



Australian Financial Counselling & Credit Reform Association Incorporated

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About this Submission

This is a submission in relation to ASIC Consultation Paper 112 'Dispute Resolution Requirements for Consumer Credit and Margin Lending'.

AFCCRA is also a signatory to the joint consumer submission prepared by the Consumer Action Law Centre.

This submission expands on some of the points in the joint submission and should be read in conjunction with it. For this reason, AFCCRA has not commented on every proposal in consultation paper 112 in this submission, as the joint submission sets out our views.

About AFCCRA

The Australian Financial Counselling and Credit Reform Association (AFCCRA) is the national peak body for financial counsellors. It adopts a federated system of membership, with each state and territory represented on the Association's National Council.

Financial counsellors provide free, confidential and independent information to consumers in financial difficulty. A thorough assessment of an individual or family's situation is followed by identifying what can be done to address the financial problems, and the possible advantages and disadvantages of those choices. Financial Counsellors are based in community agencies and are funded largely by State or the Federal Governments.

Comments on Part B – Making Dispute Resolution Work

Proposal B2- IDR to Apply to Default Notices

AFCCRA supports this proposal. It will only work however where the lender cannot institute legal proceedings once the IDR process has been triggered.

The lender must advise the consumer, when a default notice is served, that IDR (and EDR) is available.

The joint consumer submission proposes a 30 day timeframe for these complaints to be addressed at IDR.

Proposal B3- IDR Procedures not to Apply to Hardship Variations

AFCCRA agrees that complaints about hardship applications and enforcement should go direct to EDR.

However we are very concerned about how an ‘application’ for hardship is going to be defined. Consumers and financial counsellors already have great difficulty in getting financial institutions to classify a matter as ‘hardship’ and consequently getting access to specialist hardship teams.

In the same way that a complaint is defined as any expression of dissatisfaction with the products or services of an organisation, hardship needs to be defined flexibly. It is when a consumer wants to pay what they owe, but for some reason, can’t. An application for a hardship variation occurs when the consumer expresses a sentiment along these lines. They should not have to use the magic word ‘hardship’. This is not clarified in legislation and needs to be one of the issues covered in ASIC’s approach.

Comments on Part D – Coverage of EDR Schemes for Credit and Margin Lending

Proposal D2 - Time Limits for Bringing a Complaint

We are very concerned that the effective two year time limit proposed will limit access to justice for consumers. It is not uncommon for financial counsellors to see clients where the issues concerned took place a number of years ago, but they have not been aware of their rights nor understood that a ‘final response’ from IDR has been provided.

Proposal D3 - EDR Schemes and Default Judgments

It is highly appropriate for EDR schemes to be able to handle complaints where a default judgment has been entered. Many consumers do not understand our legal system and do not understand the ramifications of a default judgment. It is not uncommon for a consumer to first seek access to a financial counsellor after a default judgment has been entered.

It is in the interests of lenders and consumers to try to come to an acceptable arrangement about a debt and this proposal will provide for this.

Proposal D4 - Linked Credit Providers and Complaints with Other Agencies

AFCCRA supports this proposal.

Proposal D5 - Complaints Relating to Responsible Lending

AFCCRA supports this proposal.

Comments on Part E – Contact Details for Hardship Applications

Proposal E1 – Credit Licensees Should Have a Dedicated Telephone Number re Hardship Applications

AFCCRA agrees with this proposal. However, it should go further in two respects.

First, there is little point in credit licenses having a special number for hardship complaints if consumers cannot find it. It is not enough that the numbers will be available on the websites of EDR schemes, as set out in proposal E2.

Credit licensees should also be required to publicise the existence of their hardship telephone numbers. This publication should be prominent and include a variety of mechanisms, such as a website, in arrears letters, in statements, in branches and so on. At the moment, many financial institutions bury the number for hardship, for example, on a website under the heading of “corporate social responsibility” or “news and information”.

The publication of these numbers will encourage consumers to self-identify that they need assistance. This will benefit both consumers and licensees as the earlier financial difficulty is addressed, the more likely that a satisfactory solution can be reached, as more options are available.

Second, the hardship number should be a different number to that of the general collections function in the lender’s organisation. Consumers who self identify should be provided with the specialist assistance of a hardship team. Staff in these teams generally have greater discretion about what arrangements can be put in place to assist a customer in hardship and specialist training in understanding hardship.

Putting these consumers through to a collections function is contrary to the whole intention of addressing hardship applications sensitively.

Proposal E2 – EDR Schemes to Publish a List of Members’ Telephone Numbers re Hardship

AFCCRA agrees with this proposal.

Comments on Part F – Adequate Resourcing

Proposal F1 – Adequate Resourcing

AFCCRA supports this proposal. We note that under AS ISO 10002-2006, section 6.4, resourcing extends to more than just adequate numbers of staff and will extend to having adequate systems, documentation and so on.

The proposal should also require EDR schemes to put in place measures tracking key performance metrics in this area or the proposal risks being meaningless. For example, EDR schemes should report and track the number of days before a claim is first investigated and then how long it takes for the claim to be resolved.