

Credit Ombudsman Service Limited

**ABN 59 104 961 882**

## **ANNUAL REPORT 2009**

### **Contents**

Corporate Information  
Chairman's Report  
Chief Executive's Report  
Directors' Report  
Financial Statements  
Notes to Financial Statements  
Directors' Declaration  
Independent Audit Report

## **Corporate Information**

The Credit Ombudsman Service Limited ('COSL') is a company limited by guarantee, not having a share capital. The Company was incorporated as Mortgage Industry Ombudsman Service Limited ('MIOS') on 18 June 2003 and commenced operations on 1 July 2003. The Company adopted its current name on 17 February 2004.

The Company operates the Credit Ombudsman Service, an external dispute resolution ('EDR') scheme approved by the Australian Securities and Investments Commission ('ASIC'). Under ASIC's Regulatory Guide 139, the Credit Ombudsman Service is required to be impartial, accessible and independent.

The Company's primary aim is to provide consumers and members with an alternative to legal proceedings for resolving finance-related disputes.

The Company's services are funded by a combination of membership fees and complaint fees paid by its members.

### **Board of Directors**

The Board of Directors of the Company ('COSL Board') comprises:

- An independent Chairman appointed by the MFAA
- Not less than one and not more than three Member Directors appointed by the MFAA to represent members
- Not less than one and not more than three Consumer Directors appointed by Consumers' Federation of Australia or other consumer representative body approved for the purpose by ASIC to represent consumers.

### **Credit Ombudsman Service Rules and Guidelines**

Complaints about members of COSL are dealt with by the Credit Ombudsman Service in accordance with the Rules and Guidelines promulgated by the COSL Board.

### **Credit Ombudsman**

The Credit Ombudsman is responsible for the day-to-day operations of the Credit Ombudsman Service and is empowered to make Determinations and issue binding Awards in relation to consumer complaints made against members of COSL.

About 99% of complaints received by COSL are resolved by non-adjudicative means, that is, by conciliation. However, the Credit Ombudsman can and does exercise his power to make Determinations, the terms of which are then

published on COSL's website. Like all ASIC RG 139 approved schemes, Determinations made by the Credit Ombudsman bind members but not consumers.

## **Consumer and Member Communications**

COSL maintains its website at [www.cosl.com.au](http://www.cosl.com.au).

The COSL website:

- publicises its Annual Report on Operations, public submissions, Determinations, case studies and media releases
- has a dedicated member section for viewing information about COSL membership, applicable fees, complaint and internal dispute resolution processes and member resources
- allows a person to check if a person against whom they have a complaint is a member of COSL or a contractor of such a member
- provides consumers with an on-line 'jurisdiction checker' to see if their complaint can be dealt with by COSL under its Rules
- allows consumers to lodge complaints on-line and provides guidance as to how a complaint can be made to COSL
- allows access to corporate information about COSL, such as its Constitution, Rules, Guidelines and Annual Report.

The COSL's Annual Report on Operations 2009 will be published on its website.

## **Contact Information**

### **Membership**

Level 7, 287 Elizabeth Street  
Sydney NSW 2000.  
Phone: (02) 9273 8455  
Fax: (02) 9261 2792  
Website: [www.cosl.com.au](http://www.cosl.com.au)  
Email: [members@cosl.com.au](mailto:members@cosl.com.au)

### **Case Management**

Level 7, 287 Elizabeth Street  
Sydney NSW 2000.  
Phone: (02) 9273 8400  
Interstate callers: 1800 138 422  
Fax: (02) 9261 2798  
Website: [www.cosl.com.au](http://www.cosl.com.au)  
Email: [info@cosl.com.au](mailto:info@cosl.com.au)

## Chairman's Report

On behalf of the Board of the Credit Ombudsman Service Limited, I have the pleasure of presenting the Company's Annual Report for 2009.

### Highlights of 2008/2009

Highlights of the sixth year of the Company's operations are:

- COSL's membership almost 8,700 (up from 8,354 in 2007/2008 and 7,737 in 2006/2007), despite challenging times for industry participants
- COSL's membership represents 69% of the entire membership of all EDR schemes in the finance sector
- We received 9,703 new enquiries in 2008/2009 (8,020 in 2007/2008 and 3,274 in 2006/2007))
- 1,064 new complaints were received in 2008/2009 (894 in 2007/2008 and 338 in 2006/2007)
- Net profit for the year was \$22,475.

### Membership

COSL is the largest EDR scheme in Australia by membership, with 8,645 Members, and covers a further 11,300 loan writers. Importantly, more than 40% of all home loans written in Australia are written by COSL Members or their loan writers.

COSL's membership comprises mostly mortgage and finance brokers, but also includes non-bank lenders, micro-lenders, credit unions, building societies, mortgage managers, mortgage originators, aggregators, wholesale funders, securitisation trustees, financial planners, housing co-operatives and debt collection firms.

When its operations commenced on 1 July 2003, COSL's membership was only about 1,200 and comprised Full Members and Life Members of the Mortgage and Finance Association of Australia ('MFAA').

The impressive growth in COSL's membership during the period 2003 to 2008 can be attributed to:

- the MFAA requiring certain categories of its members to be members of an ASIC-approved scheme, such as COSL
- a number of lenders, aggregators and large broker organisations requiring their contracted brokers to be members of an ASIC-approved EDR scheme

- an ASIC Class Order which requires brokers to join an ASIC-approved EDR scheme if they offer mortgage off-set accounts but do not wish to apply for an Australian Financial Services licence.

## **Challenges ahead**

However, membership growth in the last 12 months has been particularly difficult, given the severe funding pressures and other challenges faced by non-bank lenders, mortgage managers and brokers alike.

Nonetheless, COSL's membership has increased slightly, mainly because of:

- Victorian legislation requiring lenders operating in that State to join an ASIC-approved EDR scheme
- the Financial Co-operative Dispute Resolution Scheme, one of only three ASIC-approved EDR-schemes in Australia, proposing to cease its operations in October 2009
- the Commonwealth's National Consumer Credit Protection Bill ('Commonwealth's credit legislation') which will require lenders, intermediaries and other credit operators to join an ASIC-approved EDR scheme.

The Commonwealth's credit legislation will take effect on 1 July 2010, requiring credit operators to initially register with ASIC from April to June 2010.

It is difficult at this stage to gauge the full effect the legislation will have on broker numbers over the next 12 to 18 months (particularly since brokers have already endured cuts to their commissions and the Government's First Home Owner's Grant will be significantly scaled back by 31 December 2009).

The likely drop-out rate for brokers has been suggested by industry participants to be anywhere between 10% and 30%. Indeed, it has been reported that the UK witnessed a drop-out rate of about 50% when broker legislation was introduced there.

2009/2010 will therefore see significant challenges for the Company as it prepares for impact of the Commonwealth credit legislation on its operations, resources, funding and membership.

## **Lender and broker regulation**

The Company has been and continues to be consulted on the development of the Commonwealth's credit legislation and has played a key role in its policy development and proposed implementation. Under the legislation, it will be compulsory for lenders, intermediaries and other credit operators to become members of an ASIC-approved EDR scheme, such as COSL.

It is pleasing to note that most of COSL's submissions to the Senate Economics Committee reviewing the Commonwealth's credit legislation were accepted by the Committee and recommended to the Government. The Government has since accepted a number of these recommendations. This outcome could not have been achieved without the support of key consumer bodies and the MFAA.

I am appreciative of the close working relationship the Company has with the Australian Securities and Investments Commission and the Commonwealth Treasury, and am thankful to them for affording us every opportunity to contribute to the development of the proposed credit legislation and its implementation.

I am particularly appreciative of the collaborative relationship we enjoy with consumer bodies, the MFAA and industry generally.

### **Acknowledgements**

I would like to record my sincere appreciation for the sustained commitment, professionalism, enthusiasm and diligence that my Chief Executive, Raj Venga, and his staff bring to their roles every day. Raj has consistently extended himself since his appointment in 2006 and his dedication and commitment to the role is recognised and well regarded by industry, regulators and consumer bodies.

I would also like to extend my thanks to my colleagues, Ms Katherine Lane and Ms Catherine Uhr (Consumer Directors) and Mr Jon Denovan and Mrs Vicky Edema (Member Directors), for their valuable contribution to the governance and strategic direction of the Company.



GW Matthews AM  
Chairman  
21 October 2009

## **Chief Executive's Report**

In the last 12 months, we have remained focused on continuously improving our case management capabilities and the streamlining of our member services.

### **Membership**

COSL's membership has increased by about 3% from the previous year, a reasonable outcome given the difficult environment in which the non-bank sector has had to operate.

A dedicated membership department, adequately staffed and resourced, services and maintains records for almost 8,700 Members and their 11,300 representatives. This involves processing applications, renewals and follow-ups, and attending to the numerous enquiries that are typical of a scheme with a large membership base.

### **Case management**

We have again witnessed an increase in both enquiries and complaints. This is attributable to the heightened awareness among consumers of COSL's services, as well as referrals by both legal centres and COSL's own Members:

- enquiries increased by 21% in 2008/2009 (and by 196% from 2006/2007)
- complaints increased by 19% in 2008/2009 (and by 215% from 2006/2007)

Issues relating financial hardship alone accounted for a significant 22% of all enquires and complaints we received. Applications for a variation to a credit contract on grounds of financial hardship are likely to increase further in the next financial year.

Our experience to date has been that COSL Members are genuinely considering requests for payment variations on grounds of financial hardship. Indeed, this is appropriate where the consumer can demonstrate that he or she is unable to meet their obligations under the credit contract because of temporary financial hardship, but they are likely to be able to do so if the credit contract is changed in the manner proposed.

### **Membership fees**

EDR will be a central plank of the Commonwealth's credit legislation and is intended to give consumers an avenue for the expeditious resolution of complaints through a no-cost forum, outside of the court system.

We expect to receive an avalanche of enquiries and complaints from July next year when borrowers are directed to their lenders' EDR scheme on receiving certain mandatory notices under the legislation. It has therefore been necessary for COSL to commence gearing up for the legislation and this has involved recruiting more case managers and upgrading our IT systems. This process is set to continue in the financial year 2009/2010.

The significant increase in enquiries and complaints has of course put a strain on the Company's resources and we have had to almost double the number of Case Managers in the reporting period to effectively manage our caseload and maintain the quality of our output. The increase in professionally-qualified staff has meant a corresponding increase in salary expenses. Yet, COSL's membership has not materially increased in the last two years.

Additionally, an external independent review of COSL's operations (which is a condition of its approval by ASIC to operate as an EDR scheme), is due to be conducted by the end of next financial year. The review will be at some cost to COSL.

While it has been our deliberate policy to keep membership and complaint fees to an absolute minimum, it became necessary to increase membership fees for brokers as of 1 July 2009. While this was a relatively significant increase, it did represent the first fee increase since 1 August 2005.

The fee increase was also necessary in view of the ASIC's Regulatory Guide 139 which requires EDR schemes to have sufficient resources to carry out their functions, including managing their caseloads effectively.

COSL's operations and annual free complaint voucher (which allows Members to offset the cost of complaint fees) are essentially funded by membership fees, not complaint fees. This was designed to ensure that complaint fees remained low and would not impose a crippling burden on sole operators and smaller COSL Members.

Indeed, based on complaints closed during the 2008/2009 financial year, I am pleased to say that:

- 83% of COSL Members against whom complaints were made were not charged any complaint fees whatsoever (either because the complaints were closed at the early stages of our process, the fees were waived or the free complaint voucher was used to offset the complaint fees)
- of the remaining 17% of COSL Members who were invoiced for complaint fees, the average complaint fee charged was only \$200.



## **Annual Report on Operations**

COSL's Annual Report on Operations will shortly be available on its website ([www.cosl.com.au](http://www.cosl.com.au)). It provides a comprehensive review of COSL's case management operations for the year 2008-2009.

## **Conclusion**

For the last 6 years, while membership has grown by a factor of 7.4 and complaints by a factor of almost 13, total expenditure has only risen by a factor of 3.13. This is, of course, a significant gain in productivity.

Importantly, the financial performance of the Company continues to be at a very sound level, despite the considerable level of costs associated with its core activities.

## **Record of thanks**

I have been fortunate in having the dedicated support of a young, enthusiastic, passionate and committed team without whom none of our achievements would have been possible. I am particularly indebted to my Case Management team not only for the skill and creativity they bring to facilitating the resolution of complaints, but also for the empathy they bring to their jobs.

I would also like to express my appreciation to the Chairman and the non-executive directors of the Company. Their whole-hearted support and guidance throughout the year has been unparalleled.

Significantly, the continued support of our Members is immensely appreciated.



R Venga  
Chief Executive  
21 October 2009

## Directors' Report

Your Directors submit their Directors' Report for the Financial Year ended 30 June 2009. This report is made in accordance with a resolution of the Directors passed on 4 August 2009.

### 1. Directors

The names of the Directors, the periods during which they were in office during the financial year and on the date of this Report, are:

**Graeme William Matthews AM** (whole year and current) - Chairman

**Katherine Gizelle Lane** (whole year and current) - Consumer Director

**Jonathan Alexander Denovan** (whole year and current) - Member Director

**Catherine Louise Uhr** (whole year and current) - Consumer Director

**Victoria Anne Massey Edema** (whole year and current) - Member Director.

### 2. Nature of the Company's operations and principal activities

The principal activity of the Company during the financial year was to operate as an external dispute resolution scheme in the finance industry. The Company's membership comprises mortgage and finance brokers, mortgage managers, aggregators, originators, non-bank lenders, wholesale funders, housing co-operatives, trustees and credit unions.

The Company has operated as an ASIC-approved EDR scheme since 17 December 2003.

### 3. Review of Operations

The operations of the Company during the year resulted in an operating surplus of \$22,475.

### 4. Significant changes in the Company's state of affairs and principal activities

There have been no significant changes in the Company's state of affairs or principal activities, other than those referred to in the Chairman's Report above.

### 5. Significant matters or circumstances since balance date

No matter or circumstance has arisen since the end of the financial year that has significantly or may significantly affect the Company's operations in future financial years, or the results of those operations in future financial years, or the Company's state of affairs in future financial years.

6. Likely developments in the Company's operations in future financial years

As noted in the Chairman's Report, the Company's operations in future financial years and the results of those operations are likely to be affected by the proposed enactment of Commonwealth legislation, likely to be in late 2009/early 2010, which will require the licensing and regulation of lenders and finance brokers and other credit intermediaries.

7. Environmental regulation and performance

The Company is not subject to any particular and significant environmental regulation under a law of the Commonwealth or of a State or Territory.

8. Dividends

The Company's Constitution prohibits the paying of any dividend or distribution to members and no dividend or distribution was paid to any member during the financial year.

9. Company Officers

During the year no officer of the Company was a partner in an audit firm or a director of an audit company that is an auditor of the Company.

10. Options

The Company is a company limited by guarantee without a share capital and therefore no options were or were able to be granted over unissued shares or unissued interests.

11. Indemnities and insurance

During the year no indemnities were given for any person who is or has been an officer or auditor of the Company. The Company has paid directors and officers insurance cover for all directors at a cost of \$ 6,320, exclusive of GST. The Company did not pay any insurance premiums in respect of insurance for auditors.

12. Remuneration and Benefits

No Director or other officer of the Company has during the year or since the end of the year received or become entitled to receive any benefit other than those benefits included in the aggregate amount of emoluments received or due and receivable by the Directors and other Officers as shown in the COSL accounts.

13. Directors and Secretary qualifications, experience and special responsibilities

**GW Matthews**

AM SFFIN FAICD FAIM AFAMI - Chairman. Company Director

**JA Denovan**

LL.B - Member Director. Partner, Gadens Lawyers

**VA M Edema**

BA LL.B - Member Director. Company Director

**KG Lane**

BA LL.M - Consumer Director. Principal Solicitor, Consumer Credit Legal Centre (NSW)

**CL Uhr**

LL.B - Consumer Director. Solicitor, Legal Aid Queensland

**RA Venga**

LL.B(Hons) LL.M FIFS – Company Secretary.

14. Meeting attendance

<b>Name</b>	<b>Meetings held whilst a Director</b>	<b>Meetings Attended</b>
Graeme William Matthews	4	4
Victoria Anne Massey Edema	4	4
Katherine Gizelle Lane	4	4
Catherine Louise Uhr	4	4
Jonathan Alexander Denovan	4	4

15. Proceedings on behalf of the Company

During the year, no proceedings were either commenced by or against the Company and accordingly no application for leave under section 237 of the Corporations Act 2001 was made.

16. Registered Membership

As at 4 August 2009, the registered membership of the Company was 8,814.

On behalf of the Board

GW Matthews AM  
Sydney, 4 August 2009