




Credit Law and Dispute resolution – a paradigm shift!

Presentation
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- Credit and Debt Hotline (NSW)
1800 808 488
- Financial Counsellors line
1800 650 084
- Insurance Law Service (National)
1300 663 464
- Mortgage Hardship Service – casework, intake via Credit and Debt Hotline
- Over 17,000 calls last financial year
- About 4900 referrals to financial counsellors in the last financial year

External Dispute Resolution

- Two dispute resolution schemes approved by ASIC for credit disputes:
 - Financial Ombudsman Service (FOS)
 - Credit Ombudsman Service (COSL)
- **All** Australian Credit License holders and Credit Representatives will need to be **members of an EDR scheme** (FOS or COSL)

External Dispute Resolution

- **Free** alternative to court
- **No** possibility of a **costs** order
- Accessible – complaints can be made by **unrepresented consumers** or **lay advocates**
- **No physical appearance necessary** – largely paper & telephone based
- Credit provider cannot commence or continue legal proceedings while the dispute is being considered in EDR.

A big change for EDR

- *Both schemes now allow disputes to be referred to them **after legal proceedings have been commenced** (up to filing of defence and cross-claim only)*
- This means that even if the credit provider commences proceedings in Court the consumer can change jurisdiction to EDR (as long as they do so **BEFORE** the credit provider gets judgment)

The paradigm shift

- *The **underlying principle** of the new regime is that the vast majority of disputes will go to **EDR rather than Court***
- So every time there is a credit dispute you need to think:
 - “Can I go to EDR?”
 - “Do I need to go now?”
 - “How do I argue my case?”

The paradigm shift cont.

- EDR is different from Court:
Three considerations in decision making:

- ✓The law
- ✓Good practice in the industry
 - Code of Banking Practice
 - MFAA Code of Practice
 - Mutual Banking Code of Practice
- ✓Fairness

Running a case in EDR

- No evidence given on oath
- Decided on the “papers”
- EDR generally has access to credit provider’s file
- Opportunity to develop your case over time
- Huge opportunity to negotiate an outcome with assistance from the EDR Scheme
