

Help! My Client has Problem Debts #2: External dispute resolution



Redfern Legal Centre



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Credit, Debt and Consumer Law Solicitor
Redfern Legal Centre

Acknowledgement Of Country

Outline

1. What is External Dispute Resolution (EDR)
2. Internal Dispute Resolution (IDR) recap
3. Benefits of EDR
4. Avoiding court action
5. AFCA
6. TIO
7. EWON
8. Case: Thomas
9. Q&A, legal services

Resources: rlc.org.au/training/resources/debts



Thomas

Thomas

- 30 years old
- Disability support pension
- Living with parents in social housing
- Thomas comes to see you with a file full of documents spanning the last 10 years.
- Stress from debt is exacerbating his mental illness

Thomas' story #1

- \$45,000 **credit card** debt to a big bank and has been served with a **court document** relating to the debt saying he must respond to the court within 28 days.
- He was on the DSP when the credit card was initially approved.

Thomas' story #2

\$4,000 **electricity** bill received for 12 months' worth of charges that he didn't know about, after a faulty meter had been replaced.

Thomas' story #3

- A **debt collector** is calling every day and at night about an old \$200 **mobile phone** debt that has somehow grown to \$1,000.
- He also received a letter from the debt collector saying the debt has been **assigned** to them, and they will start legal proceedings if not paid.

Thomas' story #4

- Received a letter from a **car insurer** of another driver that Thomas had a minor **accident** with .
- It was unclear who was at fault.
- The letter says Thomas must pay \$9,000 within 21 days, but he was uninsured at the time of the accident.

Thomas' story #5

- Received a **letter of demand** for a \$2,000 debt relating to a **small loan** he took out about 8 years ago.
- Thomas remembers he **stopped paying for it about 7 years ago** when he got sick and became homeless.
- He was never contacted about the debt until now, as he had had moved address a number of times over the years and forgot about it.

External Dispute Resolution (EDR)

What is EDR?

A free service for resolving disputes between consumers and members of an EDR scheme. There are different EDR schemes for different industries:

- financial
- telecommunication
- energy.

Membership of the EDR scheme is compulsory for most industry participants.

EDR action is an **alternative to going to court** when attempts to resolve a dispute internally (IDR) with a service provider have been unsuccessful.

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graph LR; A[Internal Dispute Resolution (IDR)] --> B[External Dispute Resolution (EDR)]; B --> C[Court];
```

Internal Dispute
Resolution (IDR)

External
Dispute
Resolution
(EDR)

Court

EDR schemes

- The Australian Financial Complaints Authority - **AFCA**
- Telecommunications Industry Ombudsman - **TIO**
- Energy & Water Ombudsman NSW – **EWON** (and equivalents in other states and territories)



We provide consumers and small businesses with fair, free and independent dispute resolution for financial complaints

Make a complaint

We consider complaints about



Credit, finance
and loans



Insurance



Banking deposits
and payments



Investments
and financial advice



Superannuation

Australian Financial Complaints Authority (AFCA)

Commenced on 1 November 2018

A new EDR scheme that deals with complaints from consumers and small businesses about financial services and products

AFCA replaced three previous EDR schemes:

- The Financial Ombudsman Service (FOS)
- The Credit and Investments Ombudsman (CIO)
- Superannuation Complaints Tribunal (SCT)

Required to be members of AFCA

- ✓ Banks and other credit providers
- ✓ Insurance broking firms
- ✓ Stockbroking firms
- ✓ Financial planning firms
- ✓ Life insurers
- ✓ Fund management companies
- ✓ General Insurers
- ✓ Superannuation fund trustees
- ✓ Debt collectors
- ✓ Payday lenders
- ✓ RSA providers

Search...



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1800 062 058



Telecommunications
Industry
Ombudsman

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[Reports & Updates](#)

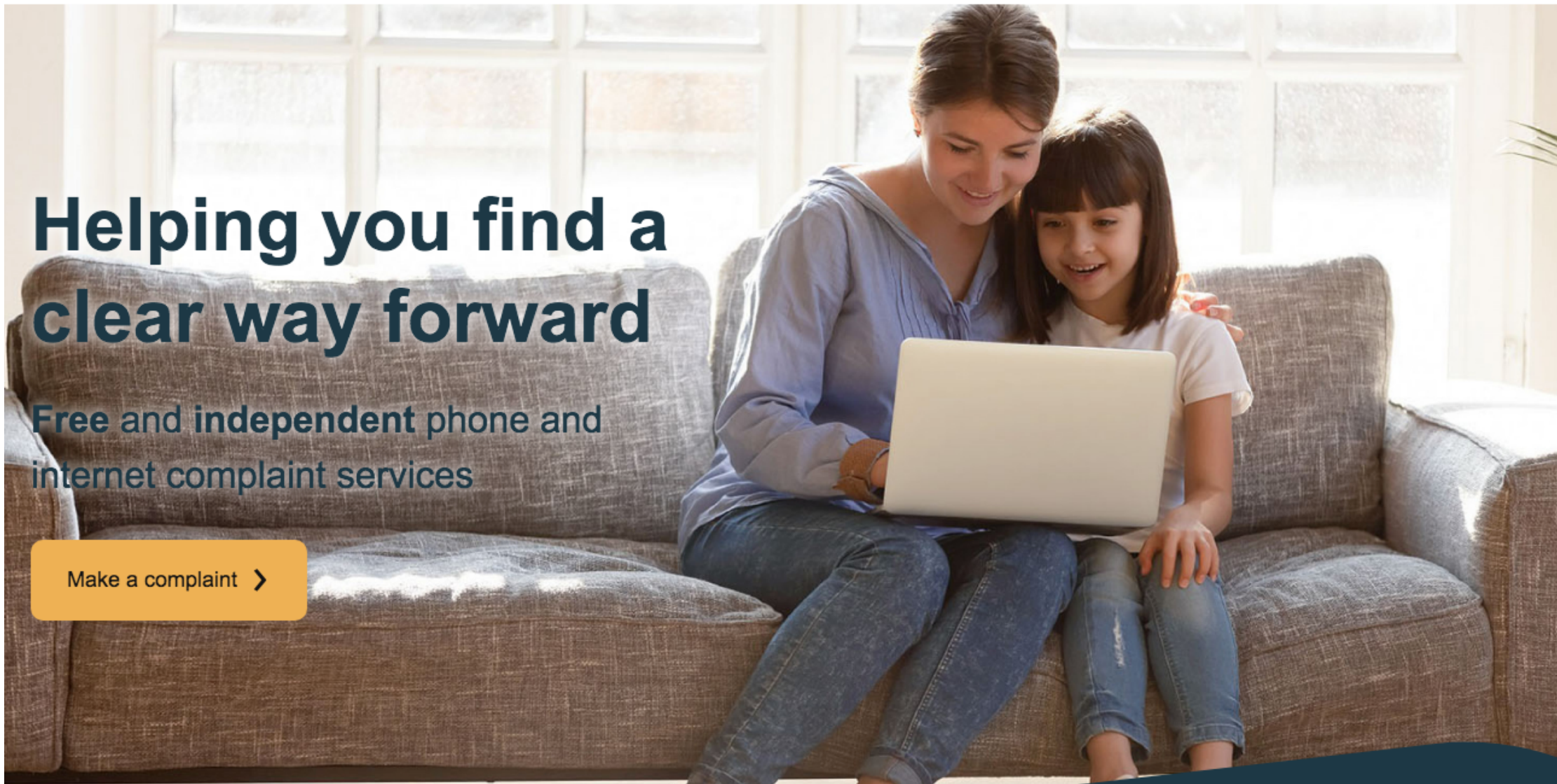
[About us](#)

[Make a complaint >](#)

Helping you find a clear way forward

Free and independent phone and
internet complaint services

[Make a complaint >](#)



Required to be members of TIO

All

- landline
- mobile phone
- internet

service providers are required to be Telecommunications Industry Ombudsman (TIO) members



Energy & Water
Ombudsman NSW

[Making a complaint](#)[Resources for customers](#)[FAQs](#)[Customer stories](#)[Publications and submissions](#)[Freecall 1800 246 545](#)

Welcome to EWON's website

The Energy & Water Ombudsman NSW (EWON) provides a free, fair and independent dispute resolution service for all electricity and gas customers in New South Wales, and some water customers.

[Make a complaint](#)[Call 1800 246 545](#)[Get help with bills](#)

We consider and investigate complaints from



Community workers
& advocates



Energy & water
customers



Small businesses

Required to be members of EWON

All authorised electricity and gas retailers and distributors, and licenced water providers in NSW must be members of EWON.

EDR scheme governance

AFCA: Complaint Resolution Scheme Rules (AFCA Rules)

TIO: Telecommunications Industry Ombudsman Terms of Reference

EWON: EWON Charter

Other ombudsman schemes

National

- Australian Small Business and Family Enterprise Ombudsman (ASBFEO)
- Fair Work Ombudsman (FWO)
- Tolling Customer Ombudsman (TCO)
- Commonwealth Ombudsman

NSW

- NSW Ombudsman

Internal Dispute Resolution (IDR) recap

How to find the IDR contact

If creditor is:

- **a member of AFCA** (Australian Financial Complaints Authority), you can search the website
- **a telco**: find contact on Telecommunications Industry Ombudsman (TIO) website on Members Listing
- **energy or water company**: search for contact on the Energy & Water Ombudsman NSW

[Home](#) > [Make a complaint](#) > [Find a financial firm](#)

Find a financial firm

Use our search tool below to find the contact information for a financial firm.

If you cannot find the firm you are looking for, call us on 1800 931 678, or proceed to our [online complaint form](#) to lodge a complaint.

Name



Member number

ABN/ACN

Search

Clear

Search results

2 results displaying 5 per page

Commonwealth Bank of Australia

Member number: 10008

ACN/ABN: 48123123124

Also known as CBA

Homepath

Trading asCommonwealth Financial
Services[View contact details](#)

Search

Clear

Search results

2 results displaying 5 per page

Commonwealth Bank of Australia

Member number: 10008
ACN/ABN: 48123123124

Also known as CBA
Homepath
Trading as Commonwealth Financial
Services

[Hide contact details](#)

Member details

Date joined: 1/07/2008
Website: www.commbank.com.au

Complaint contact



Group Customer Relations
Commonwealth Bank of Australia
GPO Box 41
Sydney NSW 2001

Toll Free No: 1800 805 605
Business: 02 9841 7000
Fax: 02 9841 7700
Email: customerrelations@cba.com.au



Make a complaint →

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Small Business Complaints →

Members ↓

- Membership
- Members Listing
- Member Portal

Publications →

About us →

Useful Links

[Authorisation forms](#)

[Consumer complaint form](#)

[Membership form](#)

[See our latest stats](#)

Home → Members → Members Listing → Optus ←

Optus

Trading name:	Optus
Member name:	Optus Satellite Pty Limited
Member status:	Member - Active
Carrier License:	No
Address:	PO Box 888 NORTH RYDE NSW, 1670 ←
Facsimile number:	1 300 555 221
Customer service number:	133 937
Web address:	http://optus.com.au

[Return to the members listing](#)



[Home](#) > [Member providers](#) > [Providers in NSW](#)

Providers in NSW

It is a condition of licence for electricity and gas retailers and distributors to be members of EWON. The legislative provisions which state this can be found at:

- [Electricity Supply Act 1995 Sect 96B](#) for electricity distributors
- [Gas Supply Act 1996 Section 11A](#) for gas distributors
- [National Energy Retail Law \(NSW\) Section 86](#) for electricity and gas retailers

You can [make a complaint](#) about any EWON [electricity](#), [gas](#) or [water](#) members, including those operating embedded networks for residential customers as exempt entities.

Electricity providers and gas providers

Some of EWON's energy members are both retailers and distributors, and it is important to note the difference between them:

- Retailers are responsible for opening/closing accounts, issuing bills and liaising with the distributor about supply reconnection/disconnection. Generally, retailers provide selected services (electricity, gas or both) to selected areas in NSW.
- Distributors are responsible for disconnecting/reconnecting supply, new and existing connections to services, maintaining network assets, reading your meter and sending the data to the retailer.

Energy providers who supply small retail (and small to medium-sized business) customers must be



Benefits of EDR

IDR to EDR

If:

- you have received an unsatisfactory IDR response, or
- the dispute remains unresolved after a reasonable period of time,

then you can make an application to EDR.

Benefits of EDR



- Free for consumers
- Independent
- Easy to access
- All **legal and enforcement/debt recovery action must stop** (including court proceedings) while your matter is with the EDR scheme or while the EDR scheme considers your dispute
- EDR **decisions are binding** on the service provider/other party, but not on the consumer complainant if not agreed. Complainants retain their legal rights to take their matter to court if they do not agree with the outcome of EDR
- An EDR complaint can give the consumer extra time to deal with their financial hardship

When to refer your client to EDR

Unsatisfactory IDR outcome:

- Legal (eg. breach of credit law, credit record dispute)
- Non-legal (eg. customer service complaint)
- Not being assisted with financial hardship

Threat of court action or served with a Statement of Claim.

Are there any underlying legal issues, or is it financial hardship?

If you **suspect** there may be an underlying issue, recommend your client speak with a lawyer before they start IDR or EDR, even if it is just to eliminate the existence of a legal issue.

Red flags for legal issues – look out for:

- Client was on a Centrelink income when they were approved by a lender
- Client has multiple loans or leases at the same time
- Client's bill is extremely high compared to previous bills
- Client has experienced domestic violence
- Client does not speak English or has another significant vulnerability that was exploited by the creditor
- The debt is 6 years old or more
- Client has a disability

Avoiding court action

Stages in a Debt

Overdue

Creditor chasing client

Demand

Creditor or **Debt Collection Agency** threatening court recovery.

Statement
of Claim

Court recovery commenced

DANGER ZONE

High urgency – act quickly!

Overdue



Formal Demand



Statement of Claim



DANGER ZONE

1. A Statement of Claim is a document that starts a court claim
2. Must be personally served on client or posted by the court
3. Creditor / Debt Collector is the “plaintiff”
4. Debtor is the “defendant”

High urgency – act quickly! #2

Overdue



Formal Demand



Statement of Claim



DANGER ZONE

5. Client has 28 days to respond
6. If no response, after 28 days, the plaintiff can apply for default judgment
7. Judgment can be enforced through court
8. Get legal advice **immediately!**
9. A defence can be argued at EDR

STATEMENT OF CLAIM

COURT DETAILS

Court	Local Court
Division	Small Claims Division
Registry	Blacktown
Case number	

TITLE OF PROCEEDINGS

[First] plaintiff	Meena Vishwana
[First] defendant	Fiona Frame trading as Fantastic Florists

FILING DETAILS

Filed for	Meena Vishwana, Plaintiff
Contact name and telephone	Meena Vishwana 02 2222 1111
Contact email	meena.vishwana@chillmail.com

TYPE OF CLAIM

[Select type of claim from the list provided in section 6 of the Guide to preparing documents, available on the UCPR website www.ucprforms.justice.nsw.gov.au by clicking on the link to Publications, or at any NSW court registry]

Mercantile Law - Sale of Goods and Services - Work done

Sample statement of claim - debt

This is an example of a completed statement of claim. It is important to complete this form using your own details and based on your own circumstances. If you need more help, get legal advice.

I acknowledge that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature *Meena Vishwana*

Capacity Plaintiff

Date of signature 19/11/20xx

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

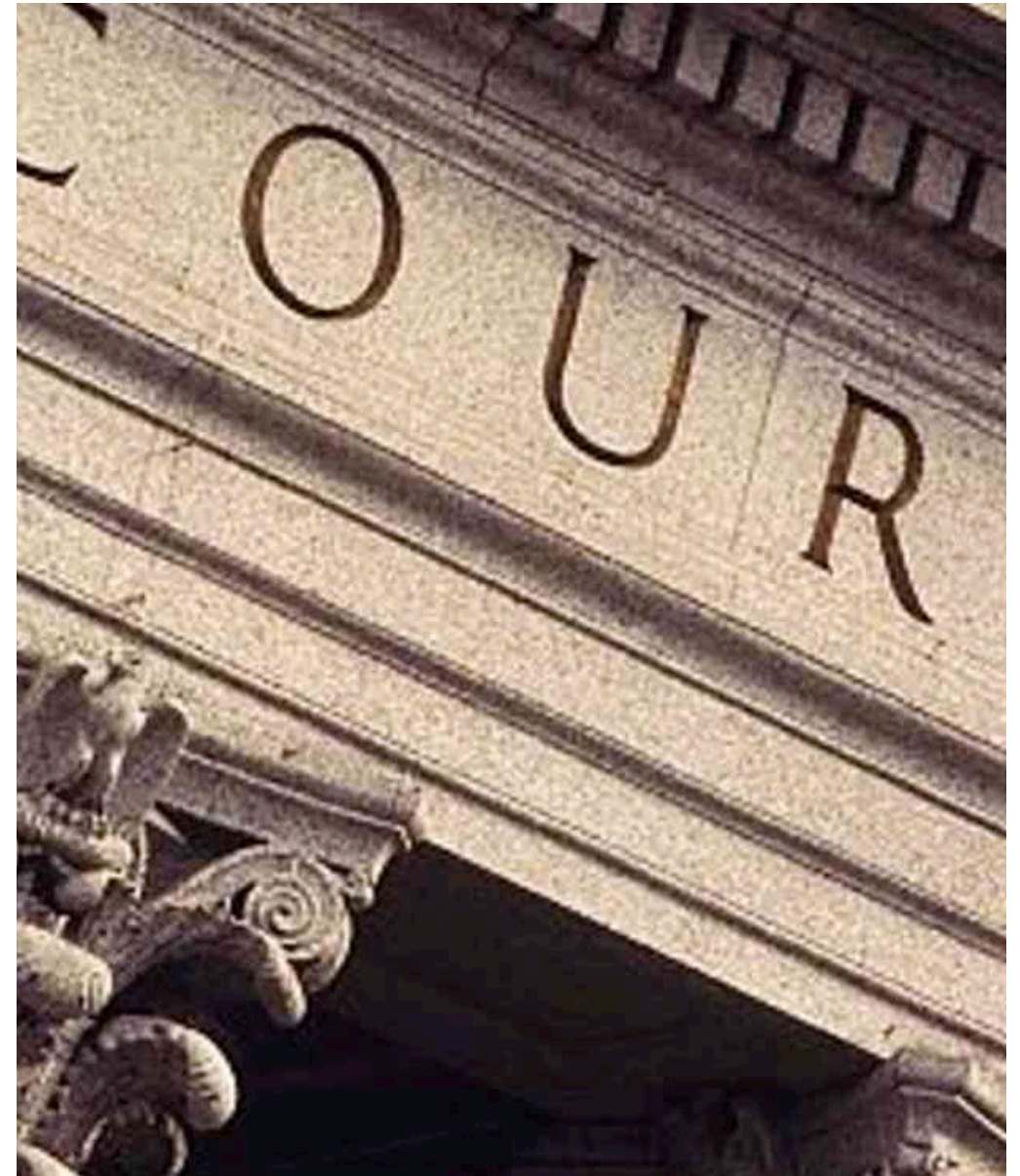
The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim, you should get legal advice as soon as possible.

Why it is best to avoid court

- Costs orders can be made against the unsuccessful party
- Evidence standards are higher than IDR and EDR
- Legal representation is expensive / unattainable for most people
- Stress from meeting court deadlines
- Loss of income from attending court
- Judgment order enforceable for 12 years
- Court enforcement options
- Pre and post judgment interest may be added to the debt



EDR puts a hold on court action

AFCA – for the duration of the EDR

TIO – for the duration of the EDR

EWON – the earlier of:

- a) 90 days after lodgement of complaint; and
- b) the date that EWON closes or resolves the complaint



Other circumstances when you should seek legal advice immediately!

- The client has a **judgement order** against them.
- Enforcement action has been taken against the client, for example, a **garnishee order** for their wages or bank account.
- The client is required to attend court under an **examination order**.
- Any **court proceedings** are on foot.

Is my client in financial hardship?

A loss of income

A very high electricity/gas bill

An illness or family crisis

Domestic violence/financial abuse

Unexpected expenses or bills

Financial hardship - EDR

- If your hardship request is rejected or not actioned, seek **legal advice** and lodge an EDR complaint.
- However, EDR cannot force companies to waive legitimate debts, fees and charges on the basis of financial hardship

Debt collectors

If a debt collector has bought the debt (*assigned debt*), your dispute is with the debt collector.

You should lodge the EDR complaint directly against them.



Credit Corp Group

BAYCORP.



Debt Collection Guidelines

Produced by ASIC and ACCC:

A debt collector must not:

- Use physical force or coercion
- Harass or hassle the client to an unreasonable extent
- Mislead or deceive the client
- Take unfair advantage of any vulnerability, disability or other similar circumstances affecting the client.

Credit report disputes

- **Debts over \$150** that are **overdue for more than 60 days** can be reported to a credit reporting agency and listed on a customer's credit file/report as a default.
- You may be able to make a complaint to an EDR scheme if a credit provider/debt collector has incorrectly made a credit default listing on your credit report.
- A company **must not make a default listing** when an individual has made a **hardship request** and the company is considering it.
- Credit reporting bodies keep default information and judgment debts on client's file for 5 years.



The Australian Financial Complaints Authority (AFCA)

Complaints considered by AFCA

- Banking & credit cards
- Loans & mortgages
- Insurance
- Superannuation: death benefits; total and permanent disability (TPD) cover
- Financial planning and investment advice
- Financial hardship complaints

AFCFA: common legal issues: financial services

Debts chased by financial service providers or debt collectors:

(eg. credit cards, car loans, payday loans/short term credit, leases for whitegoods, mortgages etc) – **legal issues include:**

- Responsible lending
- Unfair/unjust contracts and transactions
- Misleading and deceptive conduct
- Targeted/unconscionable/unsolicited selling to vulnerable people
- Unlawful and aggressive debt collection tactics

AFCFA: common legal issues: insurers

Unfair rejection of an insurance policy claim

Debts chased by insurers trying to recoup money from a vehicle accident (property damage only):

- client did not cause the accident (ie. not at fault)
- amount being claimed includes repairs that were not connected with the accident
- wrong vehicle / driver identified

Types of outcomes AFCA can provide

- The payment of a sum of money/compensation (up to \$500,000)
- Waiver or variation of a debt, fees, interest and other charges
- The reinstatement, variation, rectification or setting aside of a contract
- Extending payment or arranging a payment plan
- Enforcing a claim under an insurance policy
- Extra time to sell a property if in mortgage hardship
- In relation to a default judgment, not enforcing the default judgment
- An apology

Jurisdiction: AFCA

- Before considering a complaint, AFCA must confirm that your complaint is one it can deal with under the **AFCA Rules**
- AFCA can hear complaints regarding matters of up to a **\$1 million value**, and order compensation of up to **\$500,000**

Time limits: AFCA #1

Generally:

You can lodge a complaint within **two years** after a written response from the lender's IDR complaint process, or **six years** from the date when you first become aware of the problem, **whichever is earlier.**

(This excludes superannuation-related complaints)

Time Limits: AFCA #2

With complaints relating to changing a credit contract due to **financial hardship** or **unfair conduct** by a lender under national credit laws:

A complaint should be made within:

- two years after a written response from the lender's IDR complaint process
- two years after the termination of the credit contract,

whichever is later.

Time Limits: AFCA #3

Types of superannuation complaints that have strict time limits (**no extensions**):

- **death benefit complaints: 28 days** from notice of final decision by the superannuation fund trustee
- **disability benefit complaints (TPD):**
 1. Permanently stopped work because of the disablement - within **four years** of the trustee's decision to deny a claim
 2. Stopped work for reasons not related to the disablement - within **six years** of the trustee's decision to deny a claim.

Applying to AFCA

You can lodge a dispute with AFCA online at www.afca.org.au/make-a-complaint or by email, fax, letter or phone.

Your application should include:

- details of all parties involved
- details of the complaint and any attempts you made to resolve the complaint with the financial service provider
- the outcome you are seeking
- supporting documents.

AFCA dispute process #1

- AFCA will contact the provider to notify of lodgement of the complaint
- AFCA may request that you attempt to resolve your dispute through the provider's IDR process.
- AFCA will ask the provider for a response and a proposed resolution to the complaint within 21 days.
- If no resolution is reached between the parties, AFCA will determine if it has jurisdiction to keep handling the complaint. If AFCA agrees to handle the complaint, it will try to resolve the dispute through **informal methods** including **negotiation** and **conciliation**.

AFCA dispute process #2: Preliminary assessment

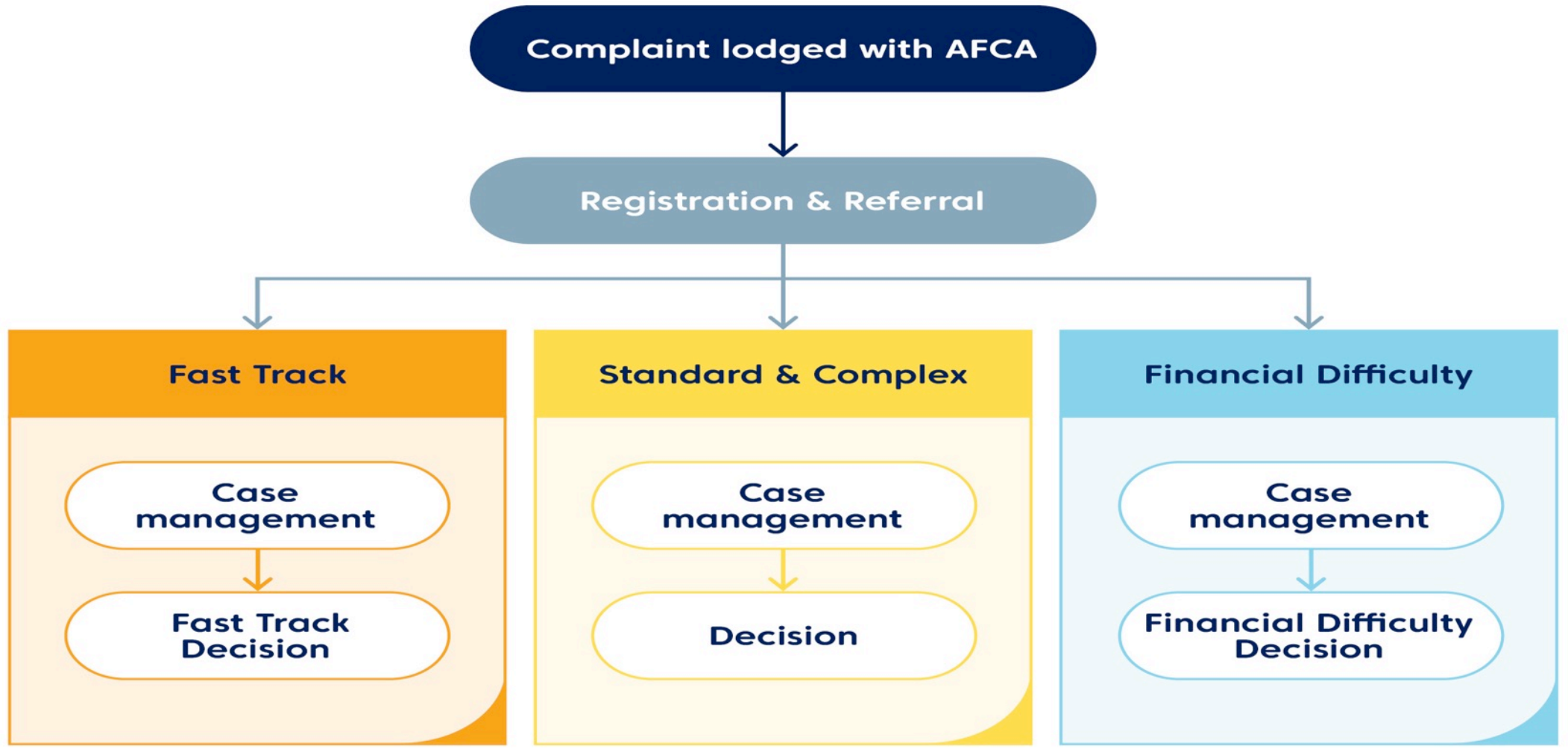
A preliminary assessment includes:

- an overview of the facts of the complaint
- the issues raised in the complaint and AFCA's preliminary assessment of those issues
- how AFCA think the complaint should be resolved and why
- when the parties must tell AFCA whether they are willing to settle the complaint in line with the preliminary assessment.

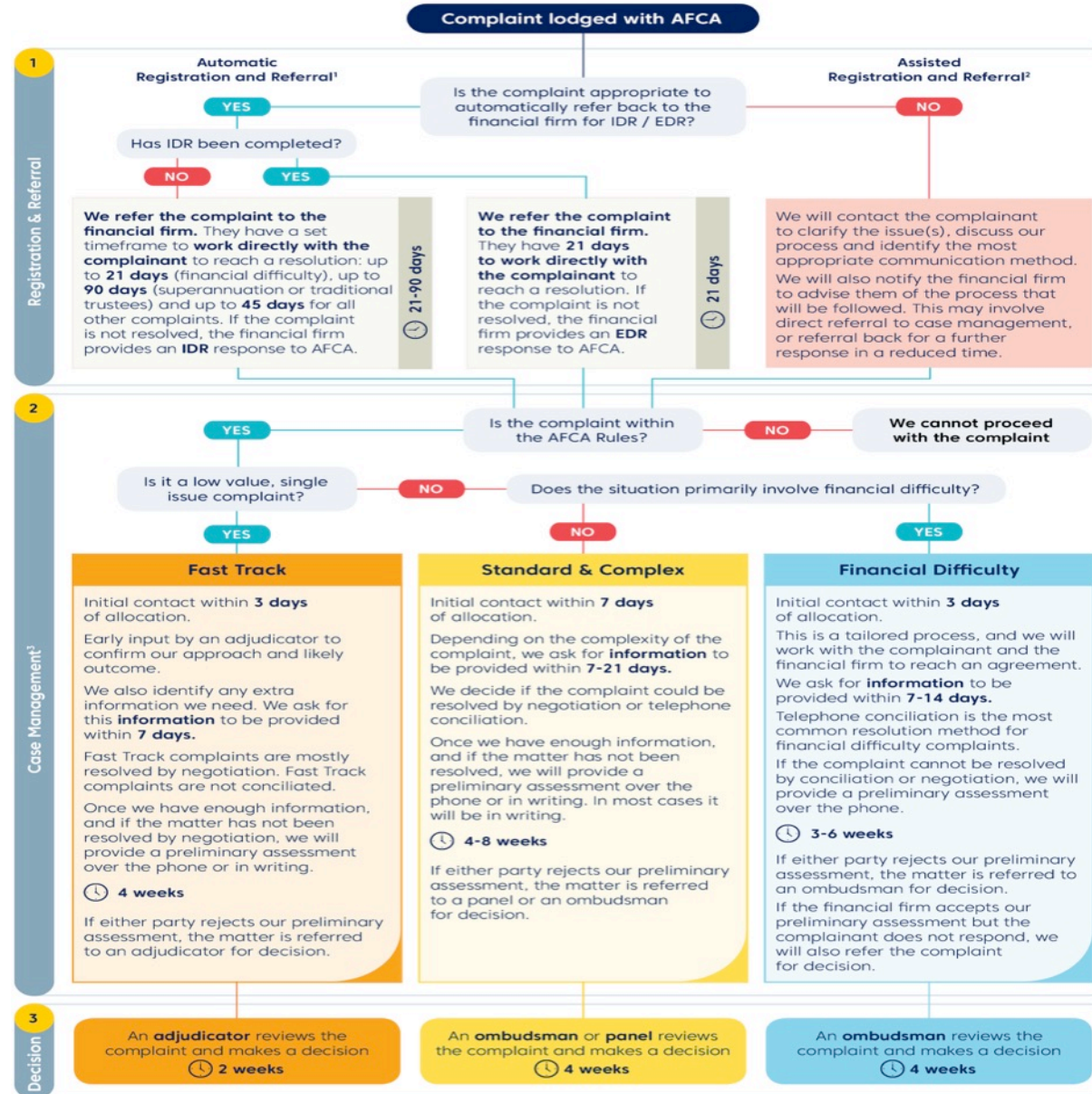
AFCA dispute process #3: Determination (a binding decision)

- If you agree with AFCA's decision, it will become binding on the financial institution.
- If you do not accept the decision, or AFCA terminates your complaint, either party will be able initiate or recommence other legal/court action.

AFCA complaint resolution process



AFCA complaint resolution process



¹ Most complaints will progress through the automatic Registration and Referral process.

² Some complaints may not be appropriate to automatically refer back to the financial firm because of the subject matter, urgency or the accessibility needs of the complainant.

³ These are average expected timeframes.

AFCFA appeals & reviews

Other than by going to court, it is not possible to appeal a Determination.

The Telecommunications Industry Ombudsman (TIO)

Types of complaints considered by TIO

- **contracts**
- **billing disputes, mistakes and overcharging**
- connecting new services
- transferring services
- **debt collection**
- faults, dropouts and poor coverage
- supply of mobile premium services
- SIM unlocking fees
- services provided over the National Broadband Network (NBN)

Types of outcomes TIO can provide

- **waiving debts and arranging payment plans**
- **releasing a consumer from a contract** waiving service charges and late payment fee
- reconnecting a service
- paying compensation
- offering an interim service
- suspending credit management, including **dealing with a debt that has been sold or assigned to a third party**

Jurisdiction: TIO

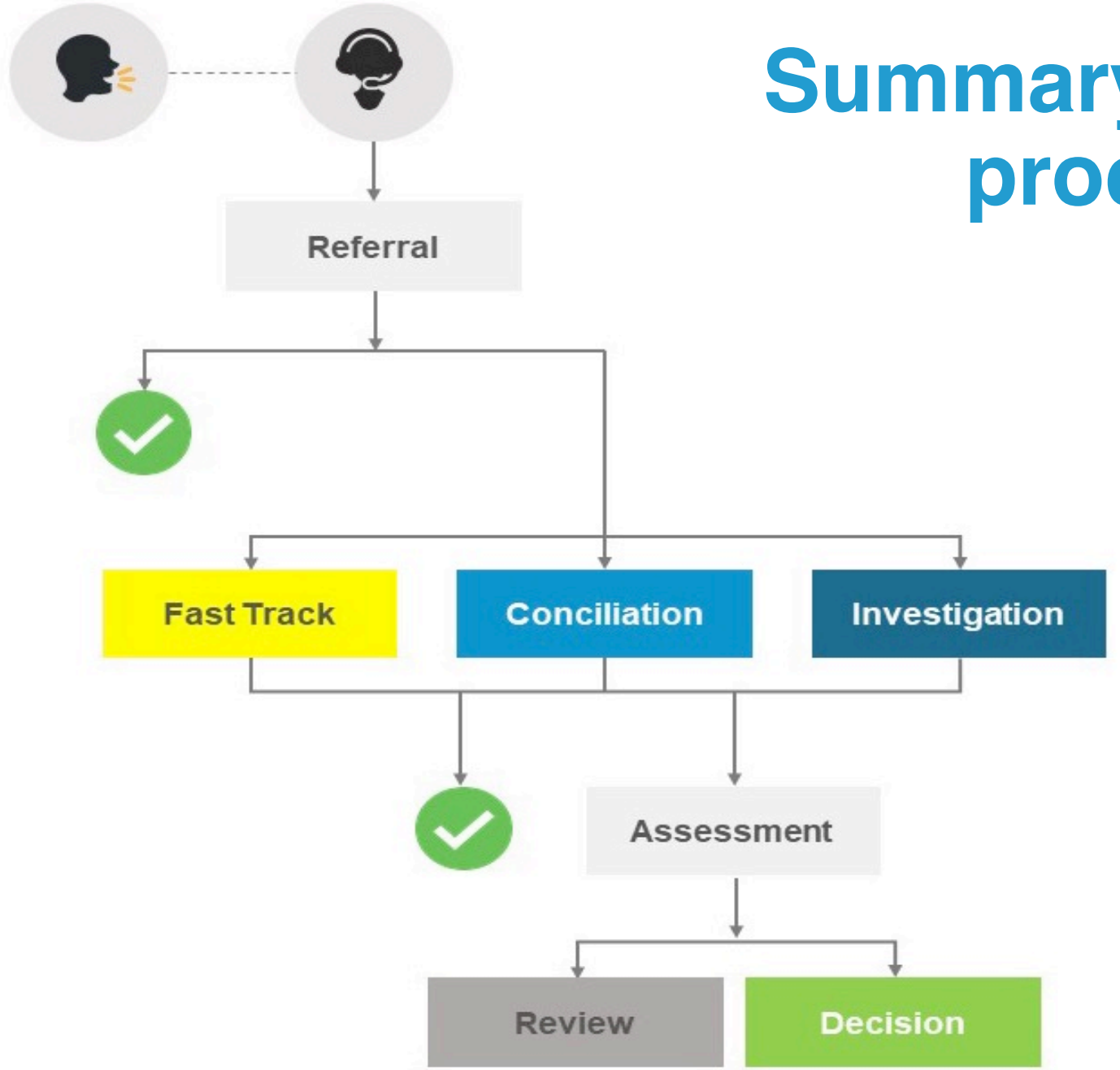
TIO has the authority to make:

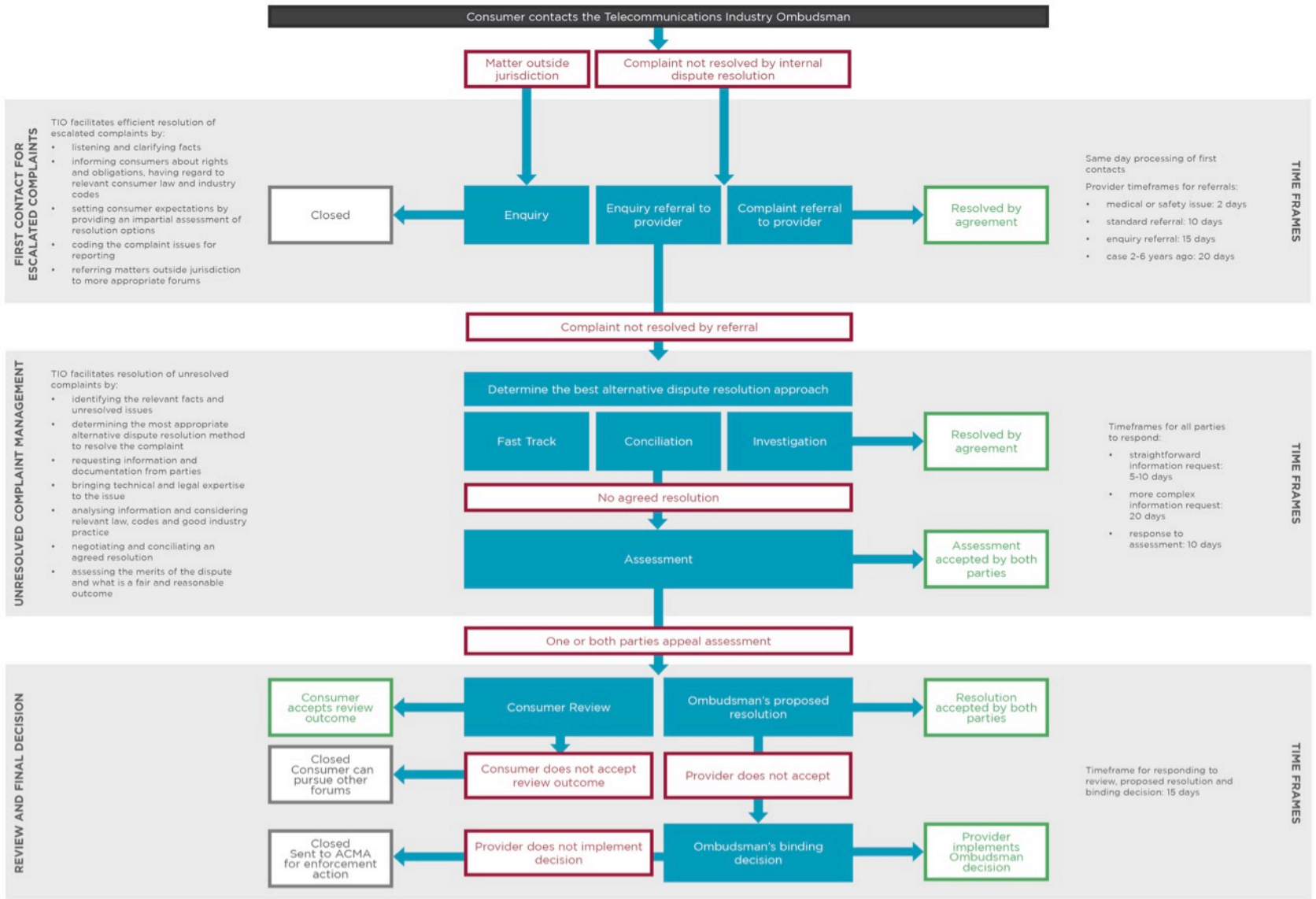
- binding resolution to a complaint up to **\$50,000**
- non-binding **recommendations** up to **\$100,000**

Time Limits: TIO

- TIO will usually only look at complaints that happened, or that the complainant became aware of, in the **past two years**.
- This time may be extended to **six years** in some circumstances.

Summary of complaint process: TIO





TIO appeals & reviews

If the TIO has told a consumer that they intend to stop handling their complaint, and have offered the consumer the ability to ask for a review, the consumer must ask for the review within 10 to 15 business days.

Energy and Water Ombudsman NSW (EWON)

Jurisdiction: EWON

EWON can award a maximum amount of **\$50,000**.

Complaints considered by EWON

- provision or failure to provide **energy or water services**
- **disconnection** or restriction of supply
- **billing and credit issues** - including high bills, disputed accounts, backbilling
- quality of supply
- actions by a provider that impact on land or other property
- customer transfers between energy providers
- electricity and gas marketing

Types of outcomes EWON can provide

- **negotiation of affordable and realistic payment arrangements**
- **reconnection of supply**
- a refund or a goodwill gesture payment
- a compensation payment
- a reduction in arrears because of delays or other problems in billing
- an apology
- assistance for customers, eg. about **reducing** energy or water consumption

Time Limits: EWON

- A complaint must be made to EWON within 12 months of the date the complainant first became aware of the events giving rise to the complaint.
- EWON considers if it is reasonable to accept the complaint after that time.

Summary of complaint process: EWON

If you make a complaint to EWON and haven't contacted your provider first about the problem, EWON will normally refer you back to them.

If there is no resolution, EWON will allocate an Investigations Officer and may undertake any of the following:

- Seek information from the provider
- Seek further information from you
- Seek independent expert advice
- Continue to investigate for as long as there are grounds to support further investigation, or until the matter is resolved.

Determination: EWON

If a matter is not resolved, EWON may make a determination ('a binding decision') to resolve the case.

EWON: Requesting a review

A request for review must:

- be received within **28 days** of the date of the case closure letter or Final Investigation Report
- include supporting information.

EDR: When should you seek legal advice?

- Before making a complaint to EDR
- If you have been served with a **Statement of Claim** or after **default judgment** has been given against you
- If the other party/service provider is not part of an EDR scheme
- Before signing or accepting an agreement: gag/confidentiality clauses; restrictions on taking further legal action
- If you do not accept the decision of the EDR scheme
- The EDR scheme discontinues your complaint.



Thomas

Thomas

- 30 years old
- Disability support pension
- Living with parents in social housing
- Thomas comes to see you with a file full of documents spanning the last 10 years.
- Stress from debt is exacerbating his mental illness

Thomas' story #1

- \$45,000 **credit card** debt to a big bank and has been served with a **court document** relating to the debt saying he must respond to the court within 28 days.
- He was on the DSP when the credit card was initially approved.

Thomas' story #2

\$4,000 **electricity** bill received for 12 months' worth of charges that he didn't know about, after a faulty meter had been replaced.

Thomas' story #3

- A **debt collector** is calling every day and at night about an old \$200 **mobile phone** debt that has somehow grown to \$1,000.
- He also received a letter from the debt collector saying the debt has been **assigned** to them, and they will start legal proceedings if not paid.

Thomas' story #4

- Received a letter from a **car insurer** of another driver that Thomas had a minor **accident** with .
- It was unclear who was at fault.
- The letter says Thomas must pay \$9,000 within 21 days, but he was uninsured at the time of the accident.

Thomas' story #5

- Received a **letter of demand** for a \$2,000 debt relating to a **small loan** he took out about 8 years ago.
- Thomas remembers he **stopped paying for it about 7 years ago** when he got sick and became homeless.
- He was never contacted about the debt until now, as he had had moved address a number of times over the years and forgot about it.

Helpful tips for EDR #1

- Always lodge your complaint in **writing**.
- If possible, **lodge the dispute online** as it will be received straight away and get a EDR case number.
- **Keep a copy** of your completed complaint form.
- Don't be deterred if you are told on the phone that your complaint has no merit.
- Tell the creditor or their legal representative that you have lodged an EDR dispute and remind them that they must not file for default judgment while the dispute is being considered.

Helpful tips for EDR #2

- You can keep the information in your dispute simple to start with as you can add further information later.
- Don't be afraid to ring and chat to the EDR scheme about your case and the procedure for resolving the complaint.
- Look at the EDR Scheme's **Rules, Terms of Reference, and/or Constitution.**
- Helpful information (including **EDR fact sheets**) are available on each EDR scheme's website.

Questions?



David Hofierka

Credit, Debt and Consumer
Law Solicitor

Resources for this workshop: rlc.org.au/training/resources/debts

This workshop is a guide to the law in NSW, Australia. It is not a substitute for legal advice. If you have a legal problem, seek legal advice from a legal centre or Legal Aid.

Where to get free confidential legal advice on debt related issues

- Redfern Legal Centre's Credit, Debt and Consumer Practice (local residents only)
- Most community legal centres:
 - NSW: <https://www.clcnsw.org.au/resource/community-legal-centres-nsw-directory-2018>
 - outside NSW: www.naclc.org.au/need_legal_help.php
- Legal Aid NSW www.legalaid.nsw.gov.au/contact-us/legal-aid-nsw-offices

RLC now has a statewide financial abuse legal service

Free, confidential legal information and advice to people across NSW who have money problems due to domestic abuse in an intimate partner relationship.

- 0481 730 344
- falsintake@rlc.org.au
- www.rlc.org.au/financial-abuse-legal-service

Thank you



Redfern Legal Centre