ASIC
Australian Securities & Investments Commission

CONSULTATION PAPER 190

Small business lending complaints: Update to RG 139

October 2012

About this paper

This consultation paper seeks comments from industry, consumer representatives, external dispute resolution (EDR) schemes and other interested persons on our proposal to update our guidance in Regulatory Guide 139 *Approval and oversight of external dispute resolution schemes* (RG 139) on an EDR scheme's debt recovery legal proceedings jurisdiction for small business lending complaints.

The proposals arose out of our review of EDR jurisdiction over complaints when members commence debt recovery legal proceedings: see Consultation Paper 172 *Review of EDR jurisdiction over complaints when members commence debt recovery legal proceedings* and Report 308 *Response to submissions on CP 172 Review of EDR jurisdiction (debt recovery legal proceedings)* (REP 308).

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.

Document history

This paper was issued on 19 October 2012 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

Contents

The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on in RG 139.77–RG 139.79. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 10 December 2012 to:

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Consumer Policy, Financial Advisers
Australian Securities and Investments Commission
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What will happen next?

Stage 1	19 October 2012	ASIC consultation paper released
Stage 2	10 December 2012	Comments due on the consultation paper
Stage 3	Late January 2013	Updated regulatory guide released

A Background

Complaints handling by EDR schemes

1 As a condition of their licence, Australian financial services (AFS) licensees and credit licensees must have a compliant dispute resolution system for handling retail client complaints. The dispute resolution system must consist of:

(a) internal dispute resolution (IDR) processes that meet ASIC's approved standards and requirements; and

(b) membership of an external dispute resolution (EDR) scheme approved by ASIC (unless the Superannuation Complaints Tribunal (SCT) can handle all of the licensee's retail client complaints).

2 We have issued guidance on how:

(a) licensees can meet their dispute resolution obligations in Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165); and

(b) EDR schemes can obtain ASIC's approval and continue to remain approved in Regulatory Guide 139 *Approval and oversight of external dispute resolution schemes* (RG 139).

3 Two ASIC-approved EDR schemes currently exist to handle financial services and credit complaints. They are:

(a) Financial Ombudsman Service Limited (FOS), formed by the merger of five pre-existing ASIC-approved EDR schemes in 2008–09; and

(b) Credit Ombudsman Service Limited (COSL).

4 Both FOS and COSL are approved by ASIC for the purposes of the *Corporations Act 2001* (Corporations Act) and the *National Consumer Credit Protection Act 2009* (National Credit Act), and must continue to meet the requirements of RG 165 and RG 139 as a condition of their approvals.

Note: See Class Order [CO 09/340] *External dispute resolution schemes* and Class Order [CO 10/249] *External dispute resolution schemes (credit)*.

Jurisdiction for complaints involving debt recovery legal proceedings

5 From 1 January 2010, EDR schemes must also maintain a specific jurisdiction under their terms of reference or rules so complainants can access EDR even if a scheme member has commenced legal proceedings to recover a debt or recover possession of an asset used as a security for a loan (usually a residential property): see RG 139.77–RG 139.79. In this paper, we refer to this as a 'debt recovery legal proceedings jurisdiction'.

6 Where a scheme member commences these legal proceedings, complainants must be able to complain to, and access, an EDR scheme, at least during the early stages of the debt recovery legal process (i.e. up until the point where the complainant has *not* taken a step beyond lodging a defence or defence and counterclaim).

> Note: For the avoidance of doubt, the complainant will not be considered to have taken a 'step' if they attend a directions hearing or agree to consent orders of a procedural nature only being filed in those legal proceedings: see RG 139.79.

7 To allow the EDR scheme process to properly run its course, once a complaint involving debt recovery legal proceedings has been lodged with an EDR scheme, the terms of reference or rules of the scheme must require that the scheme member *not* pursue the debt recovery legal proceedings beyond the minimum necessary to preserve its legal rights.

8 In practice, this requires an EDR scheme member to stay or discontinue the legal proceedings while the complaint is being handled at the EDR stage.

9 While this jurisdiction mainly affects lenders regulated by the National Credit Act, it may also apply to complaints involving:

(a) lenders mortgage insurers who are seeking to recover a shortfall debt; and

(b) margin loan providers and other financial product and service providers regulated by the Corporations Act (i.e. insurers) where the scheme member is seeking to recover a debt from the complainant.

Rationale for jurisdiction

10 The purpose of the requirement in RG 139.77–RG 139.79 was to ensure that EDR schemes were meeting the overarching principles of 'accessibility' and 'effectiveness' for credit and margin lending.

> Note: When considering whether to approve a scheme, ASIC must consider the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness: see regs 7.6.02(3) and 7.9.77(3), Corporations Regulations 2001 and reg 10(3), National Credit Regulations 2010. A more detailed discussion of these principles is set out in RG 139.

11 These principles can be summarised as follows:

(a) *Accessibility:* Consumers of credit and margin lending providers should have adequate access to EDR so hardship issues may be addressed.

(b) *Effectiveness:* EDR schemes must be able to handle the vast majority of types of complaints in a particular industry sector or sectors covered by the scheme.

12 In the lead up to the transfer of credit regulation to the Commonwealth, consumer representatives expressed particular concern that consumers of credit should not be disadvantaged by losing important complaints rights, given the loss of access to relevant state and territory tribunals.

13 Under previous state and territory credit regimes, complainants could make hardship applications in the Victorian Civil and Administrative Tribunal (VCAT) and NSW's Consumer, Trader and Tenancy Tribunal (CTTT), even when the lender had already commenced legal proceedings in court to recover an outstanding debt or recover possession of an asset provided as security for a loan. In these cases, the court proceeding would be stayed while the VCAT or the CTTT exercised its exclusive jurisdiction to deal with the hardship issues.

14 By contrast, under the national credit regime, access to EDR replaced access to state and territory tribunals (i.e. VCAT and CTTT).

15 Such access to EDR, similar to VCAT and the CTT, was considered important as consumer representatives reported that many consumers do not realise they have a problem or only seek financial hardship assistance once they are served with a writ or statement of claim.

16 During our review of EDR jurisdiction (see paragraphs 27–35), consumer representatives further reiterated the importance of this post-statement-of-claim jurisdiction at the EDR stage, and added that this jurisdiction also assists consumers with debt collection issues (e.g. when they are being pursued by a debt collection agency for a statute barred debt), or when particularly vulnerable and disadvantaged consumers have been granted loans in breach of responsible lending requirements.

Approach to jurisdiction

17 ASIC approved both FOS's Terms of Reference and changes to COSL's Rules as meeting the minimum requirements in RG 139.

18 FOS's approach to its debt recovery legal proceedings jurisdiction is expressed in paragraph 13.1 of its Terms of Reference, which states that:

> (a) Subject to paragraph (b), where an Applicant lodges a Dispute with FOS, the Financial Services Provider:
>
> (i) must not instigate legal proceedings against the Applicant or any Other Affected Party relating to any aspect of the subject matter of the Dispute;
>
> (ii) must not pursue legal proceedings relating to debt recovery instituted prior to the lodging of the Dispute with FOS save to the minimum extent necessary to preserve the Financial Services Provider's legal rights and, in particular, must not seek judgment in those legal proceedings provided the Dispute is lodged before the Applicant takes a step in those legal proceedings beyond lodging a defence or a defence and counterclaim (however described);
>
> (iii) must not take any action to recover a debt the subject of the Dispute, to protect any assets securing that debt or to assign any right to recover that debt,
>
> while FOS is dealing with the Dispute.

(b) Notwithstanding paragraph (a), with FOS's agreement and on such terms as FOS may require, the Financial Services Provider may:

(i) issue proceedings where the relevant limitation period for such proceedings will shortly expire—but those proceedings may not be pursued beyond the minimum necessary to preserve the Financial Services Provider's legal rights; or

(ii) exercise any rights it might have to freeze or otherwise preserve assets the subject of the Dispute.

(c) If the Dispute is subsequently decided by FOS and becomes binding upon the Financial Services Provider, the Financial Services Provider will abandon any aspect of proceedings against the Applicant or Other Affected Party that are inconsistent with that decision.

19 FOS's *Operational guidelines* further explain its approach, including how a lender may seek to issue proceedings to preserve their legal rights (e.g. if the limitations period is about to expire) and to preserve assets that are the subject of the complaint.

Note: A copy of this document is available at www.fos.org.au.

20 COSL's approach to its debt recovery legal proceedings jurisdiction is reflected in Rules 17.2–17.6 of its current rules (8th edition), which state that:

Rule 17.2 Once COSL records a Complaint and for as long as COSL deals with the Complaint:

(a) the Member must not initiate enforcement action against the Complainant in relation to any aspect of the subject matter of the Complaint;

(b) where the Member commenced such enforcement action before the Complaint was recorded as received by COSL, the Member must not continue the enforcement action and, in particular, must not:

(i) seek judgment in the legal proceedings; or

(ii) where default judgment has been entered, seek to enforce the default judgment;

(c) the Member must not sell the debt that is the subject of the Complaint to a debt buy-out business or otherwise assign any right to recover the debt; or

(d) if it has not already listed a default, the Member must not list a default on the Complainant's credit reference file.

Rule 17.3 Despite Rule 17.2, COSL may at its discretion and on such terms as it may require, permit the Member to:

(a) issue proceedings, but only where the relevant limitation period for the proceedings will shortly expire, and then only to the minimum extent necessary to preserve the Member's legal rights; or

(b) exercise any rights it might have to freeze or otherwise preserve assets the subject of the Complaint; or

(c) continue or resume legal proceedings if the Complainant has taken a step in the legal proceedings beyond lodging a defence or a defence and counterclaim (however described).

Note: The Complainant will not be considered to have taken a 'step' if they merely attended a directions hearing or agreed to consent orders of a procedural nature being filed in the proceedings.

Rule 17.4 The Member must not do anything, including:

(a) initiating or resuming enforcement action; or

(b) seeking judgment for the debt or taking possession of an asset securing the debt; or

(c) assigning any right to recover the debt; or

(d) listing a default on the Complainant's credit reference file,

which is inconsistent with:

(i) a decision by COSL in the Complainant's favour; or

(ii) an agreement by the parties to the Complaint to settle the Complaint on agreed terms; or

(iii) in the case of a financial hardship application, an agreement between the parties on a variation of the payment terms; or

(iv) in the case of a financial hardship application, a direction by COSL to the Member to vary the terms of a Credit Contract under Rule 9.6(h).

Rule 17.5 The Member may initiate or, subject to Rule 17.6, resume enforcement action if:

(a) COSL determines it has no jurisdiction to deal with the Complaint; or

(b) COSL considers that the Complaint is not made out; or

(c) the Complainant declines to accept COSL's determination of the Complaint.

Rule 17.6 Where the Complainant was served with a statement of claim or other initiating process before COSL recorded the Complaint, the Member may only resume enforcement action under Rule 17.5 if it first allows the Complainant 21 days in which to file a defence or a defence and counterclaim (if they have not already done so).

21 We consider that COSL's approach is consistent with the requirement in RG 139.77–RG 139.79 and achieves a higher standard than the requirement because COSL may become involved in complaints at later stages of the debt recovery legal process, beyond when a complainant lodges a defence or defence and counterclaim (i.e. once a default judgment is entered).

Phase II credit reforms

22 The *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (Enhancements Act) passed both the House of Representatives and the Senate on 20 August 2012 and was assented to on 17 September 2012. The Enhancements Act seeks to refine the National Credit Act from 1 March 2013.

23 Of relevance to our review of EDR jurisdiction, the Enhancements Act:

(a) removes the $500,000 value of the loan threshold for a consumer to apply for a hardship application or postponement of enforcement proceedings;

(b) makes it easier for a consumer to give notice that they seek a hardship variation (i.e. either in writing or verbally and on broader grounds, if the consumer is unable to meet their obligations under a credit contract); and

(c) requires lenders to not progress enforcement proceedings until a consumer's request for a hardship variation has been properly considered.

24 We anticipate that these reforms will reduce the number of complaints coming to EDR schemes under their debt recovery legal proceedings jurisdiction. However, this jurisdiction is likely to continue to be relevant, particularly if consumers continue to not recognise they have a problem or only seek assistance for hardship after a writ or statement of claim has been served (i.e. they are not aware they can make a hardship application earlier when they begin to experience financial difficulty, they are being pursued for a statute barred debt, or the loan granted did not meet responsible lending requirements).

25 As part of Phase II credit reforms, the Australian Government is also considering the extent to which the National Credit Act and Sch 1 of that Act (National Credit Code) will apply to the provision of credit to small business borrowers and the provision of credit for investment purposes (other than margin loans).

26 We understand that there may be some time yet before Phase II credit reforms for small business and investment lending are finalised.

Our review of EDR jurisdiction

Consultation paper

27 In December 2011, we commenced a review of EDR jurisdiction in this area by releasing Consultation Paper 172 *Review of EDR jurisdiction over complaints when members commence debt recovery legal proceedings* (CP 172).

28 In CP 172, we sought feedback from stakeholders on their experiences with this jurisdiction.

29 We also sought feedback on the following issues, among others:

(a) Should the requirement in RG 139.77–RG 139.79 for EDR schemes to handle complaints where debt recovery legal proceedings have already commenced remain in its current form?

(b) What refinements should be made to this requirement?

(c) Are any refinements needed given proposed changes to the National Credit Act as part of Phase II credit reforms?

(d) Should complaints about certain types of financial or credit products be excluded from an EDR scheme's debt recovery legal proceedings jurisdiction and instead be more appropriately handled in court?

(e) Do certain court processes and procedures prevent a member from being able to reasonably comply with FOS's and COSL's debt recovery legal proceedings jurisdiction?

(f) Is there a class of complainant that should not be allowed to access an EDR scheme's debt recovery legal proceedings jurisdiction?

30 In May–June 2012, after all written submissions to CP 172 were received, we met separately with key industry associations, consumer representatives and EDR schemes that had made submissions to informally discuss their views.

Roundtable discussion

31 We also held a joint roundtable discussion with key stakeholders in July 2012. At this discussion, all attendees expressed support for EDR and the useful role played by an EDR scheme's debt recovery legal proceedings jurisdiction. For some stakeholders, this represented a different view to those initially expressed in their written submissions to CP 172.

32 Attendees at the joint roundtable discussion agreed that some of the problems raised by written submissions to CP 172 could be best addressed by the EDR schemes adjusting their approach to this jurisdiction, rather than ASIC adjusting our guidance in RG 139. This would be part of a collective solution, with all stakeholders taking steps to do their part to make the dispute resolution system work better.

33 This would include:

(a) better early identification of hardship by licensees and better resourced and more efficient and effective complaints handling teams;

(b) enhanced EDR scheme operations and processes;

(c) enhanced consumer understanding of how an EDR scheme's debt recovery legal proceedings jurisdiction can assist a consumer and a consumer's continued obligation to make repayments where possible; and

(d) some relatively minor refinements to ASIC guidance in RG 139.77–RG 139.79.

Further consultation

34 We have released the findings of our review in Report 308 *Response to submissions on CP 172 Review of EDR jurisdiction (debt recovery legal proceedings)* (REP 308).

35 As a result of our findings, we seek feedback on a discrete proposal to refine our guidance in RG 139.77–RG 139.79 on an EDR scheme's debt recovery legal proceedings jurisdiction for small business lending complaints: see Section B of this paper.

B Proposed refinement to RG 139

Key points

In response to feedback received on CP 172, we propose to update our guidance in RG 139 so that complaints involving certain small business loans may be legitimately excluded from an EDR scheme's debt recovery legal proceedings jurisdiction.

As the loan value for these loans is higher and the complaints may potentially involve more complex issues, we consider that these complaints would be more appropriately dealt with in court.

Small business lending complaints

Proposal

B1 We propose to update our guidance in RG 139.77–RG 139.79 so that:

(a) EDR schemes under their terms of reference or rules may legitimately exclude certain types of small business lending complaints from their debt recovery legal proceedings jurisdiction (e.g. where the value of the small business loan is over A$5 million).

(b) Where the small business has a series of loans, with multiple corporate entities and cross-guarantees, the $5 million value of the loan limit would apply to the single loan facility relevant to the small business lending complaint. This would mean that the value of all of the related small business loans would *not* be aggregated to determine whether the $5 million limit has been reached.

(c) EDR schemes would need to implement this change by 1 January 2014.

Your feedback

B1Q1 Do you agree with our proposal? If not, why not? Please include any statistical data you have which may indicate that the vast majority of small business complaints could be addressed under an EDR scheme's debt recovery legal proceedings jurisdiction if the A$5 million threshold was set at a lower value. If this were the case, what would be the more appropriate lower value?

B1Q2 Where the small business has a series of loans, should a small business loan which uses the residential home as security be treated differently when determining whether the $5 million value limit has been reached? If not, why not?

B1Q3 Do you consider that our proposal adequately addresses small business lending to borrowers who may be farmers?

B1Q4 Are there any other matters we should consider in relation to this proposal?

Rationale

36 We consider that our proposed approach is appropriate for the following reasons:

(a) Phase II credit reforms are currently considering how to bring small business lending within the credit laws.

(b) This approach is consistent with current banking practice—for example, the ABACUS Mutuals Banking Code of Practice (clause 24) and the Australian Bankers' Association (ABA) Code of Banking Practice (clause 25.2) currently commit to assisting small business complainants in hardship.

(c) Certain small business borrowers may still benefit from being able to access EDR under RG 139.77–RG 139.79.

37 Under both the FOS terms of reference and COSL rules, small business borrowers (i.e. borrowers that meet the definition of a 'small business' under the Corporations Act) can complain to an EDR scheme and access the scheme's debt recovery legal proceedings jurisdiction.

38 Industry submissions to CP 172:

(a) expressed concerns that there has been unintended 'jurisdictional creep' as FOS's and COSL's debt recovery legal proceedings jurisdiction extends to non-National Credit Code regulated commercial loans, when the rationale for our guidance in RG 139 was to assist consumer borrowers in hardship; and

(b) suggested certain loans could be excluded from FOS's and COSL's debt recovery legal proceedings jurisdiction as a court would be the more appropriate forum for handling the complaint when:

(i) the loan value exceeds $1 million (several industry submissions); or

(ii) the value of the security for the loan exceeds $1 million (ABA).

39 During informal discussions, FOS commented that given the complaints that come to FOS, the threshold could be more appropriately set where the value of the small business loan (as a single facility) exceeds $5 million.

40 In its separate submission and during informal discussions, the Consumer Credit Legal Centre NSW (CCLC NSW) expressed concern about the incorrect assumption that borrowers with loans over $1 million are sophisticated. Many problems have occurred over the last decade due to poor lending standards and many unsophisticated borrowers have been granted high value loans. These borrowers should not be denied access to EDR. The Regulation Impact Statement to the Enhancements Act also comments that the median value of home loans is typically moving towards $1 million.

41 While there is no clear data on the average size of a small business loan, the Reserve Bank of Australia (RBA) in its updated submission to the *Inquiry into access for small and medium business to finance* on 7 February 2011 commented that:

(a) small business loans are mostly secured against residential property;

(b) small business loans are generally used to pay for debts;

(c) the RBA determines a business to be 'small business' based on a number of measures, including whether the business is an unincorporated association, and whether the loan is for $2 million or less (the RBA acknowledges that there is no statistical basis for the $2 million measure); and

(d) small business borrowers are more than twice as likely as standard mortgage borrowers to default.

Note: See www.rba.gov.au/publications/submissions/inquiry-access-small-med-fin-0211.html#f1.

42 Given the RBA's statistics, it appears that there may be a significant number of small business loans granted for $2 million or more.

43 We consider that excluding small business lending complaints based on the value of the underlying security would be practically unworkable because the value of the security may change during the life of the loan. During informal discussions as part of the CP 172 consultation process, both FOS and COSL expressed similar concerns.

C Regulatory and financial impact

44 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us, we think they will strike an appropriate balance between:

(a) reducing the compliance cost on industry in relation to small business lending complaints; and

(b) ensuring that consumers in hardship are appropriately protected by having access to an ASIC-approved EDR scheme.

45 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

(a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;

(b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and

(c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

46 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

47 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

(a) the likely compliance costs;

(b) the likely effect on competition; and

(c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

Key terms

Term	Meaning in this document
ABA	Australian Bankers' Association (an industry association comprising member banks)
ABACUS	An industry association comprising member credit unions and mutual building societies
ASIC	Australian Securities and Investments Commission
credit	Credit to which the National Credit Code applies Note: See s3 and 5–6 of the National Credit Code.
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
COSL	Credit Ombudsman Service Limited—an ASIC-approved EDR scheme
CTTT	Consumer, Trader and Tenancy Tribunal (NSW)
EDR	External dispute resolution
EDR scheme (or scheme)	An external dispute resolution scheme approved by ASIC under the Corporations Act (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
Enhancements Act	The *Consumer Credit Legislation Amendment (Enhancements) Act 2012* passed by the House of Representatives and the Senate on 20 August 2012 and assented to on 17 September 2012
FOS	Financial Ombudsman Service—an ASIC-approved EDR scheme
FOS circular	FOS's circular on *Guideline to paragraph 13.1 of the terms of reference* (August 2010)
IDR	Internal dispute resolution
National Credit Act	*National Consumer Credit Protection Act 2009*
National Credit Code	National Credit Code at Sch 1 of the National Credit Act
RBA	Reserve Bank of Australia
RG 139 (for example)	An ASIC regulatory guide (in this example numbered 139)
scheme member (or member)	An industry participant who is a member of an ASIC-approved EDR scheme

Term	Meaning in this document
Terms of Reference	The document that sets out an EDR scheme's jurisdiction and procedures, and to which scheme members agree to be bound. In some circumstances it might also be referred to as the scheme's 'rules'
VCAT	Victorian Civil and Administrative Tribunal

List of proposals and questions

Proposal	Your feedback
B1 We propose to update our guidance in RG 139.77–RG 139.79 so that: (a) EDR schemes under their terms of reference or rules may legitimately exclude certain types of small business lending complaints from their debt recovery legal proceedings jurisdiction (e.g. where the value of the small business loan is over A$5 million). (b) Where the small business has a series of loans, with multiple corporate entities and cross-guarantees, the $5 million value of the loan limit would apply to the single loan facility relevant to the small business lending complaint. This would mean that the value of all of the related small business loans would not be aggregated to determine whether the $5 million limit has been reached. (c) EDR schemes would need to implement this change by 1 January 2014.	B1Q1 Do you agree with our proposal? If not, why not? Please include any statistical data you have which may indicate that the vast majority of small business complaints could be addressed under an EDR scheme's debt recovery legal proceedings jurisdiction if the A$5 million threshold was set at a lower value. If this were the case, what would be the more appropriate lower value? B1Q2 Where the small business has a series of loans, should a small business loan which uses the residential home as security be treated differently when determining whether the $5 million value limit has been reached? If not, why not? B1Q3 Do you consider that our proposal adequately addresses small business lending to borrowers who may be farmers? B1Q4 Are there any other matters we should consider in relation to this proposal?