



Financial Rights

LEGAL CENTRE

E-FLYER



Financial Rights Legal Centre Inc.
ABN 40 506 635 273

Fact sheets are information only and should not be relied upon as legal advice. This information only applies to NSW.

©2014 FRLC NSW.
All rights reserved.

FEBRUARY 2015

Welcome to the FINANCIAL RIGHTS LEGAL CENTRE E-flyer.

IN THIS EDITION

1. Community Workers Update: What we do at the Financial Rights Legal Centre
2. Bankruptcy Toolkit
3. Big Win for Consumers in Financial Stress at FOS
4. Changes to FOS Terms of Reference
5. COSL Changes its Name to the CIO

1. Community Workers Update: What we do at the Financial Rights Legal Centre

This will be a new repeating column in the Financial Rights E-flyer. In order to get the most out of referrals to Financial Rights, we think it is important that we give community workers and related organisations regular updates on the services that we can provide to consumers in financial stress.

HOW CAN FINANCIAL RIGHTS HELP FINANCIAL COUNSELLORS AND OTHER COMMUNITY WORKERS?

We are a community legal centre that specialises in helping consumers in financial stress. We give free and independent legal advice, assistance and financial counselling about loans, mortgages, banking and insurance.

If you have a client with a financial rights problem:

- You can call our financial counsellor help number for advice on how best to help your client: **1800 650 084** (toll free for landlines). Please do NOT give this number to clients.
- You can visit our website for useful resources, factsheets and sample letters for both credit and debt and insurance: www.financialrights.org.au
- You can refer your client to our free Credit & Debt Helpline: **1800 007 007** (toll free for landlines) for on- the-spot advice and options provided by financial counsellors and solicitors. Please note that calls from some areas around the ACT will divert to Care in Canberra and calls from some border towns

www.financialrights.org.au



Financial Rights

LEGAL CENTRE

E-FLYER

may go to the Victorian or Queensland service instead.

- You can refer very disadvantaged clients to us for possible casework assistance

We can consider requests to provide workshops and training sessions in regional centres for financial counsellors and other local community workers in our areas of expertise .

We can provide specialist legal advice and financial counselling in the following areas: loans, consumer leases, insurance, bankruptcy, debt agreements, mortgages, early access to super, and much more. Keep in mind that we are unable to assist with investment or business-related questions.

2. Bankruptcy Toolkit

The purpose of this toolkit is to assist financial counsellors and community lawyers to be able to explain to their clients the consequences of bankruptcy, the alternatives (such as Debt Agreements), the process and the practical details of completing the forms. It also covers problems that may arise during bankruptcy and even beyond discharge. Many financial counsellors and financial counselling services have already developed their own forms and procedures for assisting clients with bankruptcy. In this kit we try to pool the benefit of this vast experience to develop a convenient source of information and tools to help achieve best practice in this area.

The kit has been a long-time coming. Bankruptcy is a big area and the topics that could be covered are almost limitless, so we had to stop somewhere. There are also constant developments so we encourage you to use this resource as a starting point and add information by simply slotting in extra pages as you come across other things that are useful, such as updates from the Australian Financial Security Authority (“AFSA” – formerly the Insolvency Trustee Service of Australia) or handouts from further training. If you are completely new to bankruptcy law you might want to start by reading Chapter 3 and Chapter 6. Another possible way of using this kit is to refer to Chapter 7 question by question as you complete a client’s Statement of Affairs and use the cross references to other parts of the kit as particular issues come up relevant to your client. The Bankruptcy Toolkit is available for financial counsellors in PDF through the Financial Counselling Australia Toolkit portal. We are hoping to do a print run soon and get as many hard copies out to Financial Counselling agencies as possible. **If you would like to download a copy from our website you can contact us on 02 9212 4216 or info@financialrights.org.au for password access to the pdf file.**

This kit was a joint project between Financial Rights and Lismore and District Financial Counselling, with funding provided by the Department of Families, Housing, Community Services and Indigenous Affairs (now the Department of Social Services)

www.financialrights.org.au



**Financial
Rights**

LEGAL CENTRE

E-FLYER

If you think there is something we should have covered, or there is something that needs correction or clarification send an e-mail to info@financialrights.org.au with Bankruptcy Toolkit Feedback in the subject line.

3. Big Win for Consumers in Financial Stress at FOS

In early October 2014 the Financial Rights Legal Centre helped a consumer in severe financial stress obtain an order for the repayment of more than \$12,000 through FOS that she had paid to a financial-difficulty predator business which had failed to provide her any meaningful assistance.

Regina* is in her mid fifties. After a work place injury she was on workers compensation. She and her husband had separated, after her husband revealed he had an affair and wanted a divorce. They owned their own home with a mortgage. She had \$75,000 in credit card debt. She was depressed and off work as she needed spinal surgery.

She saw an advertisement online for Clickthru Pty Ltd. They advertised their services to negotiate debt. The fees were 15% of the debt being negotiated. Regina was required to pay \$9,815 + GST by paying an initial amount of \$1200 up front before they would undertake any work and then \$100 per week by direct debit.

Clickthru advised her to “lay low” and to save money she would otherwise pay creditors to save up for them to make settlement offers. It was clear from Regina’s income and expenditure that there was unlikely to be any money available for saving even after she stopped paying her creditors.

Regina paid the upfront fee and commenced paying \$100 per week. Clickthru corresponded with her creditors. Various creditors listed defaults on her credit file and threatened to commence proceedings. Many of the debts were assigned to debt collectors. Clickthru would send creditors various offers without getting any instructions from Regina.

Regina subsequently was homeless, as she would move from friend to friend and sometimes slept in her car. Regina never had any money to save, her main concern was getting herself to work and having somewhere to sleep each night. She paid Clickthru the \$9,815.

She eventually was in the position to make offers after a family law property settlement. By this stage, Regina had gone to see a free financial counsellor who helped her make offers of settlement with her creditors with the funds she had received from the property settlement. Clickthru never gave Regina any options about how to handle her creditors, they blindly pursued moratoriums and made offers to creditors that Regina was never in a position to perform.

We assisted Regina to lodge in the Financial Ombudsman Service against Clickthru. The Ombudsman issued a recommendation finding that the

www.financialrights.org.au



contract was unconscionable and the fees Regina had paid ought to be refunded with interest. The recommendation was rejected by Clickthru and was referred to the Ombudsman for Determination. The recommendation was upheld with the addition of compensation for non-financial loss, in part as a result of offensive comments made by Clickthru, such as that our client should have sold her car to pay her debts, despite the fact they were aware she was living in it.

*Regina's real name has been changed in this case study.

4. Changes to FOS Terms of Reference

The recent independent review of FOS recommended changes to its processes and jurisdiction. Some recommendations included specific Terms of Reference changes, and others contained process changes which require amendments to the Terms of Reference.

All of the changes to the FOS Terms of Reference were submitted to ASIC and have now been formally approved. The changes came into effect on 1 January 2015, except two changes that will come into effect a year later on 1 January 2016.

Changes to the Terms of Reference that are now in effect include:

1. Creation of a new role of an Adjudicator that will have similar powers to an Ombudsman. Adjudicators will be appointed to deal with disputes classified as 'Fast Track' which is a streamlined process for simpler, low value disputes.
2. New one-step lodgement and referral processes. Disputes will no longer 'fall out' of FOS if the consumer has not been through IDR yet.
3. Shorter timeframes to object to a case being classified as 'Outside of Terms of Reference'. Timeframes may vary from 7 to 30 days depending on the reason it is outside of the Terms of Reference.
4. Small business credit disputes will now be excluded if they exceed \$2 million (as these disputes would be more appropriately dealt with in the courts).
5. The amount in dispute for uninsured third party motor vehicle disputes has been raised from \$3000 to \$5000, and FOS can now hear disputes even if the insured driver who caused the damage has failed to pay the excess.
6. FOS may now refuse to consider a dispute when an applicant is represented/assisted by a fee-for-service agent (like a credit repairer) if the agent is engaging in inappropriate conduct or the dispute does not include information requested by FOS.

7. FOS may allow an FSP to sell an asset that is the subject of a dispute.
8. Several compensation caps have changed and are now set at:
 - Income stream - \$8,300 per month
 - Insurance broker disputes - \$166,000 (except if it involves a life policy)
 - Consequential loss - \$3,300
 - All other disputes - \$309,000
 - Uninsured 3rd Party motorist disputes - \$5000
 - No change to \$3000 limit on non-financial loss
9. FOS can now join another FSP to a dispute if it would lead to a more efficient and effective resolution.

A complete summary of all of the approved changes, along with their effective dates, can be read here: <http://www.fos.org.au/custom/files/docs/summary-of-fos-terms-of-reference-changes-december-2014.pdf>

Updated Operational Guidelines which explain in more detail the FOS Terms of Reference can be found here: <http://www.fos.org.au/custom/files/docs/terms-of-reference-operational-guidelines-updates.pdf>

5. COSL Changes its Name to the CIO

The Credit Ombudsman Service has announced (<http://www.cio.org.au/news/news-and-information/change-of-name-from-cosl-to-cio/>) that it has changed its name to the 'Credit and Investments Ombudsman Limited'.

The annual general meeting of members of the EDR service passed a special resolution on 19 November 2014 to change the name of the company. The EDR scheme/service that is operated by the company will now be known as the 'Credit and Investments Ombudsman' (CIO).

CIO has said that the change of name is not part of a re-branding exercise or intended to signal a change in the way the scheme will work. The name change is simply intended to more accurately reflect the composition of the service's existing membership, which has for some time also included financial advisers and managed investments schemes.

Over the next few months, the new name and logo will appear on the scheme's website and in its communications and brochures. The current COSL email addresses will remain the same, but the website is now <http://www.cio.org.au/>

Below is an image of CIO's slightly changed logo:



www.financialrights.org.au