REPORT 465

Paying to get out of debt or clear your record: The promise of debt management firms

January 2016

About this report

This report presents the findings of research into firms that promise to help consumers in financial hardship or with listings on their credit reports (debt management firms) in Australia. This research is intended to contribute to the publicly available information about this growing sector.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

Executive summary

Debt management firms

1 There are a range of firms that promise to help consumers in financial hardship or with listings of payment defaults on their credit reports. We call these firms ‘debt management firms’. They typically promise to help consumers by:

(a) developing and managing budgets;

(b) negotiating with creditors, including lenders, telecommunications companies (telcos), utilities companies or debt collectors;

(c) advising and arranging formal debt agreements under Pt IX of the *Bankruptcy Act 1966* (Bankruptcy Act); and

(d) ‘cleaning’, ‘fixing’ ‘repairing’, ‘removing’ or ‘washing away’ default listings or other information on credit reports.

2 The main selling point for debt management firms providing ‘credit repair’ services is to clear negative information from credit reports so that a consumer is more likely to get credit or access to other services in the future. These firms operate by challenging credit default listings and making complaints on behalf of consumers to external dispute resolution (EDR) schemes.

3 While the models are diverse, many debt management firms operate as one-stop shops offering a combination of some or all of the above services.

4 Consumers paying for services from debt management firms probably sit on a spectrum. At one end are those consumers who may consciously choose to outsource an activity they don’t have the time, energy or perceived ability to do for themselves and who don’t mind paying for it. At the other end are those consumers who may be in significant financial hardship and in need of specialist advice and assistance to help them through a crisis.

5 The promise of debt management firms is attractive to many consumers. However, where this promise does not or cannot meet expectations, the harms for consumers can range from the relatively minor to the very serious.

6 Experience from overseas, anecdotal reports and case-work experience in Australia suggests that debt management firms can pose significant risks to some consumers. Concerns have been reported to ASIC by a diverse group including financial counsellors, credit providers, consumer legal centres and EDR schemes in financial services, telecommunications, energy and water.

7 Their key concerns include that debt management firms:

(a) charge high fees for services of little value;

(b) give poor or inappropriate services that can leave consumers worse off;

(c) have mis-sold services on the basis of misleading representations about the nature and effectiveness of the service; and

(d) have engaged in unfair and, in some cases, predatory conduct in relation to consumers in financial hardship.

8 We have limited information about the exact size and make-up of the market of debt management firms. This is because firms are not required to hold a licence under the financial services or credit licensing regimes that ASIC administers to provide debt management services. However, some debt management firms also engage in regulated credit activities and will hold an Australian credit licence (credit licence) for those activities: see paragraph 147.

9 While some firms are regulated by the personal insolvency regulator—the Australian Financial Security Authority (AFSA)—for the administration of debt agreements, most are not subject to any specific regulation beyond the general consumer law, which includes prohibitions against misleading and deceptive conduct and unconscionable conduct.

10 Barriers to entry for firms providing debt management services are low. Firms are not required to satisfy threshold requirements (such as ‘fit or proper’ persons tests), satisfy competence standards, meet conduct or disclosure obligations, manage conflicts of interest or belong to an EDR scheme to resolve consumer complaints.

11 Debt management firms promise timely help for consumers. However, consumers trying to deal with debt problems can be extremely vulnerable if firms do not act in their best interests, provide unsuitable services or, at worst, engage in predatory conduct.

12 There have been a number of public reports expressing concern about debt management firms, including in overseas jurisdictions. In some jurisdictions specific standards apply to the conduct of debt management firms to address the potential harms posed by these firms, particularly to vulnerable consumers or those in financial hardship.

What we did

13 In order to get as broad a view as possible of the debt management market, this research employed and analysed multiple research methodologies (quantitative and qualitative) and sources of information (primary and secondary).

14 ASIC’s Consumer Advisory Panel (CAP) commissioned qualitative research, performed by BIS Shrapnel Pty Ltd. This involved a qualitative

analysis of debt management firms' marketing material, stakeholder interviews and a mystery shopping exercise.

15 We initiated a further survey of EDR schemes operating across the financial services, utilities and telecommunications sectors to gather information to serve as a proxy for the size and growth of this market.

16 In 2014 we collected data on EDR schemes' experiences with debt management firms for the 2010–13 calendar years. In 2015, we asked the Credit and Investment Ombudsman (CIO) and the Financial Ombudsman Service (FOS) to update their data for 2014 and the 2015 year to date. In surveying the EDR schemes, we set out to understand:

(a) what types of firms were bringing complaints to the schemes;

(b) how many requests the schemes were dealing with from firms and how this has changed over time;

(c) the type of requests they were making on behalf of their clients; and

(d) the outcomes of those claims.

17 We also surveyed nine authorised deposit-taking institutions (ADIs), including banks and credit unions; however, differences in the way dispute information is captured by ADIs, as well as gaps in the data, meant we were unable to draw robust conclusions from the collected data. Nevertheless, financial services industry participants—including banks, credit unions and debt collectors—anecdotally reported significant growth in the number of debt management firms representing consumers.

18 The principal phases of the research were carried out between February and June 2014 with further work in 2015. A detailed methodology is set out in Appendix 1.

19 This report summarises the findings of this research and is intended to contribute to the publicly available information about this growing sector.

Key findings

20 This research involved a mix of methodologies to get a picture of this sector. See Section A for a profile of the services that are available to consumers.

Qualitative findings

21 Findings from the qualitative research included that:

(a) debt management firms offer a range of services to consumers—in many cases, multiple services. For example, a firm promoting itself as dealing with credit defaults may be a gateway to refer consumers to other services from the same firm or a related firm (such as budgeting or debt negotiation services) or, in some cases, to lenders who will provide credit to consumers in financial hardship;

(b) fees and costs were opaque, making it difficult for consumers, often in significant financial hardship, to assess the cost of the services relative to the purported value;

(c) fees were often high and heavily 'front loaded'—that is, fees were payable before services were provided or promises met, which is likely to increase consumer commitment and exacerbate sunk cost bias;

(d) some sales techniques may create a high-pressure sales environment;

(e) little information was given about important risks;

(f) some firms had a poor understanding of the relevant law and the consequences of particular strategies, which may lead to unsuitable services for some consumers; and

(g) firms rarely referred consumers in financial hardship to free, alternative sources of help—such as financial counsellors, consumer law services or ombudsman schemes—or advised consumers they could resolve the problem themselves at no cost.

22 The Financial Rights Legal Centre (FRLC) also provided us with case studies that, while not representative of all consumer experience of the services of debt management firms, show poor outcomes for some consumers and may be representative of complaints received by community legal services about the services of debt management firms: see Section E.

Quantitative findings about EDR

23 This part of the research found that:

(a) a growing number of firms are representing consumers at EDR—this is concentrated among a few large players, with an increasing number of small firms entering the market;

(b) the disputes brought to EDR schemes by debt management firms relate almost exclusively to arguments about the removal of default listings on consumer credit reports (despite the breadth of issues that can arise for indebted consumers); and

(c) while an increasing number of consumers are being represented at EDR by debt management firms, this is not leading to more credit reporting related disputes being found in favour of consumers.

Background to the research

24 The growth of the debt management industry coincides with significant change to the regulation of consumer credit and credit reporting in Australia.

Changes to credit laws

25 In 2010 the *National Consumer Credit Protection Act 2009* (National Credit Act) commenced, which:

(a) imposed responsible lending obligations on lenders;

(b) provided consumers' access to hardship arrangements with their lender;

(c) introduced national caps on interest rates for payday lenders; and

(d) extended consumer access to free and independent EDR schemes to resolve disputes.

Changes to the credit reporting regime

26 In March 2014, a new positive credit reporting regime commenced, which significantly expands the types of data creditors can access about a consumer's credit history, including their repayment history. Participation by credit providers is currently voluntary.

27 In Australia, the move to a positive credit reporting regime is likely to see significant growth in the volume of data being collected and reported to credit reporting bodies, such as Veda and Dun and Bradstreet. At the time of publication, we understand that few, if any, credit providers are currently reporting on this expanded data set to credit reporting bodies.

Errors in credit reports

28 Inaccurate information on credit reports can have a serious negative impact on consumers who want to access basic services such as utilities, telecommunications or credit. More data may provide a more complete picture and history of consumer behaviour, but with more data there is also the potential for more errors in credit reporting and therefore more demand for services that claim to 'fix' errors.

29 In 2013, the Office of the Australian Information Commissioner (OAIC) reported that only one in six Australians (17%) had accessed their credit report.[1] The OAIC noted that, of those who had accessed their credit report, three in ten (30%) found the information to be incorrect and, of those who

[1] OAIC, *Community attitudes to privacy survey: Research report 2013*, October 2013. The OAIC reported that 'just over half (55%) made a complaint about the fact that the information was incorrect. Of these, the majority made that complaint to the organisation involved (41%), with others complaining to a credit report organisation (25%), the financial institution (19%), the Ombudsman (12%) or a government department (3%)'.

found errors, nearly six in ten (57%) were able to have the information corrected by making a complaint.

30 In the United States, Congress mandated the Federal Trade Commission (FTC) carry out a study on credit report accuracy in 2013. The study found that, overall, one in five consumers had an error on at least one of their three credit reports.[2] In March 2015, the three national credit reporting agencies in the United States agreed to a significant overhaul to their processes to improve credit report accuracy and increase the fairness and efficacy of the procedures for resolving consumer disputes of credit report errors.[3]

31 In Australia, there has also been evidence of credit providers making serious and systemic errors in credit listings. The 2013–14 Annual Review of FOS reported that 4,800 incorrectly made credit listings were corrected or removed as a result of the FOS systemic issues investigations.[4] In their 2014–15 Annual Review, FOS reported a downward trend of new issues relating to incorrectly made credit listings.[5]

Financial stress, hardship and consumer complaints

32 While Australia is in a benign interest rate environment, recent research found that 31.8% of households in Australia are financially stressed. This suggests that the market for debt management firms includes a significant proportion of Australian households. The research observed that:

> Since 2005, there has been a rise in the absolute number and relative percentage of financially stressed Australian households.[6]

33 This research segmented households into groups to identify those that are financially stressed, and a subset that are in financial hardship. Financially stressed households are generally coping with their current financial situation (even if using unconventional means), while households in financial hardship are not. Leading indicators of financial stress include those who:

(a) are in mortgage stress;[7]

(b) are behind with loan repayments;

---

[2] FTC, *Section 319 of the Fair and Accurate Credit Transactions Act of 2003: Fifth interim Federal Trade Commission report to Congress concerning the accuracy of information in credit reports*, report, December 2012.
[3] New York State Office of the Attorney-General, *AG Schneiderman announces groundbreaking consumer protection settlement with the three national credit reporting agencies*, media release, 9 March 2015.
[4] FOS, *Annual Review 2013–2014* (PDF, 4.78 MB), October 2014, p. 92.
[5] FOS, *Annual Review 2014–2015*, October 2015, p. 97.
[6] Digital Finance Analytics and the Monash University Centre for Commercial Law and Regulatory Studies, *The stressed household finance landscape report 2015*, report commissioned by Consumer Action Law Centre, Good Shepherd Microfinance and FRLC, October 2015, p. 7.
[7] Digital Finance Analytics and the Monash University Centre for Commercial Law and Regulatory Studies, *The stressed household finance landscape report 2015*, report commissioned by Consumer Action Law Centre, Good Shepherd Microfinance and FRLC, October 2015, p. 6. The report defines ‘mortgage stress’ as households that are in some form of loan default or are struggling to pay their mortgage on time.

(c) have been declined some form of credit;

(d) consistently borrow again to repay an existing loan (excluding mortgage refinancing);

(e) seek debt counselling or credit repair services;

(f) have had difficulty getting or keeping a bank account;

(g) are bankrupt or under a deed of arrangement.[8]

34 While the proportion of households in financial stress may be increasing, that financial stress is not reflected in complaints to the financial services EDR schemes. Data from both CIO and FOS show significant reductions in the number of financial-difficulty related disputes coming to the schemes. Both schemes report this downward trend over the past few financial years.[9] FOS attributes the reduction in disputes to:

(a) improvements financial services providers have made in managing hardship requests and complaints from customers in financial hardship;

(b) consistently low interest rates, which have reduced repayment pressure for many borrowers; and

(c) fewer consumers requesting financial hardship assistance from their financial services provider or greater willingness of providers to give financial hardship assistance if it is requested.

35 FOS also notes that Financial Counselling Australia's 2015 *Rank the banks* report further indicates better financial hardship practices, observing an improvement across the banking sector, including more referrals to hardship teams and better staff training.[10]

36 Changes to broader economic conditions—such as any increase to currently low interest rates or any increase in unemployment rates—would mean that many consumers would face increasing levels of financial stress, including mortgage stress, given high household debt levels.

---

[8] Digital Finance Analytic and the Monash University Centre for Commercial Law and Regulatory Studies, *The stressed household finance landscape report 2015*, report commissioned by Consumer Action Law Centre, Good Shepherd Microfinance and FRLC, October 2015, p. 6. 'Deed of arrangement' in this context means a formal or informal mechanism where debtors agree to make scheduled payments to reduce debt and creditors agree not to enforce the debt in the meantime. This may include structured arrangements under the Bankruptcy Act, such as debt agreements and personal insolvency agreements, hardship variations under the National Credit Act, or other informal arrangements.

[9] In 2014–15, FOS accepted 4,134 disputes relating to financial hardship, which was a 12% decrease on 2013–14, 20% less than 2012–13 and 37% less than 2011–12: see FOS, *Annual Review 2014–2015*, October 2015. CIO also reports that the number of financial hardship complaints has also fallen, from 'a high of about 34% to a low of 24%': see CIO, *Annual report on operations 2014/15*, October 2015, p. 8.

[10] FOS, *Annual Review 2014–2015*, October 2015, p. 85.

Effect of financial stress on consumer behaviour

37 There is a growing body of evidence and research showing that financial stress can reduce a person's effective cognitive capacity.[11] A 2015 World Bank report noted that:

> … both poor people and people who are not poor are affected in the same fundamental way by certain cognitive, psychological, and social constraints on decision making. However, it is the context of poverty that modifies decision making in important ways. In particular, poverty is not simply a shortfall of money. The constant, day-to-day hard choices associated with poverty in effect tax an individual's bandwidth, or mental resources. This cognitive tax, in turn, can lead to economic decisions that perpetuate poverty.[12]

38 The cognitive burden associated with financial stress may make the services of debt management firms more attractive to consumers in financial hardship.

39 This may help explain the increasing number of consumers using third parties in EDR schemes. For example, FOS reports that the number of consumers using a fee-for-service agent (this includes debt management firms) increased 7% in 2014–15, following a 59% increase in the previous year.[13] Across the same period, the number of consumers represented by debt management firms—such as credit repair and debt negotiation firms—at CIO was relatively static, at 9.9% and 11% respectively.[14]

International and Australian research and action

40 In 2010, the Office of Fair Trading in the United Kingdom conducted a mystery shopping compliance review that tested the quality of advice given by debt management services.[15] It found:

> The majority of advisers (92 per cent) failed to inform shoppers that free to client debt advice was available …
>
> The level of information provided to shoppers about the advantages and disadvantages of individual debt solutions was extremely patchy […] Among the 202 advisers who referenced at least one debt solution, 78 per cent volunteered an 'advantage' as compared to 47 per cent who volunteered a disadvantage.
>
> None of the advisers gave shoppers a full explanation of the main features of each individual debt repayment option they discussed.[16]

---

[11] World Bank, *World development report: Mind, society and behaviour*, December 2014, p. 27.
[12] World Bank, *World development report: Mind, society and behaviour*, December 2014, p. 81. See also S Mullainathan & E Shafir, *Scarcity: Why having too little means so much*, Times Books, New York, 2013.
[13] FOS, *Annual Review 2014–2015*, October 2015, p. 34.
[14] CIO, *Annual report on operations 2014/15*, p. 36; CIO, *Annual report on operations 2014*, October 2014, p. 28.
[15] Debt management firms are known as 'debt management services' in the United Kingdom.
[16] Office of Fair Trading (UK), *Debt management guidance compliance review: Mystery shopping* (PDF, 763 KB) (OFT1265), report, March 2010.

41 In 2012, the Energy & Water Ombudsman NSW (EWON) published a report that specifically examined credit repair firms in Australia. This study involved a consumer survey and a shadow shop exercise.[17] It found:

(a) low awareness among consumers of free alternatives to commercial agents;

(b) misleading conduct and incomplete information provided by some credit repair agents; and

(c) high fees charged by credit repair agents, which exacerbated financial hardship for consumers.

42 In 2015, the Financial Conduct Authority (FCA) in the United Kingdom released a thematic review on the quality of debt management advice, which argued that debt management is one of the highest risk activities in consumer credit. The FCA's concerns included that:

(a) customers are not sufficiently made aware of the nature of the service being offered to them, including any fees they are required to pay, and that help in managing debt is available free of charge from various sources;

(b) debt advice provided may not be in the customer's best interests and that recommended debt solutions may not be suitable, affordable and sustainable;

(c) customers are recommended or sold additional products and services that may not be suitable or in their best interests;

(d) the nature and level of fees charged by some fee-charging debt management firms is such that they affect customers' ability to make significant repayments towards their debts;

(e) firms do not market themselves in a manner that is clear, fair and not misleading. This includes using misleading trading names that imply that services are free (when they are not) or have some form of government or charity backing or status; and

(f) client money is not adequately protected, accounted for or passed to creditors in a timely manner.[18]

43 In 2015, a legal analysis of the regulatory framework for the credit repair industry in Australia, the United Kingdom and the United States was published.[19] The authors' note states that:

> credit repair companies charge very high up-front fees, sometimes thousands of dollars for services that could otherwise be accessed free of charge through an industry ombudsman, financial counselling service or community legal centre.[20]

[17] EWON, *Research survey report: Consumers' use and experience of 'credit fix' agents* (PDF, 467 KB), September 2012.
[18] FCA, TR15/8 *Quality of debt management advice*, thematic review, June 2015.
[19] P Ali, L O'Brien & I Ramsay, 'A quick fix? Credit repair in Australia', *Australian Business Law Review*, vol. 43, 2015, p. 179.
[20] P Ali, L O'Brien & I Ramsay, 'A quick fix? Credit repair in Australia', *Australian Business Law Review*, vol. 43, 2015, p. 180.

Regulatory frameworks

44 There is no uniform regulatory framework applying to the activities of debt management firms in Australia. Firms are not required to hold a credit licence or an Australian financial services (AFS) licence to provide debt management services.

45 Debt agreement administration services are regulated under the Bankruptcy Act, while the general consumer law prohibitions against misleading and deceptive and unconscionable conduct apply to the extent that the conduct relates to 'financial services'—as set out in the *Australian Securities and Investments Commission Act 2001* (ASIC Act)—or to goods and non-financial services—as set out in the *Competition and Consumer Act 2010* (Competition and Consumer Act).

46 Internationally, regulatory responses range from broad licensing requirements in some jurisdictions to more targeted approaches to the conduct issues that arise from the different activities of debt management firms in others.

A Profile of services to consumers

Key points

The debt management industry has emerged in an environment where consumers in financial hardship or with disputes about credit listings can take steps to resolve issues themselves.

Consumers can also access other sources of help, including:

- free access to and the ability to update credit reports;
- free help from financial counsellors or community legal services;
- free access to ombudsman schemes to resolve disputes with lenders, telcos and utilities providers.

Free access to credit reports and help for consumers in hardship

47 Consumers in financial hardship or with disputes about credit listings can take steps to resolve problems and get help at no cost.

Access and updates to credit reports

48 Consumers have free access to their credit reports once every 12 months from credit reporting bodies in Australia. It is also free to update a credit report to remove incorrect listings where a listing is incorrect or out of date.

49 Credit reports include personal identification details, credit applications, repayment history, account information, defaults and personal insolvency information (such as bankruptcies). While some credit reporting bodies may also charge a fee for faster access to credit reports or for alerts about changes to a credit report, they must provide a free copy once every 12 months.

50 Consumers can also ask for a free copy of their credit report where a credit application was declined (within 90 days) or where they have asked for a correction and been told by the credit reporting body that the information on the report has been corrected.

Financial counselling services

51 Free and independent community-based advice and support to help consumers resolve credit and debt problems is available from financial counsellors and community legal services.

52 The financial counselling service model has served Australian consumers in financial hardship well over many decades, and plays an important role in the consumer protection framework. Premised on support, advocacy and

empowerment, financial counsellors recognise that financial hardship may also involve other hardships, such as job loss, illness, disability or relationship breakdown.

53 Financial counsellors therefore see an important part of their role as assisting clients to access other services, such as health, housing, legal advice and support, and EDR schemes. They take a holistic approach to a debtor's situation to help them understand and exercise some control over their financial circumstances and make decisions that are in their best interests.

Dispute resolution arrangements

54 Free and independent dispute resolution arrangements, such as ombudsman schemes, exist to help consumers resolve disputes with providers across the economy (e.g. financial services, telecommunications and utilities). Dispute resolution—along with other mechanisms such as hardship arrangements—work on the basis that most consumers can, with limited assistance from a scheme, resolve disputes themselves. Most consumers do resolve complaints themselves or with the assistance of family or friends. A smaller number seek the assistance of a financial counsellor, community legal service, solicitor or accountant.

55 EDR schemes have been reporting an increase in new businesses, such as debt management firms, representing consumers at the schemes.[21] So, while the 'self-help' and advocacy model works well for most consumers, the selling point of debt management firms is the ability to 'outsource' the management and resolution of a problem for a fee.

56 EDR schemes have reported concerns about the conduct, effectiveness and cost of debt management firms to often vulnerable consumers. More recently, a number of EDR schemes have taken steps to mitigate the negative effects of some debt management firms—for example, by refusing to deal with firms who bring complaints to the schemes on behalf of their clients but fail to comply with scheme procedures.[22]

Fee-for-service debt management firms

57 The research identified four key types of debt management firms:

(a) credit repair services;

(b) debt agreement administrators;

[21] FOS, *Annual Review 2013–2014* (PDF, 4.78 MB), October 2014, p. 32.
[22] See, for example, recent amendments to the *Credit and Investments Ombudsman Rules* (9th edition, 5 May 2015) and the *FOS Terms of Reference* (as amended 1 January 2015).

(c) budgeting services; and

(d) debt negotiation services.

Credit repair

58 Poor credit reports can negatively impact a consumer's access to consumer credit or other services. Credit repair services promote their ability to clear 'negative' information from a consumer's credit report by challenging a credit listing held by a credit reporting body and therefore improve a consumer's access to those products.

59 Veda, the largest credit reporting body in Australia, notes that:

> Having a debt or bankruptcy, or other information such as a debt agreement or court writ, recorded on your credit report, may hamper your chances of being approved for a loan or line of credit.[23]

60 Credit repair firms offer services to correct errors in a client's credit report allowing access to better loans. One credit repair firm describes its service as follows:

> [Firm name] removes negative listings [on a credit file] by identifying unfair, disputable and contestable areas where 'black marks' may have been listed in error, then negotiating for those listings to be removed on that basis.

61 A consumer can access and update their credit report to remove incorrect listings at no cost. A credit report can only be changed if a listing is inaccurate or out of date.

62 The ability of credit repair firms to actually help a consumer is therefore limited to instances where the credit reporting information held by the credit reporting body is incorrect. There is no publicly available information to show the rate of success for consumers using these services.

Debt agreements

63 Where unsecured debts are unmanageable, one option for a debtor to consider is a formal debt agreement with their creditors. A debt agreement is a legally binding agreement between a debtor and their creditors under Pt IX of the Bankruptcy Act.

> A debt agreement is a binding agreement between a debtor and their creditors. It involves the creditors agreeing to accept a sum of money, usually less than the full amount they are owed, in satisfaction of their debt. The amount to be paid is proposed or offered by the debtor based on what they can afford to pay having regard to all their income and household expenses and what the creditors are willing to accept.[24]

---

[23] Veda, 'Is 'credit repair' possible?', webpage, www.veda.com.au.
[24] AFSA, 'Debt agreement overview', webpage, www.afsa.gov.au.

64 Proposing a debt agreement is an *act of bankruptcy* and, as a legally binding arrangement, debt agreements can have significant implications for debtors, including that:

(a) a debtor who proposes a debt agreement commits an act of bankruptcy. A creditor can use this to apply to court to make the debtor bankrupt if the proposal is not accepted by creditors;

(b) the debtor's name and other details appear on the National Personal Insolvency Index[25] (a public record of insolvency proceedings) and may also appear on a credit reporting agency's records for up to five years; and

(c) the ability of the debtor to obtain further credit is affected.[26]

65 Debt agreements and debt agreement administrators are regulated by AFSA. A debtor proposing a debt agreement must meet certain criteria, including that the debtor has not filed for bankruptcy in the previous 10 years, has an income no higher than $81,121.95 and unsecured debts and assets of no more than $108,162.60.[27]

66 While an individual debtor can administer a debt agreement themselves, they may also use the services of firms that specialise in debt agreement administration. The clear benefit of these services for debtors is to receive expert help at a time of great personal difficulty.

Budgeting and debt negotiation services

67 At first glance, these services seem to provide very similar services to the services consumers in financial hardship may receive from community-based financial counsellors, but with some key differences.

68 Some budgeting services promise to manage the payment of bills and debt on behalf of their customers while providing them with an allowance for day-to-day expenses. One firm describes its service as follows:

> Your wages get paid directly into an account [firm name] creates for you. Your living expenses are transferred to your private bank account for you to access as you need them. As your bills arrive you forward them to us and we pay them on your behalf. We will also make loan repayments for you, whether they're for debts such as credit cards and personal loans or payments to family members and friends.

[25] The amendments to the Bankruptcy Regulations 1996 (contained in the Bankruptcy Amendment (National Personal Insolvency Index) Regulation 2015) mean that details of debt agreements will only remain on the National Personal Insolvency Index for a limited time, depending on when the agreement was made and how it ends: see AFSA, 'Important changes to retention of debt agreement information on the NPII', Inspector-General's column, *Personal insolvency regulatory newsletter*, October 2015.
[26] AFSA, 'Consequences of a debt agreement', webpage, www.afsa.gov.au.
[27] AFSA, 'Indexed amounts', webpage, www.afsa.gov.au.

69 These firms may then provide a debt negotiation function, as another budgeting service states:

> Once your budget is set, we'll work with the people you owe money to and arrange for them to accept payments you can afford.

70 Debt negotiation services distinguish their service offering from the more formal arrangements provided for under a debt agreement, as described at paragraphs 63–66.

71 Debt negotiation services provide *informal* debt agreements between creditors and debtors with the aim of reducing the debtors' balance owed. They claim the agreements will not affect the borrower's credit rating. One firm describes its negotiation agreements as:

> … an informal debt agreement set up between you and your creditors allowing you to repay the majority of your debt with minimal lasting consequences. Unlike a formal debt agreement, a [firm name] agreement won't impact negatively on your credit rating and allows you certain financial freedoms declaring bankruptcy wouldn't.

B Findings from qualitative analysis and stakeholder interviews

Key points

This section presents the findings from the qualitative analysis of information, including websites and marketing materials published by debt management firms. It also reports findings from the stakeholder interviews and observations about the marketing approach of debt management firms.

Key findings include that firms offer multiple services to consumers and that fees were opaque.

Multiple services and opaque fees

72 The website review and analysis of communications and marketing materials from debt management firms found that firms generally provided multiple services.[28] For example, the review found that four of the nine credit repair firms also provided debt negotiation services. One credit repair firm also advertised budgeting services for individuals in financial hardship.

73 As with credit repair, debt agreement administrators often offer multiple services. The website review of the sampled debt agreement administrators found two of the firms provided only debt agreement administration. The other eight offered additional services, with most offering multiple services:

(a) six advertised bankruptcy assistance;

(b) five advertised a budgeting service;

(c) four advertised informal mediation; and

(d) one also promoted credit repair.

74 Credit repair firms offering multiple services were also found in the mystery shopping exercise. A number of conversations with credit repair firms in the mystery shopping exercise included mentions of a non-credit repair service. One firm advertising credit repair mentioned a non-credit repair service in every initiated call.

75 Only one debt management firm disclosed their fees on their website. This disclosure was not obvious, however, as the fee appeared in a fine print disclaimer at the bottom of the site.

[28] The sample is described in detail in Appendix 1.

76 The opacity of the fees charged by debt management firms has significant implications for a consumer's ability to choose whether the services on offer will meet their needs or not, or to compare the services and cost of one firm to another. All the fees in this analysis were obtained through the mystery shopping exercise.

How debt management firms market their services

77 Debt management firms employ a range of marketing techniques that may be particularly persuasive for consumers in financial hardship. The following discussion includes techniques identified during the marketing analysis and website review.

78 Online marketing includes search engine optimisation and web-based advertising. One firm placed a string of key words such as 'debt relief' and 'debt help' on their website in an effort to optimise search results.

79 One debt agreement administrator placed paid advertisements for search terms involving 'credit repair'. When clicking through one of these advertisements, a landing page (unreachable from the firm's home page) advertised 'bad credit loans'. The following is an extract from the website:

> If you have been refused a debt consolidation loan or you think you will not quality [sic] for one through traditional lenders, there are other options available which you should explore …
>
> Even if you have bad credit, existing loan arrears or credit card defaults, an irregular income or too many debts, [firm name] may be able to help.

80 A debt agreement is an act of bankruptcy with significant implications for a debtor contemplating such a step. It is concerning that a firm purporting to advise consumers in financial hardship about debt agreements would also act as a gateway for the same consumers to access further credit. Such additional credit may increase financial hardship and may be in breach of the lenders' responsible lending obligations. The mystery shopping exercise uncovered this practice.

81 Some credit repair firms directly advertise to credit brokers. Articles and opinion pieces published in industry publications, such as *The Adviser* or *Australian Broker Online*, suggest that brokers may benefit from referring clients to credit repair firms—for example, an article in *The Adviser* claims:

> brokers can engage a credit repair agency to work with their client to improve their credit history …

Findings from stakeholder interviews

82 BIS Shrapnel conducted nine interviews with a selection of stakeholders who had relevant experience with debt management firms. The stakeholders

were identified on the basis of their day-to-day experience dealing with debt management firms and expertise with consumer credit, consumer debt and the issues affecting consumers in financial hardship. BIS Shrapnel did not interview debt management firms or credit reporting bodies. The stakeholders included representatives from ADIs, EDR schemes, financial counsellors, consumer groups and regulators.

83 Beyond informing BIS Shrapnel about the various firms and services they offer, key observations from the stakeholders related to marketing and experience at EDR.

84 In relation to marketing, stakeholders noted that internet advertising appeared to represent the largest source of referrals for debt management firms.

85 Many debt management firms also seemed to obtain court records about debtors from commercial information services focused on credit decision making. It appears that court judgement listings are used to market directly to prospective customers: mail is sent to the individuals on these lists advertising credit repair, debt agreement administration, and mediation services. Interviewees provided examples of letters

> Recently you have had a judgement placed against you by [company]. Whilst we hope that you have now resolved the issue with your creditor, if you haven’t let us help you before the situation becomes serious … [Firm name] specialises in helping Australian’s [sic] enter in a government regulated product called a debt agreement.
>
> Dear [potential client], Your name has been listed on the public records at the Melbourne Magistrates Court this week. (Ref xx/xx)

86 While judgement listings are publicly available and can be obtained directly from courts, a number of stakeholders expressed concerns about the use of this information to market the services of debt management firms. We understand that in some jurisdictions the court gives this information to commercial information services under contractual terms that prohibit the use of the information for marketing purposes.

87 In relation to dispute resolution, stakeholders observed that:

(a) some debt management firms bring complaints to EDR, where the member incurs costs, as a means to influence the member to remove a valid credit listing;

(b) complaints were often framed in a templated format and that there was a lack of tailoring to the needs of individual consumers; and

(c) debt management firms providing credit repair services and generating revenue by acting as intermediaries between consumers and EDR schemes that are freely accessible to consumers were often high cost and of limited value to many consumers.

C Findings from the mystery shopping exercise

Key points

From the mystery shopping exercise, we found that:

- fees varied between and within service types and were uniformly poorly disclosed;
- sales techniques tended to involve consumers committing to further engagement with the firm, often without clarity about the likely cost of the service the firm is offering;
- one firm offered home loans to individuals currently in a debt agreement, where the provision of further secured credit to debtors unable to manage unsecured debt may not be in their best interests;
- there was limited tailoring of services to consumers and some services may not be suitable to the needs of the clients;
- while there is no freely available information on the demographic profile of clients of debt management firms, debt management firms appeared to exercise discretion in which clients they offer services to; and
- there was no mention of free and independent services, such as EDR schemes, in any of the 24 mystery shopping calls to firms providing credit repair services.

Fees and costs

88 The mystery shopping exercise found that, while fee structures varied widely both between and within service types, most debt management firms did not clearly disclose their fees and charges on their websites. All the fee information in the following analysis was drawn from the mystery shopping exercise.

Credit repair

89 We found that firms front loaded their fees, charging an upfront fee followed by a ‘success fee’. A ‘success’ generally means the successful removal of a credit default listing, although it may also apply to other ‘fixes’ such as the separation of a credit report where a naming error may have meant the credit reports of different individuals were mistakenly combined.

90 We found the most common fee structure for credit repair firms was an initial upfront fee of between $495 and $1,095. Many firms did not refund the upfront fee if they were unsuccessful in removing the credit listing. Most firms did, however, charge further fees for successful removals.

91 One firm charged an upfront fee of $495 and an $880 removal fee ($990 on a payment plan). Another firm required an upfront payment of $1,095.[29] A contract from a credit repair firm included an upfront charge of $1,089, a $1,089 charge for each listing corrected and a $990 cancellation fee.

92 Only one credit repair firm in the sample did not charge any upfront fees, only charging customers on successful listing removals ($1,320 for the first listing and $880 for any subsequent listings). Of the eight company websites examined, three included separate claims of a ‘no win, *no removal fee*’ policy (emphasis added) as opposed to a total ‘no win, no fee’ policy.[30]

Debt agreement administrators

93 Debt agreement administrators in the sample charged for their services in one of two ways: upfront fees or as a percentage of total debt. Upfront fees were found to be between $500 and $660 (excluding the $200 government application fee).[31] Others charged a fee based on a percentage (between 13% and 20%) of the total debt.

94 Of the nine mystery shop calls involving a debt agreement recommendation, only five involved upfront fees, two described the total fees payable and two made no mention of fees.

95 We found some inconsistency, even within the same firm, about the fees that applied. For example, in one case, an administrator advised the low-income profile that an upfront fee of $550 was required, while on another call (also under the low-income profile) the same firm advised their fee was $660.

96 Other debt agreement administrators were more consistent. Two firms stated their upfront fees were $500 and $550 respectively. Different calls to the same organisations saw mystery shoppers being quoted identical prices.

97 Explanations of fees were not always clear to the caller, as one mystery shopper (using the low-income profile) describes:

> He spoke about paying off $66 [a week] for five years, which is a total of $17,000. He did give a breakdown of the percentages of where these fees go; however, I was only able to catch one percentage as he glossed over it very quickly and that was that 25%–28% goes to the government. In terms of their fees it was $2,200 broken up into a $700 payment plan over a seven week period, and then $1,500 which is taken out of the initial $66 per week …

98 The debt agreement representative estimated the fees would total $2,200, including all government charges. This was around 13% of the profile’s

[29] This may only be a partial disclosure—we received no comment on the non-existence of any removal fees.
[30] This includes the six credit repair firms allocated to the credit repair category in the sample, plus other firms that also advertised credit repair services.
[31] AFSA charges a fee to lodge a debt agreement: see AFSA, ‘Fees and charges’, webpage, www.afsa.gov.au.

$16,500 in unsecured debt. On a call to a different firm, an employee informed one of the mystery shoppers their fee would be roughly 20% of the consolidated debt.

Budgeting and debt negotiation services

99 We found much less consistency in the fee structures of budgeting and debt negotiation services relative to the other services.

100 The budgeting services included in the sample charged upfront fees and ongoing fixed fees. One budgeting service charged $150 per month for a minimum of six months. Another required a $550 set-up fee as well as an ongoing fee based on the amount owing—which, for the medium-income profile with $308,000 in debt, was $55 per month.

101 There was no clear mention of specific prices on any budgeting service advertising material or website. One website did reveal, however, that the firm fee structure included both an upfront set-up fee and an ongoing management fee.

102 Debt negotiation services charged upfront fees, fees on an hourly basis, or took the gap between the full amount owed and the amount negotiated with creditors as their fee (in this case they offered the debtor an interest-free loan for the full amount).

103 One debt negotiation firm charged $330 per hour and maintained a ‘no win, no fee’ policy. Another required their customers to pay only the face value of the loan, keeping the negotiated difference. The final firm requested a $200 upfront fee and 10% of the original debt as payment for their services.

104 A contract provided by a stakeholder showed one firm charged 30% of the difference between the client’s debt and the firm’s settlement amount. It was not clear if an upfront fee or a success fee were also payable.

105 In cases where the firm takes the difference between the balance owed and the amount negotiated with creditors, there may be no net financial benefit to the consumer from the service, after the payment of fees. The consumer is in the same position as they would have been if they had paid off the total balance of their debts themselves.

The consumer target market for debt management firms

106 There is no freely available information on the demographic profile of clients of debt management firms.

107 The mystery shopping exercise showed that debt management firms appeared to exercise discretion in which clients they offer services to. Only

half the calls initiated by the mystery shoppers ended in the firm offering a product or service.

108 Firms in the sample appeared more likely to offer services to consumers experiencing a greater degree of financial hardship. They also appeared more likely to offer services to individuals with higher income levels. This implies a target market of middle-income to high-income individuals with significant (but not extreme) levels of financial hardship.

109 The effect on product or service offerings of the increase in the financial hardship of the mystery shopping 'profile' is shown in Table 1. The table contrasts how likely mystery shoppers were to be offered services across the first and second stages of the research, with the first stage including mystery shopping profiles experiencing less hardship. A description of the mystery shopping profiles is provided in Appendix 1.

Table 1: Likelihood of mystery shopping profile being offered products or services, by hardship levels

Profile	Less hardship (1st stage)	More hardship (2nd stage)
High-income profile	Moderate likelihood	High likelihood
Medium-income profile	Low likelihood	High likelihood
Low-income profile	Low likelihood	Moderate likelihood
Very low-income profile	–*	None

* The very low-income profile was not used in the first stage. See Appendix 1 for more detail on the mystery shopping consumer profiles.

Source: BIS Shrapnel, primary research.

Sales techniques

110 The mystery shopping exercise found that all of the contacted firms asked for more information or required a face-to-face meeting before proceeding with the client. As contracts can only be issued during a second conversation or at face-to-face meetings, none of the mystery shoppers were presented with a formal contract.

111 There may be sound reasons why a firm cannot proceed without further information or a face-to-face meeting, such as the need to review a credit file or relevant documents. However, as some companies refused to provide any pricing information before a face-to-face meeting, this may also be a marketing technique that builds a cost barrier (in terms of time) to ensure the caller is less likely to go elsewhere.

112 Consumers must therefore commit to further engagement with the firm without any clarity about the likely cost of the service the firm is offering. Operating in this way may increase commitment on the part of consumers to the course of action proposed by the firm, simply because of the time invested. This may reduce the opportunity to consider the value of the service in the potentially high-pressure sales context of a face-to-face meeting.

113 The promised benefits of the services were far more salient than the cost, which was often either heavily front loaded (thereby exacerbating the potential for sunk cost bias) or deferred, built into debts and paid off in smaller increments over time.

Referral to further credit

114 A further product line uncovered through the mystery shopping exercise was the offer of home loans to individuals currently under a debt agreement. The mystery shopper's experience is recounted below:

> I got through to the … 'free consultation'. I had a lengthy discussion whereby I was offered … a 'debt agreement'. He kept saying 'today is all about options, my friend,' but I was really only offered one option. He spoke about the [National Credit Act]. He also mentioned that if I wanted to enter into a home loan within my five-year debt agreement, they did have services there that could help me with that …
>
> [He] only spoke about one downside, and that was that my credit rating would be affected for the five years, and I would not be able to borrow on credit. He did say that if I wanted to enter into a home loan in that time, then they do provide home loan services to people on debt agreements.

115 The provision of further secured credit when the debtor is attempting, via the debt agreement, to address the problem of unmanageable unsecured debt may not be in the best interests of the debtor, and may be in breach of the lender's responsible lending obligations.

Service and value

116 As most debt management firms are not subject to any conduct rules or under any obligation to ensure that services are suitable or appropriate to clients, the mystery shopping exercise found limited tailoring of services to the needs of clients. One mystery shopper reported that they were 'really only offered one option' during the call and that the firm 'did not discuss any other options with me, even when I queried'.

117 The mystery shopping exercise found that consumers on higher incomes were more likely to be offered services and that, as the profiles' incomes

increased, firms tended to give more advice at an early stage. Such advice may or may not ultimately be suitable to the individual needs of that customer.

118 BIS Shrapnel compared the results from the debt management firms mystery shopping exercise with a similar mystery shopping exercise focusing on financial counsellors using the same profiles, and found financial counsellors tailored services to client needs more than debt management firms.

119 Just as there are no conduct obligations or suitability requirements for many debt management firms, there is also no obligation on firms to tell prospective customers about free alternatives, such as EDR. It was therefore not surprising to find that the mystery shopping exercise found no mention of free and independent services, such as EDR schemes, in any of the 24 mystery shopping calls to debt management firms providing credit repair services. One disclosure statement attached in an email mentioned options freely available to consumers.

120 Research by EWON questioned the value of some credit repair services to consumers finding that 70% of individuals coming to EWON to remove credit listings had multiple credit listings.[32] Because multiple listings were so common, and in light of the high fees many credit repair firms charged, EWON commented that:

> It is of considerable concern to EWON that customers are not just paying fees to credit agents when a free service is available, but that these fees typically far exceed the debt amount and include a non-refundable upfront payment of around $950. In cases where it is determined that the credit listing is compliant, customers therefore find the exercise of attempting to fix their credit situation has only worsened their immediate financial position and delivered no benefit in terms of credit rating to offset this negative outcome.

121 Among debt agreement administrators, the mystery shopping exercise also found examples of poor advice. After a call to one firm, a mystery shopper wrote:

> He … recommend[ed] that I initiate a discussion with the bank about the credit cards so as to set a precedent, to show that I had been ‘proactive’ about communicating my situation. Though he said not to be totally candid about [the] overall situation.

122 On at least two occasions mystery shoppers reported claims inconsistent with the legal requirements applying to debt agreements. For example, a debt agreement representative claimed that a Pt IX debt agreement would have no negative impacts as the profile already had an impaired credit record. There are, however, further negative consequences of proposing debt agreements, including appearing on the National Personal Insolvency Index.

[32] EWON, *Research survey report: Consumers’ use and experience of ‘credit fix’ agents* (PDF, 467 KB), September 2012.

123 On at least two occasions a low-income profile was advised to consider a debt agreement. Since this low-income profile had no assets to protect, bankruptcy may have been a better (lower cost) solution to those clients

124 On another occasion, after the screening stage, a high-income profile was advised they should enter into a debt agreement. The high-income profile had an after-tax income that was $15,000 above the income threshold applying to debt agreements, currently $81,121.95. This profile was therefore ineligible for a debt agreement.

D Findings from EDR surveys

Key points

We asked EDR schemes for information about their interactions with debt management firms, as a proxy to measure growth of this sector.

The number of debt management firms is growing, as is the number of consumers they represent at EDR.

This growth in numbers is not reflected in proportional growth in positive outcomes for consumers at EDR.

Role of EDR schemes

125 EDR schemes deal with many thousands of consumer disputes every year. This includes a broad range of debt-related disputes—for example, the financial services EDR schemes (CIO and FOS) deal with disputes about whether the lender met their responsible lending obligations, contractual or disclosure issues related to a debt, hardship arrangements, debt collection activities, and the listing of credit defaults.

126 Unless a debt management firm holds an AFS licence or credit licence, there is no requirement on the firm to belong to an EDR scheme. This means that consumers who may have a complaint about the service provided by a debt management firm will not generally have access to EDR. A small number of firms hold credit licences and belong to EDR schemes, but the majority do not.

127 Telecommunications, energy and water ombudsman schemes can similarly deal with billing and debt-related disputes, including disputes about credit listings, arising from contracts between consumers and providers.

128 In the absence of reliable data on the growth of this sector we set out to understand the extent to which these firms were representing consumers at EDR schemes. We used this information as a proxy for the growth of the sector.

Experience of EDR schemes with debt management firms

129 We found that:

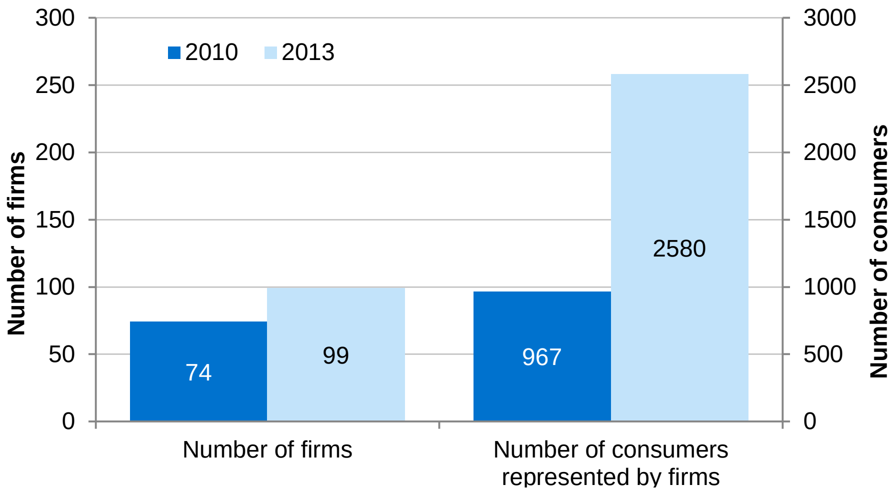
(a) a growing number of firms are representing consumers at EDR—this is concentrated among a few large players, with an increasing number of small firms entering the market;

(b) the disputes brought to EDR schemes by debt management firms relate almost exclusively to arguments about the removal of default listings on consumer credit reports (despite the breadth of issues that can arise for indebted consumers); and

(c) while an increasing number of consumers is being represented at EDR by debt management firms, this is not leading to more credit reporting related disputes being found in favour of consumers.

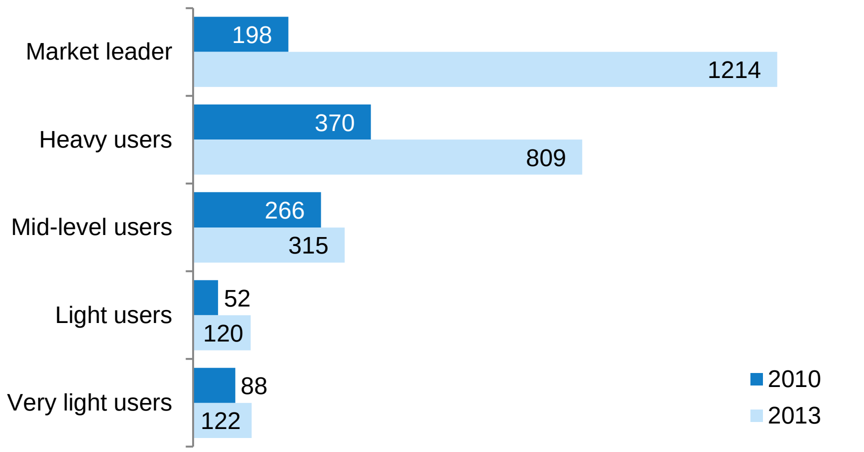
130 Between 2010 and 2013, EDR schemes across the economy experienced growth in both the number of debt management firms bringing disputes to the schemes and in the number of consumers they represented: see Figure 1.

Figure 1: Growth in debt management firms' incidence at EDR between 2010 and 2013, by number of firms and number of consumers



131 We also found concentration among a few large firms and a long tail of medium and small firms. The 'market leader' at EDR represented nearly half (1,214) of all consumers in 2013, up from a fifth (198) in 2010: Figure 2.

Figure 2: Growth in consumers represented at EDR by debt management firms between 2010 and 2013, by firm size



132 The category of 'very light users' of EDR represents the largest number of debt management firms, but the smallest number of consumers. Debt management firms in the very light, light, and mid-level users categories did not experience much growth between 2010 and 2013.

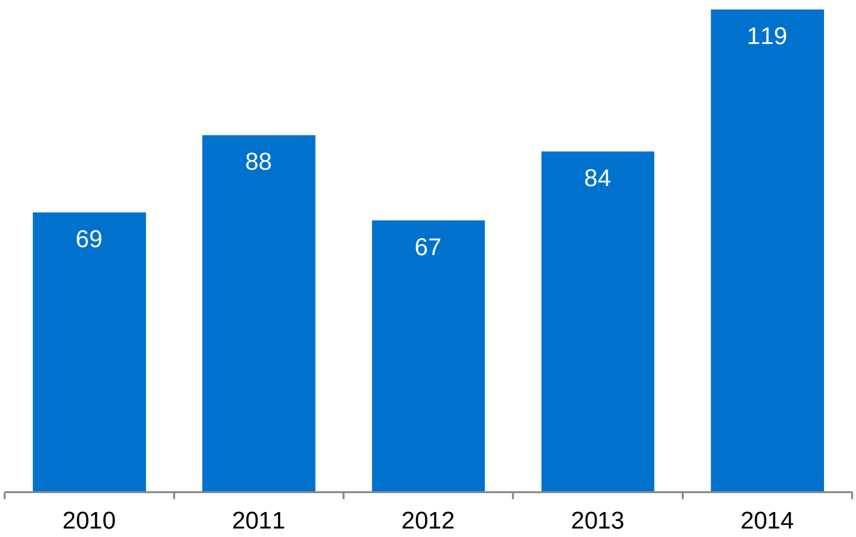
Energy and water ombudsman (EWON)

133 In 2013–14, EWON reported that as more consumers reported credit problems and 'credit fix' companies undertook aggressive marketing campaigns, the scheme saw a rise in the number of consumers bringing their issue to EWON via a commercial advocate (314 complaints, up from 157 in 2012–13).[33]

Experience of financial services EDR schemes with debt management firms

134 CIO and FOS provided data for the 2014 calendar year and up to June 2015. The growth in both the number of firms and the number of consumers represented across the time series is shown in Figure 3–Figure 4.

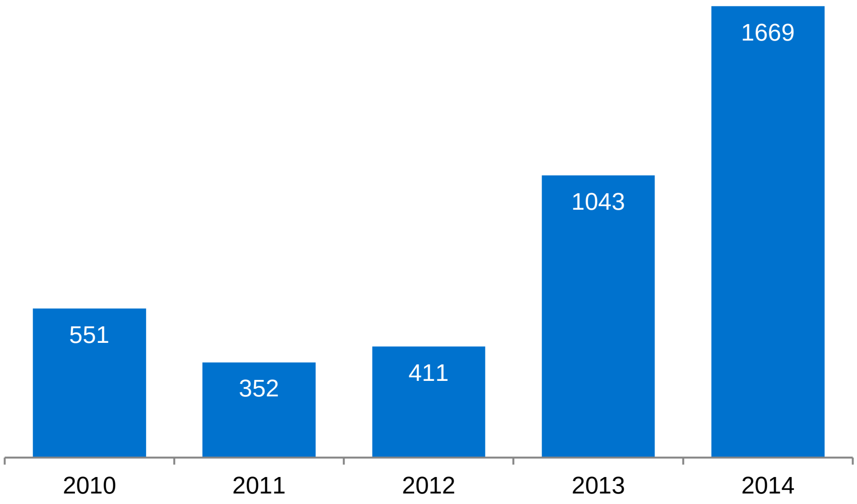
Figure 3: Growth in number of firms at CIO and FOS, 2010–14



135 In 2014, CIO and FOS interacted with 119 debt management firms. This is significantly higher than the number of firms that had been encountered in any year previously. For calendar year 2015, CIO and FOS have dealt with 65 firms at June 2015. This suggests that the upward trend is likely to continue.

[33] EWON, *Annual report 2013–14*, September 2014, p. 31.

Figure 4: Growth in consumers represented at CIO and FOS, 2010–14



136 The number of consumers represented at CIO and FOS by debt management firms grew to 1,669 in 2014 from 1,043 in 2013. In comparison, there were only 551 consumers represented in 2010.

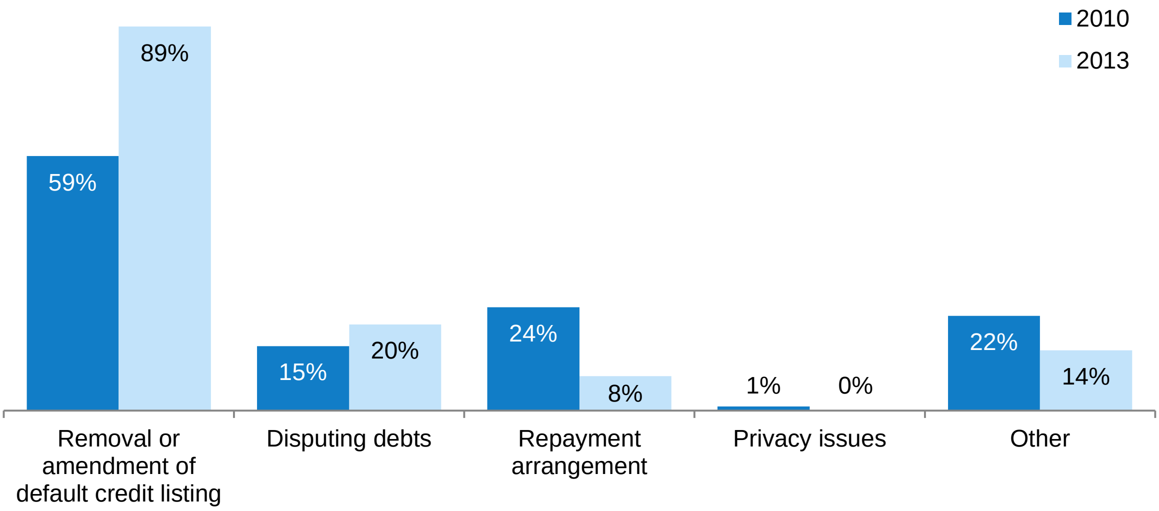
137 Between 1 January 2015 and 30 June 2015, debt management firms represented 610 consumers at CIO and FOS. This suggests that the increase in consumers represented at EDR is continuing.

Issues in dispute and outcomes at EDR

138 The profile of issues that debt management firms raise at EDR is changing. Disputes are increasingly focused on removing default credit listings and decreasingly focused on repayment arrangements: see Figure 5.

139 In 2010, 59% of issues related to the removal or amendment of a default credit listing. This figure rose to 89% in 2013. Disputation of debts rose by a third, from 15% in 2010 to 20% in 2013. However, the proportion of issues relating to dealing with repayment arrangements fell significantly, down from 24% in to 2010 to 8% in 2013.

Figure 5: Issues in dispute at EDR as a percentage of consumers, 2010 and 2013



Note: Issues sum to greater than 100% as a single case may include multiple issues.

140 In relation to the outcomes that debt management firms achieve for consumers at EDR (see Figure 6), we found that:

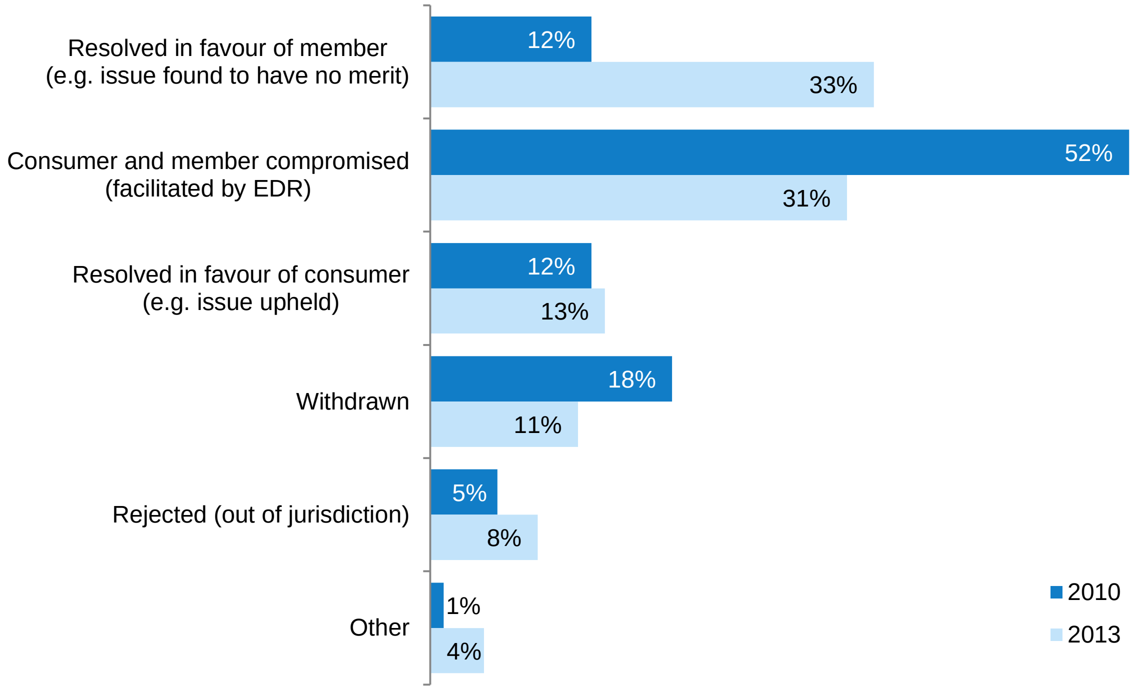
(a) the number of matters resolved in favour of consumers remained relatively static across the time series, at 12% in 2010 and 13% in 2013;

(b) matters resolved by compromise between the parties declined from 52% in 2010 to 31% in 2013; and

(c) matters resolved in favour of the member (e.g. bank, telco or utility)—that is, complaints that are found to have no merit at EDR—increased from 12% in 2010 to 33% in 2013.

141 The data suggests that the growth of debt management firms bringing complaints to EDR is not necessarily leading to a proportional growth in positive consumer outcomes.

Figure 6: Consumer outcomes at EDR, 2010 and 2013



Note: This chart does not include the matters the schemes sent to be dealt with by the relevant company's internal dispute resolution (IDR) process.

142 The decline in outcomes achieved by compromise may suggest that debt management firms are bringing a greater number of claims with limited prospect of success to EDR.

E Case studies

Key points

The following case studies are not representative of all consumers' experiences with debt management firms, although they may be representative of the experience of consumers who seek the services of community legal services or financial counsellors. The consumers in these case studies received services from debt management firms that were unsuitable and, in some cases, the services made a stressful situation much worse.

These case studies also reflect the spectrum of issues and concerns raised by stakeholders including financial counsellors, credit providers, consumer legal centres and EDR schemes. These issues are reflected in complaints to ASIC.

Case study 1: Debt agreements

Personal circumstances	Ms C is a single parent working casually who was experiencing financial hardship as a result of taking unpaid time off work to care for her injured son.
Reason for seeking assistance	Ms C had two unsecured personal loans and had entered into three pawnbroking contracts to help meet immediate living expenses. She expected her hardship to improve after a few months. After contact with a representative of Firm X at the train station, Ms C was handed a flyer that advertised 'no interest debt consolidation' and included testimonials of people who had saved thousands of dollars of interest payments. Ms C checked the firm's website and approached their shopfront, which also advertised 'no interest debt consolidation'.
Service provided	Ms C had two face-to-face meetings with the firm and believed that they could help her to get her debts consolidated into one loan with no interest which, she believed would help to relieve her financial hardship. The materials given to Ms C by the firm did not mention debt agreements or that the firm did not in fact arrange debt consolidation loans. The firm did not explain to Ms C that they would arrange a debt agreement and that they did not arrange loans. The firm's representative told Ms C she would be charged an $880 application fee if the application went through to the 'Government Board'. During the application process, Ms C began to suspect that the representative was going to great lengths to make her application sound bad. He said words to the effect of 'the application has to be bad in order for the board to accept it. You should stop paying your loans'. The representative then disclosed the fees that would be payable for the services. Ms C was concerned as these fees had not been discussed earlier. She made an excuse not to sign the application form that day and left with the intention of seeking independent advice. Ms C received free legal advice and information about debt agreements and saw a financial counsellor. On understanding that a debt agreement was an act of bankruptcy, Ms C realised that this was not the best option to deal with her debts. Ms C contacted the firm to advise that she did not want to go through with the application. She subsequently paid out her pawnbroker debts and was then able to afford to pay her personal loans.

Cost	The firm commenced proceedings in the local court, claiming an $800 fee for preparation of a debt agreement. Ms C successfully defended the proceedings.
Commentary	Ms C was seeking to consolidate her debts but was offered a service (a debt agreement) that would have had serious long-term implications for her. The advice to enter a debt agreement was unsuitable to Ms C's circumstances and her short-term hardship, and the advice to stop paying her loans could have made her situation worse.

Case study 2: Budgeting service

Personal circumstances	Mr S receives the disability support pension and occasionally works part time. Mr S had a car loan and debts with a number of payday lenders and telcos. Mr S found it difficult to manage his income and contacted Firm Y to help him manage his finances.
Service provided	Firm Y requested that Mr S's income be paid into a Firm Y bank account. Mr S paid $32.24 a week in account administration fees and a $1,975.00 establishment fee. Firm Y provided him with $30 a week allowance for his living expenses, which did not include the cost of his board. Mr S repeatedly advised Firm Y that his priority was to pay his car repayments; however, no payments were made for approximately two months. Soon after, Firm Y requested hardship on Mr S's car loan and a moratorium on payments for four months was entered into. However, Mr S did not receive any increase in his living allowance from Firm Y. Firm Y also failed to make the required payments on time to Mr S's other creditors and Mr S continued to receive calls and letters from the creditors in relation to non-payment and late payment.
Cost	An upfront establishment fee of $1,975.00 and $32.24 a week in account administration fees.
Commentary	There was no assessment of whether the service was suitable for Mr S, and the delay in making any payments to creditors suggests that Firm Y's priority was to ensure the payment of its fees before any payments were made to creditors. The service was unsuitable for Mr S's expressed needs, which were to prioritise his car loan, manage his creditors and leave him sufficient funds to meet daily living expenses. With the help of a free financial counsellor, Mr S could have entered into repayment arrangements at an affordable rate with his creditors and avoided further default fees. He could also have directed the establishment fee and the account administration fees towards his living expenses and/or the payment of his debts.

Case study 3: Debt negotiation

Personal circumstances	Ms R is 56, separated and awaiting a property settlement. After a workplace injury, Ms R was on workers' compensation and had $75,000 in credit card debt. Suffering with her injury and mental health issues, Ms R subsequently became homeless, moving from friend to friend and sometimes sleeping in her car.
Reason for seeking assistance	Ms R saw an advertisement online for Firm Z, who advertised debt negotiation services. The fees were 15% of the debt being negotiated (a total of $1,200 for Ms R) and required to be paid before the firm would help her. This worked out to an initial amount of $1,200 for Ms R; the total cost would be $9,815 plus GST. After the initial upfront payment, Ms R would pay the balance in $100 weekly instalments.

Service provided	Firm Z advised her to 'lay low' and to save the money she would otherwise pay creditors in order to accumulate money to make settlement offers. Ms R paid the upfront fee and commenced paying $100 per week. Firm Z wrote to her creditors making offers without getting any instructions from Ms R as to the affordability or practicality of the offers, including offering lump sum settlements to be paid short periods of time. Firm Z did not give Ms R credible options about how to handle her creditors and pursued moratoriums and made offers to creditors that Ms R was never in a position to fulfil. Several creditors listed defaults on Ms R's credit file and threatened to commence proceedings, while many debts were assigned to debt collectors. After the settlement of her property, Ms R was in a position to make offers. By this stage, Ms R had seen a financial counsellor who helped her with the funds she had to make offers of settlement with her creditors at no cost.
Cost	With her limited means Ms R paid Firm Z the $9,815.
Commentary	Firm Z was a member of FOS and Ms R subsequently lodged a complaint with FOS. FOS issued a recommendation and subsequently a determination finding that the contract Ms R had entered into with Firm Z was unconscionable. FOS directed Firm Z to refund the fees paid by Ms R ($9,850 plus interest) and made an award for non-financial loss to Ms R of $2,000.

Case study 4: Credit repair

Personal circumstances	Mr W is a 49-year-old labourer. Mr W was out of work for a period and accrued a credit card debt of approximately $7,000. Mr W took out a personal loan to pay the bill but struggled to make repayments and defaulted. The personal loan debt was assigned to a debt collector who commenced proceedings and obtained default judgment against Mr W in the local court. Mr W managed to enter into an arrangement with the debt collector under which he would pay off his debt at $100 per week and paid off the entire debt 18 months earlier than the originally agreed timeframe.
Reason for seeking assistance	When Mr W later tried to finance a boat purchase, he was told the default judgment with the debt collector was listed on his credit report. Mr W wanted to have the listing removed, so he could now borrow.
Service provided	Mr W initially contacted Firm A, a credit repair firm, and paid them $900 to 'repair' his file. Firm A claimed that they were unable to do anything unless Mr W paid them a further $900, as the debt collector refused to remove the listing. Mr W refused to pay any more and sought alternative assistance. Mr W later found Firm B, another credit repair firm on the internet. He told them all about his experience with Firm A and they claimed that they were 'different', noting that he would only be required to make a one off payment of $1,095 (including GST). Mr W was also told that Firm B would not take him on unless they were confident he could win. Following several telephone conversations, Mr W agreed to engage Firm B and they sent him an application form which he completed with the details of his situation and paid $1,095. Firm B sent Mr W a report containing information on his credit file and documents to file in court. Firm B had prepared a notice of motion to set aside default judgment and an affidavit in support for Mr W to file in court.

Service provided (cont.)	Mr W's matter against debt collector was listed for hearing. At the hearing Mr W was told by the court clerk that the documents prepared following Firm B's instructions were incorrect. Fortunately for Mr W, the court clerk assisted him in completing the correct paperwork. The debt collector was legally represented at the hearing while Mr W was unrepresented. Mr W was confused by the proceedings and did not understand what was happening. When questioned by the registrar he read out the following script which had been prepared for him to read out by Firm B: 'I am requesting that this judgement be struck out from my credit file as it has been paid. I want my credit file to reflect my current credit worthiness and with this judgement remaining, it doesn't. I am concerned that if this paid judgement remains it will cause me further financial hardship.' In response to this statement the registrar laughed and referred Mr W to a community legal service. The registrar did not order costs against Mr W although counsel for the debt collector requested he do so. Following the hearing, Mr W contacted the general manager of Firm B. The general manager claimed that Firm B's employees would never promise to do something they could not deliver on and that they would never guarantee anything. He stated that he would not give Mr W a refund for the fee paid; however, he offered Mr W a lifetime membership to Firm B's services, which meant that if Mr W got into any further financial trouble later down the track, Firm B would assist free of charge. The general manager also told Mr W that he had a contact for someone who would be able to give him a loan without a credit check.
Cost	Mr W paid a total of $1,995 in fees, comprising $900 to Firm A and $1,095 to Firm B, in an attempt to have the default listing with the debt collector removed from his credit report.
Commentary	Where a credit provider obtains default judgment against a consumer, the judgment information is automatically included on a credit report. In order to have judgment set aside, Mr W would need to show the court that there was a legitimate reason to do so. It is likely that the advice Firm B gave to Mr W in relation to the notice of motion to set aside default judgment was negligent. Mr W experienced confusion and humiliation in court and narrowly avoided a costs order against him.

Case study 5: Credit repair

Personal circumstances	Ms X had moved house and advised her telco of her change in address, yet her phone bill was sent to her previous address.
Reason for seeking assistance	The telco had listed a default for $120. Ms X engaged Firm D to remove the listing.
Service provided	None. Shortly after her contact with Firm D, Ms X lodged a complaint with the Telecommunications Industry Ombudsman (TIO). The listing was removed within days as a result of Ms X lodging a complaint with the TIO herself.
Cost	Ms X paid Firm D $1,100 to remove the listing.
Commentary	Firm D refused to refund the $1,100 to Ms X as they insisted she had entered a contract with them.

F Regulatory framework

Key points

There is no uniform regulatory framework applying to the activities of debt management firms in Australia.

Different aspects of the services provided by debt management firms are regulated by the National Credit Act, Bankruptcy Act, Australian consumer law (ASIC Act and Competition and Consumer Act) and the *Privacy Act 1988* (Privacy Act).

In other jurisdictions, debt management firms may be the focus of targeted regulation for some activities, such as credit repair, or a broader range of activities may be caught by the credit licensing framework.

Australia

143 There is no uniform regulatory framework applying to the activities of debt management firms in Australia.

144 Most debt management firms are not required to hold a credit or AFS licence administered by ASIC. Debt agreement administration services are regulated under the Bankruptcy Act.

145 The general consumer law prohibitions against misleading and deceptive conduct and unconscionable conduct apply to the extent that the conduct relates to 'financial services'—as set out in the ASIC Act—or to goods and services—as set out in the Competition and Consumer Act.

National Credit Act

146 Since 1 July 2010, a national licensing scheme under the National Credit Act has applied to people who engage in credit activities in relation to consumers. ASIC is responsible for regulating the National Credit Act. Whether the licensing requirements apply will depend on whether the firm is engaging in particular types of activities in relation to a type of credit or consumer lease to which the National Credit Code (Sch 1 to the National Credit Act) applies.

147 Provision of credit assistance is the most common type of regulated credit activity that may be applicable to debt management firms. Credit assistance is defined in s8 of the National Credit Act.[34] While the activities of debt management firms will not ordinarily be regulated by the National Credit

[34] Guidance on what constitutes credit assistance is available in Regulatory Guide 203 *Do I need a credit licence?* (RG 203).

Act, these firms may engage in credit activities if they suggest that a consumer take out a debt consolidation loan with a particular lender or, having negotiated an arrangement with an existing lender, suggest to the consumer that they stay in that loan.

148 Persons who engage in credit activities and hold a credit licence would be subject to the obligations under the National Credit Act. General conduct obligations include doing all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly (s47(1)(a)) and being a member of an approved EDR scheme (s47(1)(i)).

149 The law exempts not-for-profit financial counselling services and registered debt agreement administrators from the requirement to hold a credit licence: see reg 20 of the National Consumer Credit Protection Regulations 2010.

Bankruptcy Act

150 Under Pt IX or the Bankruptcy Act, debt agreement administrators need to be registered with AFSA.

151 The exemptions from the credit law that apply to debt agreement administrators do not extend to other services provided by debt management firms.

Australian consumer law (ASIC Act and Competition and Consumer Act)

152 ASIC administers the Australian consumer law provisions in Pt 2, Div 2 of the ASIC Act in relation to ‘financial services’. The meaning of ‘financial service’ is defined in s12BAB of the ASIC Act. ASIC’s jurisdiction to enforce its powers over the activities of debt management firms depends on whether the activity was in relation to a financial service.

153 Activities that fall outside this definition would fall under the jurisdiction of the Australian Competition and Consumer Commission (ACCC) and state and territory consumer protection regulators, who jointly enforce the Australian Consumer Law (which is at Sch 2 to the Competition and Consumer Act) as it applies to goods and services.

154 Consumer protection provisions under the ASIC Act that are relevant to the conduct of debt management firms include:

(a) unfair contact terms provisions (Pt 2, Subdiv BA);

(b) a prohibition on unconscionable conduct (s12CB);

(c) a prohibition of the use of physical force, undue harassment and coercion (s12DJ); and

(d) prohibitions on misleading and deceptive conduct (s12DA) or making false or misleading representations (s12DB).

Privacy Act

155 The amendments to the Privacy Act that came into effect on 12 March 2014 pave the way toward a more comprehensive credit reporting system. Credit providers that hold a credit licence can now access and list information about consumers' repayment history, including whether a consumer made a payment on time or missed a payment. The increase of additional data sets in consumers' credit report (and therefore possible contestable information) may significantly increase the activity of entities seeking to challenge the accuracy of a consumer's credit report.[35]

156 Commonwealth privacy laws are enforced by the OAIC.

International approaches

157 Like Australia, services provided under the bankruptcy framework are generally the subject of specialist regulation in international jurisdictions. For those services that fall outside the bankruptcy framework, jurisdictions tend to regulate the activities of debt management firms by:

(a) introducing targeted regulation of specific activities, such as credit repair; or

(b) requiring firms to hold a relevant licence or authorisations under the broader credit licensing regime.

158 In the United Kingdom, for example, debt advice or debt management services—along with the activities of credit repair firms, which provide 'credit information services'—must hold a licence with the relevant authorisations and meet a range of conduct and disclosure obligations under the *Financial Services and Markets Act 2000* (UK), which is administered by the FCA.

159 In the United States, debt management firms are known as 'debt relief services' and are subject to conduct regulation, which includes prohibitions against unfair or deceptive conduct. Some states also enforce the Telemarketing Sales Rule, which was amended in 2010 to add additional consumer protections that specifically addressed the telemarketing of debt relief services.[36] Measures include:

(a) specific disclosures to consumers and prohibitions on misrepresentations;

[35] Further information on amendments to the Privacy Act is available on OAIC's website (www.oaic.gov.au).
[36] FTC, *FTC issues final rule to protect consumers in credit card debt*, media release, 29 July 2010.

(b) advance fee bans, which prevent debt relief services from collecting fees until the debt relief service successfully renegotiates, settles, reduces, or otherwise changes the terms of at least one of the consumer's debts, among other measures;

(c) requirements that before charging a fee:

(i) the consumer must execute a debt relief agreement with the creditor; and

(ii) the consumer must make at least one payment under that agreement; and

(d) requirements that the fee must be proportional to the fee charged for the entire debt relief service (if the firm uses a flat fee structure) or a percentage of savings achieved (if the firm uses a contingency fee structure).

160 Unlike debt relief services, credit repair is the focus of specific regulation in the United States. The Credit Repair Organizations Act (Title IV of the *Consumer Credit Protection Act 1968* (US)) was enacted in 1996 to ensure that prospective buyers of credit repair services from credit repair organizations are provided with the necessary information to make an informed decision. Under the Credit Repair Organizations Act, a credit repair organization must:

(a) provide customers with a written statement of their rights under the *Fair Credit Reporting Act 1970* (US);

(b) accurately represent what it can and cannot do;

(c) not collect any money until all promised services are performed;

(d) provide a written contract; and

(e) provide a three-day cooling-off period.

Spectrum of regulatory approaches

161 Subject to whether broader licensing requirements apply, jurisdictions adopt different regulatory approaches to target the conduct issues, including:

(a) a prohibition on the front loading of fees and charges;

(b) cooling-off periods;

(c) transparency and disclosure obligations;

(d) authorisation and licensing requirements;

(e) fit and proper persons tests;

(f) quality of advice and suitability requirements;

(g) appropriate systems and controls; and

(h) measures to address conflicts of interest in cross selling and incentive arrangements.

Appendix 1: Methodology

162 ASIC's CAP commissioned research to better understand the debt management market in Australia and to understand the consumer experience.

163 This project incorporates a range of research methodologies. Quantitative and qualitative methodologies and primary and secondary sources were all used to compensate for the limited public data available and to give a more comprehensive picture.

164 Research was conducted between February and June 2014 with some supplementary research in 2015. We commissioned BIS Shrapnel to conduct stakeholder interviews, a mystery shopping exercise, exploration of marketing material and network analysis. The FRLC provided the case studies used in the report.

165 ASIC conducted two complementary surveys: one collecting information on IDR procedures and the other information on EDR schemes. The research stages were iterative, with overlap between many of them.

Qualitative analysis and stakeholder interviews

Marketing review and desktop analysis

166 In April 2014, we reviewed the marketing materials published by debt management firms. The analysis concentrated on the medium and content with a focus on information conveying a certain outcome. This review contributed to a deeper understanding of the marketing and selling techniques used in the industry. It also revealed segments of the population targeted by these firms. The review included:

(a) web-based advertising (including company websites);

(b) television;

(c) published articles and opinion pieces;

(d) mailed items;

(e) other publicly accessible documents (including reports and booklets); and

(f) items received through the course of our mystery shopping exercise.

167 While most of the documentation was publicly available, stakeholders also provided BIS Shrapnel with documents, such as mail-outs and contracts, that were included in the analysis. Together, the documents provided evidence of direct marketing and the presence of fees that complement the evidence gathered in the mystery shopping exercise.

168 We also reviewed each firm's website to assess what information was provided to the public. This information supplemented the overall analysis.

Stakeholder interviews

169 Stakeholder interviews were held with representatives of regulators, consumer groups, financial counsellors, ADIs and EDR schemes. ASIC provided BIS Shrapnel with a list of 11 stakeholders, nine of whom participated in the semi-structured phone interviews.

170 Stakeholder interviews occurred throughout the research. Early interviews informed the mystery shopping exercise and marketing analysis, while later interviews were used to explore some of the issues emerging from the research.

171 Interviewees described the types of firms operating in the market and some of the key features of these firms—including fee structures, target markets and marketing techniques—and the characteristics of product and service offerings as observed from their perspective and experience.

172 BIS Shrapnel employed an informal approach in these interviews, inquiring about the types of firms each industry expert either knew most about or interacted with before obtaining a general overview as informed by their relevant experience or area of expertise. The interviews by sector are provided in Table 2.

Table 2: Stakeholder interviews

Organisation type	Individuals approached	Individuals responded
Regulatory bodies	2	2
ADIs	4	2
EDR schemes	3	3
Financial counsellors and consumer advocacy groups	2	2
Total	**11**	**9**

Source: Primary research, BIS Shrapnel.

173 The telephone interviews ranged between 15 and 45 minutes in length. Of the nine interviews, five were conducted before the mystery shopping exercise and four at its conclusion on 30 May 2014. The five interviewees contacted before 30 May were asked to provide advice for the mystery shopping exercise. These stakeholders included two representatives of ADIs, two representatives of EDR schemes and one financial counsellor. Of the stakeholders contacted after the mystery shopping exercise, two were employed by regulatory bodies, one by a financial counsellor and one by an ADI.

Mystery shopping exercise

Sample selection for mystery shopping exercise

174 To ensure the reliability of the mystery shopping exercise, BIS Shrapnel generated a sample of firms that encompass the larger players in each field while maintaining some elements of randomness. Based on stakeholder interviews, we opted to focus on the categories set out in Table 3. A more detailed description of each is provided in paragraphs 175–178.

Table 3: Firms included in the sample

Organisation type	Mystery shopping exercise
Credit repair	6
Debt agreement administrators	6
Other debt management firms (debt negotiation and budgeting services)	4

Source: Primary research, BIS Shrapnel.

175 The sample was drawn from the two or three largest Google advertisers in each category and supplemented with random selections from directory services (such as the AFSA list of registered debt agreement administrators and the Yellow Pages).

176 Each entity was placed in a discrete category. Firms providing services in overlapping categories (i.e. that feature multiple service lines) were placed in the category for which they advertised most prominently. For example, a firm may provide both credit repair and debt negotiation services but if it more prominently advertises its credit repair services, it was placed in the credit repair group.

177 Financial counselling services (the mystery shopping exercise control group) were excluded from this because they were not a relevant control group.

178 As in the overall sample construction process above, to construct the mystery shopping exercise sub-sample we selected the largest firm in each category and randomly selected the remaining firm. Two credit brokers were added to explore the existence of any referrals to debt management firms; we found none.

Mystery shopping field work

179 BIS Shrapnel subcontracted the Forrest Marketing Group to conduct a mystery shopping exercise to further explore the product offerings of debt management firms. Forrest called a range of debt management firms

simulating prospective customers. This technique resulted in qualitative data on the characteristics, fee structures and benefits (perceived or otherwise) of their product offerings. It also served to provide further insight into sales techniques.

180 Evidence from the published materials review was compared against mystery shopping responses. We identified the products consumers were urged to take up, as well as each company's overall suite of options.

181 Mystery shoppers were provided with background on the companies they were calling and asked to review their websites to familiarise themselves with their services before beginning a phone call. Privacy laws meant we could not record the mystery shopping conversations without obtaining consent—as such, each shopper wrote a detailed summary of every conversation.

182 A selection of financial counsellors were also called during the mystery shopping exercise. The information gathered in these calls was compared with the advice of debt management firms. To reduce bias, these counsellors were not contacted as part of the industry expert interviews.

183 This stage of the research was conducted in two phases:

(a) A 'pilot' phase to identify the extent of information that could be extracted from for-profit debt management firms while also building a general view of the sector as a whole. The mystery shoppers used the shopper profiles only as a general guide. This phase helped refine the later profiles.

(b) A second phase in which the shoppers used more defined profiles. This phase still required some flexibility on the part of the mystery shoppers but allowed for more robust comparisons between the different types of firms contacted. It also generated most of the detailed data.

184 BIS Shrapnel reviewed the mystery shopping exercise output at the end of each day as part of a quality control process to ensure the integrity of the data. The pilot phase was conducted on 19 May 2014 with 24 calls initiated.

185 Following the pilot phase, and with significant assistance from one of the stakeholder interviewees, we re-worked the profiles to increase variability in the advice provided by debt management firms and to more closely reflect the individuals that are likely to contact these services. The attributes of new aliases included increased financial stress levels and the introduction of a very low-income profile. The second phase was conducted on 21–23 May 2014; 56 calls were initiated in this phase.

186 A limitation of this methodology is that none of the calls were advanced to a stage where a formal contract was presented. As the shoppers had false identities, they were unable to receive call-backs from the debt management

firms or attend physical meetings. Contracts would only be issued during a second conversation or at meetings. This limitation meant we could not analyse these contracts to identify if what the firms offered over the phone and in person matched what they offered in the contract. This includes exposing the presence (or lack thereof) of any hidden fees.

Mystery shopping consumer profiles

187 Three profiles were created for the mystery shoppers during the pilot phase of the mystery shopping exercise. These comprised a high-income profile, a medium-income profile and a low-income profile, with increasing levels of financial hardship: see Table 4.

Table 4: Pilot phase profiles

Variable	High-income profile	Medium-income profile	Low-income profile
Total debt	$558,000	$308,000	$11,000
Credit card debt	$8,000	$8,000	$8,000
Home loan	$550,000	$300,000	–
Weighted average interest rate	6%	7%	20%
Yearly interest spend	$34,250	$21,000	$2,200
Yearly income after tax	$96,000	$52,800	$39,600
Gender	Randomised	Randomised	Randomised
Age	Above 40	Below 50	Randomised

Source: Primary research, BIS Shrapnel.

188 In the second stage (Table 5), we defined the debts these profiles had (i.e. how much and with who). All profiles in this scenario had increased levels of debt and generally higher interest rates. The high-income profile involved debt collector calls and late mortgage payments, the medium-income profile changed to a single individual with a potentially disputable debt, and the low-income profile was largely unchanged from the pilot phase. A very low-income profile was added that involved a single mother with very limited income and extreme interest rates.

Table 5: Second stage profiles

Variable	High-income profile	Medium-income profile	Low-income profile	Very low-income profile
Total debt	$604,000	$333,000	$16,500	$8,500
Credit card debt	$16,000	$13,000	$15,000	$7,500
Other debt	$30,000	$20,000	$1,000	$1,000
Home loan	$550,000	$300,000	–	–
Weighted average interest rate	7%	7%	34%	47%
Yearly interest spend	$39,400	$24,700	$5,600	$4,000
Yearly income after tax	$96,000	$52,800	$39,600	$18,005
Gender	Randomised	Randomised	Randomised	Female
Age	Above 40	Below 50	Randomised	Below 40

Source: Primary research, BIS Shrapnel.

Survey of ADIs and EDR schemes

189 To understand the size and impact of the debt management industry, ASIC collected information from the entities (ADIs and EDR schemes) that interact with them on a regular basis. A survey was developed to quantify the impact of debt management firms on industry and EDR schemes.

190 The surveys of dispute resolution providers were developed in February 2014. To ensure both survey instruments suitably collected information from all surveyed entities, the surveys were tested on selected ADIs and EDR schemes.

191 Feedback on the surveys was incorporated during March and April 2014. In May 2014 the surveys were distributed, with responses received throughout May and June. Analysis took place in July 2014. CIO and FOS updated their responses to the same survey instrument in September 2015.

192 The survey took the form of an Excel spreadsheet with information provided on ADI and EDR scheme contact with individual debt management firms. This meant the data provided by different entities (ADIs or EDR schemes) on the same debt management firm to be combined. As a result we were able to examine industry concentration and the collective impact of individual debt management firms.

Survey content

193 The survey for ADIs asked the following questions about each debt management firm:

(a) the name of the direct consumer contact;

(b) the types of requests, including the number that were:

  (i) an update on the status of an account

  (ii) an administrative request (e.g. a change of address, request for repayment books);

  (iii) a request for documentation

  (iv) disputing debts;

  (v) about repayment arrangements;

  (vi) about the removal or amendment of a default credit listing; and

  (vii) about another issue;

(c) the number of issues that resulted in:

  (i) a debt reduction or waiver offer;

  (ii) a repayment plan;

  (iii) removal or amendment of a default credit listing;

  (iv) rejection;

  (v) withdrawal; and

  (vi) another outcome;

(d) the number of issues that were escalated to EDR;

(e) the total number of consumers represented by requests;

(f) staff time in hours spent on requests; and

(g) whether the scheme had received any complaints about the firm.

194 The survey for EDR asked the following questions about each debt management firm:

(a) the name of the direct consumer contact;

(b) the number of issues in dispute, including about:

  (i) disputed debts;

  (ii) repayment arrangements;

  (iii) removal or amendment of default credit listings;

  (iv) privacy issues; and

  (v) other issues;

(c) the impact of disputes, including the total number of consumers represented;

(d) the number of disputes returned to IDR, including the number:

(i) resolved at IDR; and

(ii) returned to EDR;

(e) the outcomes, including the number:

(i) rejected (out of jurisdiction);

(ii) withdrawn;

(iii) resolved in favour of the member (i.e. the issue was found to have no merit);

(iv) resolved in favour of the consumers (i.e. the issue was upheld);

(v) resolved through compromise between the consumer and member; and

(vi) completed in another way.

Sample response

195 The survey was sent to the entities between April and June 2014. Responses were received from nine ADIs, including the four major ADIs, and eight EDR schemes.

196 The ADI survey was distributed to members of the Australian Banking Association and the Customer Owned Banking Association. Responses were received from four major banks and five smaller banks and credit unions.

197 The ADI survey was also distributed to five debt collectors; however, no responses were received. One debt collector provided qualitative evidence of their experiences with debt management firms.

198 Differences in the way ADIs recorded information resulted in missing information from some entities, for some years. This limited the analysis. As a result, overall themes were drawn on for the analysis and detailed analysis is not provided.

199 The EDR survey was distributed directly to CIO, FOS and TIO, as well as all state energy and water ombudsmen.[37] Responses were received from all ombudsmen. Further information was collected from CIO and FOS in October 2015.

[37] EWON, Energy and Water Ombudsman Queensland, Energy & Water Ombudsman SA, Energy and Water Ombudsman Victoria, and Energy and Water Ombudsman Western Australia.

International comparison

200 In March 2014, ASIC requested information from international agencies with expected power over debt management firms. The jurisdictions included were the United States, the United Kingdom, Brazil, South Africa and New Zealand. The information ASIC requested included:

(a) whether these businesses and/or associated activities are regulated in the jurisdiction;

(b) where the businesses are regulated, the number of these businesses that are regulated in the jurisdiction;

(c) whether there are any gaps in the regulatory framework (i.e. associated activities that are not regulated);

(d) which agency or agencies are responsible for the regulation of these businesses and/or associated activities in the jurisdiction;

(e) how each associated activity is defined by relevant legislation and/or case law;

(f) which agency or agencies are responsible for consumer complaints about these businesses and associated activities;

(g) whether there are any EDR schemes for these businesses and associated activities; and

(h) whether there are any non-government organisations operating in the interest of consumers in competition with these types of businesses.

201 Further desktop research was conducted in 2015.

Appendix 2: Data tables for figures

Table 6: Data table for Figure 2

Firm size	2010	2013
Market leader	198	1214
Heavy users	370	809
Mid-level users	266	315
Light users	52	120
Very light users	88	122

Table 7: Data table for Figure 3

Year	Number of firms at CIO and FOS
2010	69
2011	88
2012	67
2013	84
2014	119

Table 8: Data table for Figure 4

Year	Consumers represented at CIO and FOS
2010	551
2011	352
2012	411
2013	1043
2014	1669

Table 9: Data table for Figure 5

Issue in dispute	2010	2013
Removal or amendment of default credit listing	59%	89%
Disputing debts	15%	20%
Repayment arrangement	24%	8%
Privacy issues	1%	0%
Other	22%	14%

Table 10: Data table for Figure 6

Outcome	2010	2013
Resolved in favour of member (issue found to have no merit)	12%	33%
Consumer and member compromise (facilitated by EDR)	52%	31%
Resolved in favour of consumer (issue upheld)	12%	13%
Withdrawn	18%	11%
Rejected (out of jurisdiction)	5%	8%
Other	1%	4%

Key terms

Term	Meaning in this document
ACCC	Australian Competition and Consumer Commission
act of bankruptcy	An action, event or declaration listed in s40 of the Bankruptcy Act that can be used by a creditor to apply to the court to make a person bankrupt
ADI	Authorised deposit-taking institution—has the meaning given in s5 of the National Credit Act
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFSA	Australian Financial Services Authority (formerly the Insolvency and Trustee Service Australia)
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
Australian Consumer Law	Sch 2 to the Competition and Consumer Act
Bankruptcy Act	*Bankruptcy Act 1966*
BIS Shrapnel	BIS Shrapnel Pty Ltd, the company that carried out a qualitative analysis of debt management firms' marketing material, stakeholder interviews and a mystery shopping exercise
CAP	ASIC's Consumer Advisory Panel
CIO	Credit and Investments Ombudsman—an ASIC-approved EDR scheme
Competition and Consumer Act	*Competition and Consumer Act 2010*
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit repair	A type of service offered by debt management firms that promises to clear negative information from credit reports held by credit reporting bodies, so that a consumer is more likely to get credit or access to other services in the future

Term	Meaning in this document
credit reporting body	An organisation or agency that carries on a credit reporting business Note: See s6 of the Privacy Act for the full definition.
Credit Repair Organizations Act	Title IV of the *Consumer Credit Protection Act 1968* (US)
debt management firm	A firm that charges fees for services to consumers in financial hardship or with listings on their credit reports
EDR	External dispute resolution
EDR scheme (or scheme)	An external dispute resolution scheme approved by ASIC under the *Corporations Act 2001* (see s912A(2)(b) and 1017G(2)(b)) and/or the National Credit Act (see s11(1)(a)) in accordance with our requirements in RG 139
EWON	Energy & Water Ombudsman NSW
FCA	Financial Conduct Authority (UK)
FOS	Financial Ombudsman Service—an ASIC-approved EDR scheme
FRLC	Financial Rights Legal Centre
FTC	Federal Trade Commission (US)
IDR procedures, IDR processes or IDR	Internal dispute resolution procedures/processes that meet the requirements and approved standards of ASIC under RG 165
National Credit Act	*National Consumer Credit Protection Act 2009*
National Credit Code	National Credit Code at Sch 1 to the National Credit Act
OAIC	Office of the Australian Information Commissioner
Privacy Act	*Privacy Act 1988*
s8 (for example)	A section of the National Credit Act (in this example numbered 8), unless otherwise specified
telco	Telecommunications company

Related information

Headwords

community legal services, consumer behaviour, consumer complaints, credit repair, credit reports, budgeting services, debt agreements, debt management firms, debt negotiation, EDR scheme, external dispute resolution, financial counsellors, financial hardship, financial stress, IDR processes, internal dispute resolution, ombudsman schemes

Regulatory guides

RG 203 *Do I need a credit licence?*

Legislation

ASIC Act, Pt 2 Div 2, 12BAB, 12CB, 12DA, 12DB, 12DJ

Bankruptcy Act, Pt IX

Bankruptcy Regulations 1996; Bankruptcy Amendment (National Personal Insolvency Index) Regulation 2015

Competition and Consumer Act; Australian Consumer Law

National Credit Act, s8, 47(1)(a), 47(1)(i); National Credit Code

National Consumer Credit Protection Regulations 2010, reg 20

Privacy Act

Other documents

Ali, P, L O'Brien & I Ramsay, 'A quick fix? Credit repair in Australia'

CIO, *Annual report on operations 2014*

CIO, *Annual report on operations 2014/15*.

Digital Finance Analytics and the Monash University Centre for Commercial Law and Regulatory Studies, *The stressed household finance landscape report 2015*

EWON, *Research survey report: Consumers' use and experience of 'credit fix' agents*

FTC, *Section 319 of the Fair and Accurate Credit Transactions Act of 2003: Fifth interim Federal Trade Commission report to Congress concerning the accuracy of information in credit reports*

FCA, TR15/8 *Quality of debt management advice*

FOS, *Annual Review 2013–2014*

FOS, *Annual Review 2014–2015*

Mullainathan, S & E Shafir, *Scarcity: Why having too little means so much*

OAIC, *Community attitudes to privacy survey: Research report 2013*

Office of Fair Trading (UK), *Debt management guidance compliance review: Mystery shopping* (OFT1265)

World Bank, *World development report: Mind, society and behaviour*