



Consumer Credit  
Legal Centre NSW

February 2010

# Submission to the Reference Concerning the Integrity of ADR Processes by the **Consumer Credit Legal Centre (NSW) Inc**

Consumer Credit Legal Centre (NSW) Inc (“CCLC”) is a community-based consumer advice, advocacy and education service specialising in personal credit, debt, banking and insurance law and practice. CCLC operates the Credit & Debt Hotline, which is the first port of call for NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. We provide legal advice and representation, financial counselling, information and strategies, and referral to face-to-face financial counselling services, and limited direct financial counselling. CCLC took over 15,000 calls for advice or assistance during the 2008/2009 financial year.

A significant part of CCLC’s work is in advocating for improvements to advance the interests of consumers, by influencing developments in law, industry practice, dispute resolution processes, government enforcement action, and access to advice and assistance. CCLC also provides extensive web-based resources, other education resources, workshops, presentations and media comment.

Thank you for the opportunity to respond to the Reference Concerning the Integrity of ADR Processes.

CCLC was unable to send a submission in relation to the original NADRAC Enquiry into ADR and Civil Proceedings. However, we did have the benefit of reading the submission from National Legal Aid. CCLC supports the submissions made by National Legal Aid.

CCLC’s very brief submissions appear below.

## Detailed Submissions

### Background

As described above, CCLC specialises in credit, debt and banking law. As a consequence, CCLC has significant expertise in the use and advice on External Dispute Resolution Schemes.

External Dispute Resolution schemes are industry funded, but must operate independently, with a Board or advisory Council consisting equal numbers of consumer and industry representatives and an independent chair. The schemes are approved by ASIC against appropriate benchmarks and regularly reviewed. Membership of these schemes was originally mandated for Australian Financial Services License holders and this will be extended to Australian Credit License holders and their Credit Representatives later this year.

The vast majority of claims in Local Courts in NSW are debt related claims. The vast majority of those consumer debt related claims are from financial institutions. As at 1 July 2010, the National Consumer Credit Protection Act will commence. This Act will require all lenders (and other intermediaries for lending) to be members of an ASIC approved EDR Scheme.

There are two EDR Schemes in credit being:

1. Financial Ombudsman Service; and
2. Credit Ombudsman Service

Both of the above EDR schemes are accessible by a consumer after a Statement of Claim has been issued by the lender.

Another important significant change is that both EDR Schemes will now consider and determine cases involving financial hardship.

Both changes are very significant changes and offer a real solution for the parties to negotiate an outcome outside the Court process.

The benefits for consumers of EDR are significant:

1. It is free
2. It offers conciliation
3. The case workers in the EDR scheme are specialists in their area
4. It is significantly less scary than Court
5. It is convenient (many consumers are unable to travel to attend Court)
6. It offers specialist assistance in hardship under the relevant credit laws and industry codes of practice.

#### Why EDR should be used in credit/debt matters rather than Court mediation

##### **Case Study 1**

CCLC was recently involved in a case in the Local Court at Hornsby, NSW. The credit provider was a small finance company had sued our client in Hornsby Local Court in relation to a debt. Our client had obtained the loan when they had bought a maths software product in their home late at night. The maths software product had been financed by a loan from the finance company. Our client alleged they had been misled about the maths software product and the loan. Our client filed a defence.

The Local Court referred the matter for mediation. At the mediation, the mediator did not have any understanding of the linked credit provisions of the Consumer credit Code. The settlement eventually reached did not make sense and was rejected by the Registrar when trying to file the consent orders.

The above case study is a typical problem with Court appointed mediation. On the other hand, EDR Schemes have specialist caseworkers who have significant expertise in credit law. CCLC has a strong preference to avoid Court appointed mediation in favour of EDR schemes (where possible).

### Financial hardship

The Treasurer has negotiated principles for financial hardship with the major financial institutions in Australia (see Treasurer's Press Release no. 34 released on 5/4/09 on Relieving Mortgage Stress). Financial hardship is a key issue for consumers. It is essential that consumers have the ability to negotiate repayment arrangements on the grounds of financial hardship where possible. EDR Schemes are a critical part of that process where the lender simply ignores requests for financial hardship and commences legal proceedings. In particular, Courts do not have specialist skills in these areas whereas EDR schemes do.

To be consistent with social policy and the Treasurer's Press Release it is essential that reasonable referral mechanisms are in place so consumers can access EDR for assistance with resolving hardship.

### **Requested Outcome**

**That a set of protocols is developed for the referral of disputes to EDR from the Court, when appropriate.**

#### Should Courts be trained on making EDR referrals?

Yes Court staff should receive training on how and when to refer to EDR Schemes.

### **Requested Outcome**

**All Court staff should have information about EDR Schemes available at the Court and have sufficient training to make appropriate referrals**

#### EDR Schemes and confidentiality and non-admissibility

All processes in the EDR are conducted on a "without prejudice" basis.

#### EDR Schemes and conduct obligations and immunity

EDR Schemes are required to meet requirements of procedural fairness.

In summary, it is essential that the NADRAC review carefully consider the role of EDR in the Court process and ensure that appropriate referral mechanisms are in place.