting their reporting obligations in a timely manner. We are comfortable that they are meeting their ongoing reporting obligations under RG 139 and RG 165.
265. ASIC continues to liaise with the schemes and oversee whether the schemes are continuing to meet their obligations under RG 139 and RG 165. We consider that the schemes are generally performing well in meeting their obligations under RG 139 and RG 165, however there are a number of current operational pressures on the schemes resulting in delays.

We continue to work with each scheme on these issues.

We are also in the process of reviewing a discrete area of the scheme's jurisdiction over complaints where members commence debt recovery legal proceedings.

These pressures are slightly different for each scheme.

Generally speaking however, they involve:

1. a significant increase in new members since the start of the national credit regime (some of whom are still adjusting to having to compulsorily join a scheme, how to best interact with their scheme, and also the policy rationale for having to do so);
2. the increase in complaints numbers that these new members bring, but also as a result of the GFC, a spate of significant natural disasters and an increase in the number of hardship cases; and
3. a higher number of complaints which are going to EDR without a member's internal dispute resolution (IDR) system first addressing them.

FOS is steadily working towards a 'one FOS' and addressing any residual issues resulting from the merger of what used to be 5 separate ASIC-approved EDR schemes. We continue to work with FOS on these issues and they are keeping us well informed of their progress.

We also understand that as a result of COSL's independent review a number improvements have been identified and recommended by COSL's reviewer, the Navigator Company. We are working with COSL on how they may implement these Recommendations.

266. ASIC does not require the schemes to publish information on financial accounts and director executive remuneration in RG 139 and RG 165.

This is because these are primarily corporate governance issues which are currently regulated by the Corporations Act.

We understand that reporting on these matters may be further refined as part of the reforms to the not-for-profit sector and the introduction of an Australian Charities and Not-for-profits Commission. These reforms are currently under consultation, and if introduced, may apply to not-for-profit Limited by Guarantee companies, i.e. FOS and COSL.