



8 August 2014

By email: info@cosl.com.au

Dear Sir or Madam

Consultation on proposed credit repair guideline

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on COSL's proposed guideline on credit repair.

We welcome this proposal, and recommend that COSL:

- reword the proposed guideline to capture not only 'paid representatives' but any fee-for-service provider providing 'representation, assistance or advice' to ensure it captures all existing models of 'credit repair';
- consider how COSL staff can identify which applications are from consumers who have been assisted by a fee for service provider (this will be difficult where the provider is not actively 'representing' the applicant);
- collect and report data on the applications it receives from applicants who are represented, advised or assisted;
- advocate for further regulation of credit repair and similar businesses, including to bring these businesses within the jurisdiction of EDR schemes.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action offers free legal advice, pursues consumer litigation and provides financial counselling to vulnerable and disadvantaged consumers across Victoria. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

Broad remarks

We welcome COSL's proposed approach as it targets a business model which has demonstrated consumer harm. While in some cases credit repair and other paid representatives may lodge claims with merit, in general, these businesses charge exorbitant fees and impose onerous terms and conditions (and, in fact, many complaints appear not to be meritorious). The benefit of lodging a complaint is more often than not outweighed by the cost imposed by these businesses.

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Capturing credit repair services that provide advice rather than representation

We are aware of a number of (related) credit repair firms who do not actually represent consumers in disputes lodged with EDR schemes, but instead provide consumers with information to help applicants lodge their own complaint. In our experience, this approach involves similar consumer harm to the 'representation' model as there is very limited (if any) assessment of the merit of the complaint, and consumers are charged significant fees without being informed of their right to make a complaint to EDR free of charge.

It appears to us that the approach proposed by COSL will not deal with this scenario and, in fact, the proposed changes may provide incentives for businesses to act in this manner. That is, these businesses will face incentives to 'do less' for their clients and only instruct consumers to make complaints in order to avoid being detected by EDR schemes. Consumers, unaware of their broader rights and often driven by financial desperation, will continue to enter into such arrangements.

We recommend that COSL:

- reword the proposed guideline to capture not only 'paid representatives' but any fee-for-service provider providing 'representation, assistance or advice';
- consider how staff can identify which applications are from consumers who have been assisted by a fee for service provider

Exempt paid representatives

We strongly support the list of exempt paid representatives for whom the guideline would not apply. We support 'specialist advisers' being exempted, but would encourage COSL to issue guidance about who would be considered 'specialist advisers'.

Monitoring and reporting

We recommend that COSL collect and report data on the number of applications it receives where applicants have been represented, assisted or advised by fee-for-service providers, the numbers of applications declined on these grounds and what happened after the application was declined. This will assist COSL and its stakeholders to understand and monitor the volume of these applications, and whether this proposed response is helping to limit problematic use of COSL by fee-for-service agents.

Broader reform

We submit that there needs to be further regulation of credit repair and similar businesses, including that these businesses be brought within EDR jurisdiction. One model is that proposed by law academics at University of Melbourne who have closely reviewed the credit repair business model:

The most effective option for regulating [Credit Repair Companies, or] CRCs would be a rule-based statutory regime combined with a licensing system. This would bring CRCs into line with consumer credit providers, which currently need to obtain a license from the Australian Securities & Investments Commission (ASIC).

A system of legal rules would promote transparency and consistency, providing the public with a clear framework for dealing with CRCs. Rules would include a strict prohibition on up-front fees and a mandatory cooling-off period, allowing clients to cancel their contracts free of charge within the first two weeks. CRCs would be required to publish detailed information about their fees, terms and conditions on their websites. Under these rules, clients of CRCs would be entitled to a refund or compensation if a CRC didn't do what it promised to do, behaved unfairly or dishonestly, or breached any other rule (for example, by refusing to let a client cancel a contract within the cooling off period, or charging unexpected administrative fees).

In conjunction with these rules, a licensing and reporting regime would eliminate rogue operators from the industry and provide the Government with valuable information about CRCs. CRCs would be required to provide ASIC with regular reports about their services, finances, staff (including staff training), customer profile and details of any complaints made against them. A licensing regime would impose clear duties on CRCs, such as a duty to act in the client's best interests. It would also require CRCs to belong to an ombudsman scheme, allowing clients to lodge complaints without having to go to a court. The licensing regime could be funded by CRCs' licensing fees, and CRCs would be required to join an existing industry-funded ombudsman scheme. Such a regime would represent no cost to Government.

While this model would not entirely eliminate the risks posed by CRCs, it would do much to protect vulnerable Australians from their most harmful effects.¹

We encourage COSL to advocate for such regulatory reform.

Please contact David Leermakers on 03 9670 5088 or at david@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



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¹ See summary of report by Associate Professor Paul Ali, Lucinda O'Brien and Professor Ian Ramsay, *A quick fix? Credit repair in Australia*, available at: <http://consumeraction.org.au/report-a-quick-fix-credit-repair-in-australia-summary-of-findings/>. Full report, forthcoming.