

Factsheet No. 2

Complaints and External Dispute Resolution (EDR)



This factsheet answers some questions about making a complaint if you are unhappy about or have a dispute with a business or government agency. In particular, it discusses External Dispute Resolution schemes and the roles of government regulators.

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What are my options for making a complaint?

If you are unhappy with the service that you have received, or believe that a business or government agency has acted improperly or illegally, you may:

- Make an internal complaint; and
- Use External Dispute Resolution (EDR).

If you choose to initially make an internal complaint and are unhappy about how it has turned out, you can

still use EDR.

For particular types of disputes, it may be useful to lodge a complaint with a regulator. Regulators typically do not investigate individual complaints. NSW Fair Trading is somewhat exceptional in that it will act as an informal negotiator.

How do I make an internal complaint?

Government agencies and most businesses will have a complaints page on their website or a phone number which you can call to make a complaint.

You can often find this through the 'Contact Us' or a Complaints or Feedback link at the bottom of their website.

What are the benefits of making an internal complaint?

By complaining directly to the business or government agency, your dispute may be resolved more quickly than through EDR.

Most EDR schemes also require you to first make an internal complaint, notifying the business or government agency of the problem and trying to resolve it directly with them.

What is External Dispute Resolution (EDR)?

EDR is an independent service that can help you resolve disputes with government agencies and most businesses.

All government agencies participate in EDR.

The following businesses are also required to be members of EDR schemes:

- Gas or electricity providers
- Telephone or internet providers
- Postal service providers
- Credit providers and brokers
- Insurance providers
- Financial advisers
- Tax agents.

The EDR scheme will consider the facts provided by you and the business or government agency. It will be determined in accordance with the law, as well as responsible industry standards and practices.

EDR can be particularly useful for those involved in a dispute with their credit providers.

Under the new Credit Law, most businesses that engage in credit activities (which includes both arranging for or providing credit) must be licensed. It is a condition of the license that the credit provider be a member of an external dispute resolution (or EDR) scheme.

Do I have to pay to use EDR?

No - the service is free for consumers.

Why should I lodge my dispute with EDR?

There are numerous advantages of using EDR:

- It is a free service for consumers, making it a cost-effective alternative to taking your matter to court
- It is an impartial, independent service
- It is much easier to participate in compared to the court process
- It encourages negotiation between you and the credit provider
- It puts a stop to all enforcement (including court proceedings) while your matter is going through EDR
- If the credit provider you are complaining about is a relatively large credit provider, you are likely to have your matter transferred to a dispute resolution department within the credit provider. This means that your matter will be brought to the attention of a person who can review your matter afresh and who will usually have more discretion and incentive to resolve the problem.
- The investigative powers given to EDR providers are often very wide. They may be able to demand the business or government agency to provide more information. However, it is important to remember that EDR is an independent, impartial service. They will not take sides.

In what situations can I take a matter to EDR?

If you believe that a business or government agency has acted inappropriately in dealing with your matter, or has breached a relevant law or Code of Conduct, you can make a complaint to the appropriate EDR scheme.

Any breach of conduct can be used as the basis of an application to EDR, ranging from matters that appear relatively minor, such as a business calling you at a later

time than is allowed by regulations, to serious breaches, such as the creditor falsely making a document look like a court document to mislead you into paying your debt.

Here are some examples of the types of matters you can take to EDR:

- You have been treated rudely or your questions/concerns have been ignored
- A service provider has failed to provide the service that it promised, or misrepresented the service
- You have been billed excessively
- Your application for a financial hardship variation is rejected
- A debt collector is unreasonably harassing you
- Your basic household possessions or tools of trade have been taken under a mortgage security
- Your car or other goods have been repossessed without a default notice
- Your creditor gave you a loan he/she knew you could not repay.

If you are unsure about whether you should lodge a complaint with EDR, contact your nearest legal aid office or community legal centre for advice.

How do I lodge my dispute to EDR?

You must usually lodge your complaint in writing, either through the online forms available on the relevant website, or by mail or fax. Contact the relevant EDR scheme by telephone if you have any questions about lodging a complaint. The complaint process is relatively simple and is designed to be easy to use.

Do not be put off if the EDR representative suggests that your case is not strong. Lodging the complaint will bring your matter to the attention of your service provider or creditor. It may make your creditor more open towards negotiating with you, or the service provider more responsive to your needs.

What can I expect from the EDR process?

1. Acceptance by EDR of the dispute. After you lodge your complaint with EDR, you will be sent a letter to confirm whether or not your complaint has been accepted.
2. Negotiation with the business or government agency. If your complaint is accepted, the EDR scheme will provide details about your complaint to the business or government agency, and encourage them to negotiate a solution with you. If the business or government agency has opposing views on your matter, they may provide a detailed response to the issues you raise in your complaint.

You should ensure that you always meet the deadlines set by the EDR scheme for responses. Otherwise your case may be closed. If you cannot make a deadline, call or email to ask for an extension.

3. Conciliation attempts. If the complaint cannot be resolved, the EDR scheme may conduct conciliation between you and the business or government agency to try to resolve the dispute.

4. EDR issues a decision.

If the dispute still cannot be resolved by agreement, the EDR scheme will usually issue a decision. You do not have to accept the decision of the EDR scheme, and you can still choose to take the matter to court. However, if the EDR scheme makes a decision, and you accept it, it is binding on the credit provider.

Be aware that the current waiting periods for EDR may be very long. Some EDR schemes may be able to investigate the matter and issue a decision in a couple of weeks or months. However, for credit disputes in particular, it can take up to 12-18 months to be resolved by EDR.

It may be a good idea to continue making payments if possible while the complaint is with EDR, in case the decision is not in your favour. If you win, the EDR scheme may decide that you should be refunded all or part of your payments.

What do I do if my file is closed or not accepted by EDR?

The EDR scheme may refuse to accept your dispute, or close your file, for a number of reasons. The dispute may not be within the rules of the EDR scheme, or your dispute may be considered to have no merit.

Do not give up if this happens – get legal advice. It may be that the EDR scheme has not properly understood your dispute, or will accept your matter if more evidence is provided.

What sorts of outcomes should I ask for in my EDR application?

You should ask for an outcome that you think is fair for you in the circumstances. For example, you could ask the business or government agency to:

- Provide the service in the way that they agreed they would
- Provide compensation for financial loss
- Provide a hardship variation
- Correct a wrongly-listed record from your file with the business or government agency
- Apologise
- Confirm that a creditor will stop chasing you for a debt.

What are the time limits for lodging a dispute to EDR?

There may be time limits for lodging an EDR application. For FOS or CIO, the time limit is usually 6 years from the event that caused the dispute. For example, the refusal of a hardship variation application, the repossession of a financed car, or an increase in credit card limit.

For the Energy and Water Ombudsman NSW, the time limit is 2 years, although this may be extended to 6 years where there is a good reason for not having made the complaint within 2 years.

Time limits can vary according to the nature of the complaint so you should contact the relevant EDR scheme to check, or get legal advice.

If you have been through an internal complaints process with your credit provider, you may have less time to lodge your dispute.

What happens if a credit provider has already started legal proceedings in court, or obtained judgment against me?

You can complain to EDR only if you have not yet taken a step in the legal proceedings beyond lodging a Defence, or attending a Pre-Trial Review or Directions Hearing.

If you are unsure about whether you can still lodge a complaint to EDR, get urgent legal advice.

If judgment has already been entered against you, there are some limited circumstances in which you can still apply to EDR. If you find yourself in this position, get legal advice immediately.

What happens if I want to resolve a dispute and the business is not a member of EDR?

If the business is not a member of an EDR provider, you may see if the business is willing to try community mediation. In NSW, the Community Justice Centres (CJC) offer free mediation services that may assist in resolving a dispute.

If you wish to try community mediation, call CJC on 1800 990 777 to talk about whether this would be suitable for your dispute.

For disputes with your credit provider, if they are not a member of EDR, you should get legal advice. There may be other methods of dispute resolution to explore before going to court, for example, directly negotiating with your credit provider.

Which EDR scheme do I lodge my dispute with?

If you have a problem with your;	Relevant EDR to contact	Contact details
Gas or electricity provider	Energy and Water Ombudsman NSW (EWON)	www.ewon.com.au/ or 1800 246 545
Telephone or internet provider	Telecommunications Industry Ombudsman (TIO)	www.tio.com.au/ or 1800 062 058
Postal services	Postal Industry Ombudsman (now part of the Commonwealth Ombudsman)	www.pio.gov.au/ or 1300 362 072
Private health insurance	Private Health Insurance Ombudsman (now part of the Commonwealth Ombudsman)	www.phio.org.au/ or 1800 640 695
Superannuation	Superannuation Complaints Tribunal	www.sct.gov.au/ or 1300 884 114
Tax return e.g. you have not received the correct amount, or you believe an accountant who has done your tax return has acted improperly.	Inspection-General of Taxation (IGT)	igt.gov.au/ or 1300 44 88 29
Credit provider Insurer Broker and financial adviser	Before you lodge a complaint you need to find out which scheme your particular credit provider belongs to. The two EDR schemes available to credit providers are: 1. Financial Ombudsman Service (FOS) 2. Credit and Investments Ombudsman Service (CIO) You can check whether your credit provider is a member of either of the two EDR schemes by using the online FOS member search or the CIO member search available from the FOS or CIO websites or by calling FOS or CIO.	1. Financial Ombudsman Service (FOS) www.fos.org.au or 1300 78 08 08 2. Credit and Investments Ombudsman (CIO) www.cio.org.au or 1800 138 422
Airline	Before you lodge a complaint, you need to find out whether the airline participates in this EDR. The Airline Customer Advocate has a list of members on their website. At July 2015, this included Qantas, Jetstar, Tiger, Regional Express, and Virgin.	airlinecustomeradvocate.com.au or 1800 813 129
Federal government agencies e.g. Centrelink, Veteran Affairs, Department of Immigration and Citizenship, Australian Federal Police	Commonwealth Ombudsman	www.ombudsman.gov.au/ or 1300 362 072

If you have a problem with your;	Relevant EDR to contact	Contact details
NSW government agencies e.g. Department of Education and Communities, Housing NSW, NSW Trustee and Guardian, State Debt Recovery Office, NSW Police, NSW Department of Community Services, SafeWork NSW	NSW Ombudsman	www.ombo.nsw.gov.au/ or 1800 451 524
Privacy being breached	Office of the Australian Information Commissioner (OAIC)	www.oaic.gov.au/ or 1300 363 992

Complaints to government regulators

Who are regulators, and for what types of complaints should I contact them?

Regulators investigate large-scale problems on particular topics. They will not often resolve individual disputes.

Nevertheless it may be useful to make a complaint with a regulator, as they have significant powers and resources. They may be able to stop the conduct from happening in the future, even if they do not resolve what has already happened.

NSW Fair Trading is somewhat different in that it will act as an informal negotiator between you and the business involved.

If you are unsure of whether your dispute falls within the conduct listed above, do still contact one of the regulators. Even if they will not directly deal with your problem, they can assist you finding someone who will help.

How do I lodge my concern with a regulator?

Similar to EDR, most of the regulators require a complaint to be made in writing. The details of where you can make a complaint are;

Regulator	Types of complaints handled	Contact Details
NSW Fair Trading	<ul style="list-style-type: none"> • Disputes between a home owner and a licensed contractor • Residential tenancy complaints, e.g. tenants, landlords, property managers • Other general consumer complaints about goods and services for businesses in NSW 	Online: www.fairtrading.nsw.gov.au Mail: PO Box 972 PARRAMATTA NSW 2124

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Regulator	Types of complaints handled	Contact Details
Australian Securities and Investments Commission (ASIC)	<ul style="list-style-type: none"> • Business names • Investment scams e.g. promising returns that are too good to be true • Consumer credit and leases, including debt collection • Shares, market misconduct, and insolvency practitioners 	Online: www.asic.gov.au
Australia Prudential Regulation Authority (APRA)	<ul style="list-style-type: none"> • Superannuation • Life or general insurance 	Phone: 1300 55 88 49 Online: www.apra.gov.au
Australian Competition and Consumer Commission (ACCC)	<ul style="list-style-type: none"> • Debt collection for non-financial services (e.g. phone and utility bills, bills for professional services) • Scams e.g. money transfer schemes, phishing, offers of prize money in return for transfers • Prices and consumer guarantees • Product safety • Misleading claims & advertising • Franchises • Other general consumer complaints about goods and service, e.g. a refusal to supply products or services, anti-competitive behaviour, franchising or unconscionable conduct, your right to ask for a repair, replacement or refund 	Phone: 1300 302 502 Online: www.accc.gov.au

Useful resources

The Australian Securities and Investments Commission (ASIC) has produced a guide called '[You Can Complain](#)'. Although it is targeted towards financial products and services, it has many useful tips that apply to the making of all types of complaints.

For legal advice, contact your nearest [legal aid office](#) or [community legal centre](#).

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This factsheet is a guide to the law in New South Wales, Australia. It is not a substitute for legal advice. If you have a legal problem seek legal advice from your local community legal centre.