



Alternative Dispute Resolution Schemes

Use this fact sheet if:

- You are a consumer, or a consumer advocate, who has a dispute with a bank, finance company or other lender.
- Neither you or your client has access to solicitors to represent you in that dispute.
- You are looking for ways to resolve your dispute without the need to issue formal legal proceedings in a court.

External dispute resolution schemes

External dispute resolution schemes (EDR schemes) assumed a prominent place in the consumer rights arena in the early 1990s as a corollary to governmental emphasis on self- and co-regulation for industry. All the EDR schemes referred to in this paper are approved by the Australian Securities and Investments Commission.

These schemes are funded by their industry members, but are independent in structure and management.

The term 'EDR scheme' is broadly used to define a non-governmental dispute resolution organisation which has jurisdiction to resolve complaints from consumers and small businesses arising out of a particular industry.

EDR schemes have considerable advantages as dispute resolution forums for consumers in that they are:

- free for consumers to use;
- accessible and comparatively informal;
- inquisitorial;
- a means of preventing any court or debt recovery action while the complaint is under investigation by the scheme;
- binding upon the industry member, but not upon the complainant.

Disadvantages to consumers may be that certain schemes lack methodical and reliable protocols for handling complaints efficiently and quickly, that EDR schemes will not investigate matters that have already been subject to a final judgment in a court or tribunal or that are currently before a court or tribunal, and that EDR schemes by their very nature do not result in precedent setting decisions that can impact industry wide practices.

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In the consumer credit field, most disputes can be dealt with by one of the following schemes:

- the Banking and Financial Services Ombudsman: www.bfso.org.au,
- the Credit Union Dispute Resolution Centre: www.cudrc.com.au,
- the Credit Ombudsman Service Limited: www.creditombudsman.com.au, and
- the Financial Cooperatives Dispute Resolution Scheme: www.fcdrs.org.au.

It is worthwhile checking at the commencement of any matter whether or not the business involved is a member of one of these schemes, by visiting each of the above websites and searching their member databases. Note however, that not all credit providers will be members of an EDR scheme.

Schemes will have different monetary jurisdictional limits, meaning that complaints in which more than the amount of the limit is in dispute will not be considered.

Remember that the amount in dispute will not necessarily be the total amount of the loan. Of the four schemes considered here, the BFSO has a jurisdictional limit of \$280,000.00.

Both the Credit Union Dispute Resolution Centre and the Financial Cooperatives Dispute Resolution Scheme have a jurisdictional limit of \$100,000.00.

The Credit Ombudsman Service has a jurisdictional limit of \$250,000.00. Schemes also impose a timeframe within which complaints must be made. The four schemes referred to will not investigate a complaint unless the complainant can show that a written complaint was made to the business in question within 6 years of the dispute arising.

Other than in exceptional circumstances, all schemes will require a consumer to have raised their complaint directly with the business before accepting that complaint for investigation.

Taking your complaint to an EDR scheme

Step One: write to the business

If you have not done so already, write a letter to the business. Firstly, visit the website of the EDR scheme of which the business is a member and search its member database, you will usually find the name and contact details of the head of the Customer Relations or Customer Complaints department of the business.

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Make sure the letter goes to this person, rather than to the Collections or Customer Service departments.

In your letter, set out the facts in as much detail as you can (numbered paragraphs help) and then explain why, in your opinion, the creditor has acted improperly, and what you want the business to do to fix your problem. Your letter does not have to set out any technical legal arguments to be effective, although such arguments can of course be helpful. Ask for a response within 21 days and warn that you will complain to an EDR scheme if you do not receive a response within that time.

If your client's complaint is resolved within this time period, you can relax and congratulate yourself on another job well done. If not, proceed to Step Two.

Step Two: write to the EDR scheme

This is the easy part. Take the letter you wrote to the business and send a copy of it to the EDR scheme, with a cover letter asking the scheme to investigate the matter.

Step Three: get authority to act

Upon receipt of your letter, the EDR scheme will most likely initially demand that, as an advocate, your client completes an authority which grants you the right to deal with the EDR scheme on behalf of your client. This will generally be required even if you provided your own authority to this effect. It is not worth taking issue with this part of the process, even though it might seem unnecessary to obtain a further authority, as the scheme will be insistent that its own form of authority is executed.

Step Four: wait for a response

Once the correct authority is received by the EDR scheme, your letter will be forwarded to the business – most likely to the same department to whom it was originally addressed if you obtained the contact details from the scheme's website. Do not underestimate the persuasive powers of a cover letter from an EDR scheme: you would be surprised how exactly the same letter may garner a different response with a cover letter from an EDR scheme. Member businesses are charged for each individual complaint made against them that is handled by the EDR scheme. Additionally, the business will be charged more, the higher the dispute is taken within the scheme's internal dispute resolution processes.

The next contact you will receive from the scheme is a letter enclosing a copy of the business' written response to your complaint. The cover letter will ask you whether the

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response satisfactorily deals with your complaint, and in the event that it does not, will invite you to write to the scheme setting out the reasons why your client is unhappy with the response.

Alternatively, the scheme may determine that the complaint for various reasons falls outside the jurisdiction of the scheme. In this case, the scheme will decline to investigate the matter and close its file.

Step Five: further investigation

If your client's complaint has not yet been resolved satisfactorily, the scheme will take an active role in investigating the matter, including demanding further information from the business in the form of witness statements and documents, and will seek further argument from each party.

At the conclusion of this process, which can take many months and further exchanges of correspondence, the scheme will issue a draft opinion or finding which sets out what the scheme thinks is the fairest resolution to the dispute. Each party then has the opportunity to accept or reject the dispute. If the former, the parties may enter into written terms of settlement confirming the conclusion of the matter. If the latter, the parties will set out in writing why they object to the draft finding.

Step Six: binding determination

The ultimate outcome of a complaint handled through an EDR scheme will be a written decision – akin to a court judgment in form and reasoning – which determines the rights, obligations and liabilities of the parties to the dispute. The determination will be binding upon the business, but not upon your client, who may opt not to accept the decision. Your client then has the right to take the matter to a court for reconsideration.

Other EDR schemes

EDR schemes covering other fields of consumer disputes include the Telecommunications Industry Ombudsman, the Insurance Ombudsman Service, the Financial Industry Complaints Service, the Electricity and Water Ombudsman Victoria and Insurance Brokers Disputes Limited.

Further information and assistance

Members of the public can obtain advice and assistance regarding consumer disputes from **Consumer Affairs Victoria** by calling 1300 55 81 81.

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For credit-related enquiries, community and public sector caseworkers and lawyers can contact the **Consumer Action Law Centre Advice Service**, Monday to Friday 9am – 1pm and 2pm – 5pm, on 03 9602 3326 or 1300 881 020 advice@consumeraction.org.au.

Members of the public can obtain credit advice from **Consumer Affairs Victoria** and from **Consumer Action's** web-based advice service at www.consumeraction.org.au.

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