National Legal Aid Secretariat
GPO Box 9898
Hobart TAS 7001

Executive Officer: Louise Smith

t: 03 6236 3813
f: 03 6236 3811
m: 0419 350 065

e: louise.smith@legalaid.tas.gov.au

National Legal Aid

Senator the Hon Nick Sherry
Minister for Superannuation and Corporate Law
Parliament House
CANBERRA ACT 2600

22 May 2009

Dear Minister

Re: Public Exposure of National Consumer Credit Protection Bill 2009

Introduction

National Legal Aid (NLA) represents the Directors of the eight State and Territory legal aid commissions (commissions) in Australia. The commissions are independent statutory authorities established under respective State or Territory enabling legislation. They are funded by State or Territory and Commonwealth governments to provide legal assistance to disadvantaged people.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- Obtain access to independent legal advice;
- Afford the appropriate cost of legal representation;
- Obtain access to the Federal and State and Territory legal systems; or
- Obtain adequate information about access to the law and the legal system.

National Legal Aid welcomes the opportunity to comment on the draft legislative package, aimed at facilitating the transfer of consumer credit regulation from the States and Territories to the Commonwealth (**"the proposed framework"**).

Having regard to the sheer size of the draft exposure package and the timeline available for comment, it is neither practical nor possible to provide detailed comments on all aspects. Instead we focus our comments on issues that will directly impact on consumers. We also highlight areas where recognised problems under the current Uniform Consumer Credit Code (UCCC) have not been adequately addressed or are inadvertently exacerbated by the proposed framework as it is currently drafted.

NLA's comments are informed by case work experience working with consumers in dispute with credit providers and/or intermediaries in relation to the provision of credit across all the States and Territories.

Our comments are also made in the context of the current financial crisis, which has illuminated the need for effective regulation of financial markets. NLA supports the view that the recovery of the credit market and its ongoing viability will depend on the ability of consumers to effectively participate in proceedings contained within the proposed regulatory framework.

Attached is a summary of our recommendations.

1. Jurisdiction to bring proceedings

Unlike the UCCC, the proposed framework allows for consumers to be sued in a State where they are not ordinarily resident. Legal Aid experience suggests that consumers will face many difficulties as a result of the removal of previous restrictions on the location in which proceedings can be commenced including:

- Significant barriers to accessing low cost legal advice and assistance for proceedings commenced in another state;

- Vulnerable consumers in particular will be totally reliant on the availability of publicly funded legal support in order to participate in interstate legal proceedings because of the added complexity and the inability to attend the relevant court in person;

- The legal support required in both preparation and appearance is more time and resource intensive requiring additional work such as linking with interstate services, drafting additional court documents and negotiating remotely with the other party. In some cases agency arrangements are also required, which further escalates the cost of providing these legal services;

- Borrowers usually have to meet the cost of video conferencing and telephone appearance or travel and accommodation - even where a stay and transfer of proceedings is probable; and

- The proposed jurisdictional changes are likely to make the process more difficult for consumers seeking to make an hardship application. Credit providers (particularly non-bank lenders) will invariably choose the jurisdiction most convenient to them in commencing enforcement action. In many instances it will be different to the jurisdiction in which the loan was settled and or where the borrower currently resides. In cases where enforcement proceedings are commenced interstate, a consumer may have to make an application for a hardship variation in a court in a different state to the court in which foreclosure action has commenced.

NLA agrees with the commentary on p 120 that the lack of restriction as to where proceedings can be commenced may be a '*material barrier to justice for consumers*'. Case studies that illustrate this are available on request.

Re-instatement of restrictions on where proceedings can be commenced should also include specific and significant penalties to aid enforcement. Without appropriate penalties there will be little incentive for credit providers to comply. Legal Aid's experience is that some credit providers commence proceedings in an inappropriate jurisdiction because they know they are likely to obtain a default judgment unimpeded by a consumer who cannot access the court registry or legal assistance.

Recommendation:
Amend s80 (3) to include

- An additional restriction to provide that any proceedings commenced by a credit provider must be instituted in the registry nearest to where the debtor resides at the date of filing and if that address is not known, at the address where the debtor resided at the date of the contract.

- The default notice containing a prominent heading at the top stating that it is a default notice and specifying that if legal proceedings are commenced they will be commenced at the court registry nearest to where the debtor resides at the date of filing and if that address is not known, at the address where the debtor resided at the date of the contract.

- If a credit provider issues proceedings in the incorrect jurisdiction:

    - The proceedings should be discontinued with the credit provider required to pay the debtor's additional costs incurred as a result of issuing in the incorrect jurisdiction on a solicitor-client basis; and

    - A relevant penalty prescribed in the legislation levied against the credit provider.

2. Proposal to establish a small claims division

NLA supports the intention to create a small claims procedure to provide effective low-cost processes in order to resolve disputes (particularly given that access to specialist consumer tribunals currently available in NSW and Victoria will no longer be available).

a. Legal representation

Sections C100 (5) – (7) in the Bill deal with the question of legal representation in the proposed small claims division. NLA supports the requirement that parties seek leave to have legal representation and for the

court to consider whether any other arrangements are required to prevent a party receiving an unfair advantage as result of leave being granted.

However this sensible approach is inconsistent with section C 100(7) which provides:

> *…a person is taken not to be represented by a lawyer if the lawyer is an employee or officer of the person.*

This provision will place consumers at an unfair disadvantage. In most cases, credit providers engage in house lawyers or employees who have legal training to represent their interests. Consumers, on the other hand, will face a presumption against legal representation.

Recommendation:
Remove section C100 (7) or if section C100 (7) remains, it should invoke the court's consideration of unfair disadvantage described in section C100 (6).

b. Lack of detail as to how the small claims process will operate

The Commonwealth Attorney General has recently announced the abolition of the Federal Magistrate's Court.

NLA believes that it is critical to the effectiveness of the proposed framework that consumers have practical access to decision making. The Exposure Draft provides very little detail as to how the small claims process will operate and to what extent it will allow consumers to readily utilise this jurisdiction. NLA is concerned that the details of these arrangements plus any transitional arrangements are not available for comment.

Recommendation:
Commonwealth Treasury, Attorney General's Department and the Australian Securities and Investments Commission urgently consult legal services that regularly assist consumers on the development of procedures that will operate in the small claims jurisdiction.

3. The application of the Code

The Code will apply to credit *"provided or intended to be provided wholly or predominantly for…"* a purpose referred to in S 6(1)(b).

The phrase *"provided or intended to be provided wholly or predominantly for…"* has led to a number of different judicial approaches to determining whether the purpose requirement has been met. The Commentary recognises the need to mitigate the use of declarations as a way of circumventing the application of the Code. NLA supports the objective evident in the proposed framework to avoid these situations by closing loop holes that currently exist under the UCCC.

Legal Aid experience assisting consumers who have been the victim of unscrupulous credit providers and/or intermediaries suggests that the following are potential loop holes in the proposed framework that will work against this objective.

a. Timing of declaration

The declaration under s 11(2) is a declaration that is said to be made "*before entering the credit contract*".

Section 11(3) provides for when a declaration is ineffective but will have no application where the declaration is made after the contract is entered, but before the credit is provided.

Similarly, in relation to s 11(6), s 11(3) will not apply where no attempt has been made to have the declaration made in the prescribed form.

In order to ensure all attempts to inappropriately use the declaration as a means of avoiding the operation of the Code are covered, the following recommendations are made:

Recommendations:
Amend s 11(2) to read "….if the debtor declares, **before the credit is provided**, that the credit is to be applied wholly or predominantly for a purpose that is not a Code purpose, unless the contrary is established"

Amend s 11(6) to read "A declaration not substantially in the form (if any) required by the regulations is ineffective for the purposes of this section."

Amend s 150(6) in relation to consumer leases in a similar way.

b. Timing of knowledge

Section 11(3) provides that a declaration will be ineffective if certain knowledge can be attributed to a credit provider or relevant person "*when the declaration was made*". This creates an obvious loop hole where certain knowledge can be attributed to the "*relevant person*" after the declaration is made, but before the credit is unconditionally approved.

Recommendation:
Amend s 11 (3) to include knowledge attributed to the credit provider **up to the time the credit provider unconditionally approves the provision of credit.**

c. Relevant Person

Section 11(3) only attributes knowledge to a "*relevant person*" as defined where that person "*obtained the declaration from the debtor*".

The Commentary suggests that the legislation intends to capture within s 11(4) all intermediaries likely to obtain the declaration. This intention would not be achieved by the definition in s 11(4) as it is currently drafted. In order to close the loop hole in the proposed framework, for example in a situation where a solicitor associated with the lender takes the declaration, but is not captured by s 11(4), the following recommendation is made.

Recommendation:
Expand the definition of "*associated with the credit provider*" to capture third parties such as solicitors and conveyancers who obtain the declaration from the borrower.

d. Coverage of Code

Legal Aid has extensive experience of credit providers avoiding the use of declarations by for example, asking a question in a credit application form about the intended purpose of the credit where the only acceptable answer that can be given is a purpose outside the coverage of the Code. This is particularly evident in the provision of credit known as "predatory lending" or "asset stripping". These loans have also attracted the attention of the ASIC. Case studies of this type of lending can also be provided on request.

The proposed framework will not avoid some predatory lending practices because currently, where no declaration is made, s 11(3) has no effect. This is despite the fact that, had the information as to purpose been sought by way of a declaration, the declaration may have been ineffective pursuant to s 11(3).

This loop hole could be closed by adopting the following recommendations:

Recommendations:
Amend Section 11(2) to include:

> any written answer given before the credit is provided by a debtor in response to a question by the credit provider about the intended purposes of the credit, is a declaration for the purposes of this section.

Amend s 6(1)(b) to read:

> "the debtor **intended to apply** the credit wholly or predominantly:
>
> (i) for personal, domestic, or household purposes; or
> (ii) to purchase, renovate or improve residential property for investment purposes;"

Amend s 6(5) to read:

> "for the purposes of this section, the predominant purpose for which the **debtor intended to apply** the credit is ….."

Clarify in the Explanatory Memorandum that what is intended in s 6(1) (b) is the purpose of the borrower.

e. Use of statutory declarations

The intention of the amendments to Section 11 would appear to be to require lenders to make reasonable inquiries. The experience of Legal Aid with fringe lenders leads it to believe that some lenders will take declarations in the form of statutory declarations and argue that it is reasonable to rely on a declaration in this form without making further inquiries, because of the serious legal consequences of making a false declaration. If the legislation is to achieve its apparent aim then the regulations should provide that a declaration cast as a statutory declaration is not in accordance with the regulations and is ineffective.

Recommendation:
That the regulations provide that declarations in the form of statutory declarations are not in the form required by the regulations.

4. Changes on the grounds of hardship

One of the most important consumer protections provided under the current UCCC is the right for a borrower to seek a variation to payment obligations to take account of a period of financial hardship.

Access to hardship provisions under the UCCC has been frustrated over the last 13 years by several issues that have correctly received attention in the proposed framework.

NLA highlights the following issues that remain fundamental barriers to consumers in accessing hardship relief.

a. No requirement for reasons in rejecting a request for hardship assistance

The insertion of a new section 66 (2A) into the UCCC includes a requirement that credit providers give borrowers a response to any application for hardship relief of the type specified in the legislation. It is proposed that the response is required in writing and within 21 days. This is welcome however Legal Aid (and other consumer groups) have on numerous occasions drawn attention to the frequent failures on the part of credit providers to supply any or adequate responses to reports of hardship by borrowers. The problems are most frequently evident amongst non-deposit taking institutions. The proposed section should specify that the response include written reasons for any rejection or partial rejection of an application made on the grounds of hardship. This will better inform the borrower as to the relative merits of taking the matter further (such as to EDR or a Court)

The provision of reasons is also crucial for the effective operation of an alternative dispute resolution framework.

Recommendation:
Section 66 (2A) include a requirement to provide written reasons for any rejection or partial rejection of an application made on the grounds of hardship.

b. Unnecessary formality

The proposed framework provides no definition of what it means to 'apply' for hardship relief and the new requirement proposed in Section 66 (2A) triggered by the credit provider 'receiving the application', may add unnecessary formality where what is required is an early identification of a borrower's need for assistance.

The focus should be on whether the borrower has reported experiencing or anticipating hardship, or whether the credit provider is reasonably on notice that is the case. This is vital for the development of self regulatory and alternate dispute resolution procedures.

Recommendation:
The Bill should provide a definition of what it means to 'apply' for hardship relief, relevant to this part and indicating that**:**

- the substance rather than the form of the request is what is important; and
- specifically recognise any communication that indicates a borrower is in hardship and unable to meet a commitment under a credit contract.

c. Reliance on External Dispute Resolution

NLA welcomes the legislative requirement for all credit providers to be licensed under an External Dispute Resolution (EDR) Scheme. This will provide greater access to low cost and effective processes to resolve disputes.

In order for this framework to be truly effective the following will require attention:

- All EDR Schemes are struggling to cope with current demand levels to a greater or lesser degree, meaning that borrowers are often referred back to the credit provider with which they have their dispute, as a default mechanism. This will greatly impede the effective resolution of disputes.

- There is no consistency amongst or between schemes on the question of how credit providers should weigh hardship requests.

- There is a current review of the terms of reference governing the Financial Ombudsman Service ("FOS"). Unless the draft Terms of Reference ("TOR") are clarified, it is clear on the current draft TOR and current application of "the law" at FOS that:

- FOS will not make a declaration to vary a consumer contract on either hardship grounds or unjust contract grounds;[1]

- FOS will presumably not decide an unfair terms in contract claim under the proposed Australian Consumer Law;[2]

- FOS will presumably not consider complaints under the responsible lending provisions of the Code;[3] and

- FOS will not properly resolve disputes over break fees or charges including whether they are fair and proportional fees or charges. [4]

Other key concerns in the draft TOR include:

- A new two year time limit is being imposed on all consumer claims.[5]

- The increased reliance on EDR to resolve hardship requests is based on an assumption that consumers and not credit providers drive the legal process when a consumer falls behind on their loan repayments. However consumers tend to activate these options after being prompted by the credit provider, usually through the commencement of enforcement proceedings. FOS will not assist once proceedings have commenced (the Credit Ombudsman Service "COSL", reports that about 50% of complaints made to it are after proceedings have commenced). This means that FOS will not be an option for a significant proportion of complaints;

- Referral to an EDR scheme may not entitle the borrower to a stay of enforcement proceedings pending the outcome of the complaint (see below).

Given the increased emphasis on EDR in the proposed framework, resolution of these issues is critical prior to the enactment of the framework.

---

[1] FOS' rationale is that it is not a Court and does not have the power to provide declaratory relief. The effect is this position is that even though FOS will consider the unjust contract laws it will not apply the primary remedy for relief under these laws – namely variation the terms of a consumer contract to remedy the unjustness or hardship.

[2] For the same reason as above, without clear power in the new TOR, FOS will presumably say it has no power to declare a term as unfair as is not a Court. To avoid any uncertainty, the TOR should be amended.

[3] For reasons outlined above.

[4] FOS will not consider, for example, whether a break fee is a legal penalty at law on the basis that it is not a Court and that fees and charges are commercial matters.

[5] This is a new time limit which was pushed by industry and which would present a significant barrier to access for consumers, given that consumer claims have a 6 year time limit at law.

Recommendation:
That these issues be resolved prior to the introduction into Parliament of any legislation concerning the proposed framework.

d. Lack of clarity in who must respond to a request for hardship assistance

A recurring problem reported by borrowers experiencing financial hardship, is confusion about who to ask for assistance. The numbers of loans brokered through an intermediary has increased dramatically over the last 15 years. So too has there been a sharp increase in the involvement of other intermediaries, for example mortgage managers. The promulgation of multi-layered relationships in the sale of consumer credit has made it confusing for borrowers to know who does what and why.

NLA supports the development of more detailed information given to borrowers at the time credit contracts are negotiated. We also support the development of a detailed licensing regime, involving all industry layers in the consumer credit transaction, from sales to collection. NLA's concern is that there is no clear requirement in the proposed framework to ensure that a request for hardship assistance is promptly provided to the relevant, licensed provider with the power and responsibility to respond to the request.

NLA is concerned that failures to receive and pass on requests for assistance may result in ASIC taking action as the licensing authority but this will not provide direct assistance to consumers whose application for hardship assistance has not been passed on. A consumer might still lose their home because an intermediary did not pass a request for hardship assistance to the appropriate decision maker (even if the intermediary loses their licence as a result). The proposed framework does not address this issue.

Recommendation:
Introduce a requirement for all licensed providers or representatives involved in a credit transaction to facilitate the prompt transfer of hardship requests to the decision maker should be included with the hardship sections in the principal legislation.

e. No automatic stay on enforcement proceedings whilst a report of hardship/request for assistance is being considered

There should be an automatic stay of enforcement proceedings where an application has been to a court for a hardship variation or to an EDR scheme. This would not create any unfairness or additional risk for credit providers. Genuine commercial risks could be mitigated by an acceleration provision in appropriate circumstances, the like of which are already recognised elsewhere in the UCCC.[6]

It will assist consumers by greatly simplifying the legal process and eliminating the need to simultaneously undertake two separate legal processes - an application for a hardship variation and a stay on enforcement proceedings.

If a credit provider believes a request is without merit, a prompt response, providing reasons as suggested above, will not unduly delay collection.

Consideration should be given to providing Courts legislative authority to stay proceedings so that EDR can be attempted even if it limited to circumstances where consumers do not get the opportunity to try EDR first. If EDR is to given real credibility, all systems must work together to facilitate this.

Recommendation:
Insert an additional General Conduct Obligation of Licensees under LIC170 (1)(n) which requires a licensee holder to stay any court proceedings that have been started against a consumer when they bring a dispute before an External Dispute Resolution Scheme, including where they are seeking an assessment of a hardship application.

f. Australian Credit Licence Requirement that credit providers be a member of an ASIC Approved External Dispute Resolution Scheme

NLA supports the requirement contained in LIC170 that all holders of an Australian Credit Licence are required to be a member of an approved external dispute resolution scheme.

NLA also supports the requirement in s 80(3) (g) of the Code that a default notice sent to a debtor in default contain information prescribed by the regulations about approved dispute resolution schemes and the debtor's rights under that scheme.

Information contained in the default notice should also provide information about support services such as legal aid and community legal centres, because such services can assist debtors to understand and participate in the legal process.

[6] For example where there is a genuine risk to the availability/safety of secured property.

Recommendation
The default notice required to be served under s 80 of the Code should also refer consumers in default to the free legal services available in their State of residence.

5. The availability of support services

NLA recognises the significant advance in requiring all credit providers to be licensed and subject to an approved EDR scheme. In many cases this will provide effective dispute resolution without the need for assistance from financial counsellors or lawyers.

In the section above we have identified a number of gaps where EDR will not be available. Further, there will still be consumers who require legal information and advice, particularly those who are unable to access an EDR without assistance.

Some of the protections provided in the proposed framework will be best accessed with the assistance of a financial counsellor, but some—such as the likelihood of achieving a hardship variation— may require at least a small amount of legal advice.

In addition, financial counsellors increasingly report that they find it harder to assist people without the assistance of a legal adviser because lenders are increasingly taking a more conservative approach to all credit decisions than in the past, and are less inclined to negotiate with a financial counsellor in complex circumstances. In some situations, a financial counsellor needs a lawyer to become involved—even if only briefly—in order to engage the lender in discussions.

Therefore under existing arrangements within the proposed framework it is important to note that where a borrower has defaulted on repayments and repossession proceedings have commenced, it will be necessary to seek assistance from a low cost lawyer because a stay of proceedings will be required to delay enforcement until an hardship application can be determined. While this is not usually a costly or lengthy process for a publicly-funded lawyer, it is a difficult process for a self-represented litigant to undertake.

While there has been an increase to the Commonwealth Financial Counselling Program in 2008-09 that has supported the employment of an additional 20 financial counsellors in non-government organisations, there has been no corresponding increase in funding for legal assistance for people experiencing mortgage stress.

NLA notes that currently, the Commonwealth provides minimal funding for the provision of legal services in the area of consumer law (through Legal Aid Commissions and Community Legal Centres). To the extent that Legal Aid

Commissions provide legal assistance, it is funded from State and Territory funds.

Low cost, publicly funded legal services (where they exist) are struggling to meet the demand for assistance from people experiencing financial stress. Some States and Territories, such as South Australia and the Northern Territory, have very few low cost legal services available to consumers. Access to low cost legal services is vital to ensure borrowers are able to participate effectively in the legal process envisaged under the proposed framework.

Under existing Commonwealth-State arrangements for funding of legal aid, responsibility for funding these forms of legal assistance will become a Commonwealth responsibility upon enactment of the proposed framework. The Commonwealth has not made any statement about the level of resources that will be provided to respond to this shift in responsibility.

Recommendation:
Provide a legislative impact statement on the flow-on effect on Legal Aid, Community Legal Centres, and financial counsellors from the proposed framework required in order to ensure consumers are able to effectively participate in legal processes under the proposed framework.

Thankyou for the opportunity to provide these comments. Should you require further information in relation to any of the issues raised in this submission, please contact Louise Smith, Executive Officer, on (03) 6236 3813 or by email to louise.smith@legalaid.tas.gov.au.

Yours faithfully

N S Reaburn
Chairperson
National Legal Aid

Summary of Recommendations.

1. Jurisdiction to bring proceedings

Amend s80 (3) to include

- An additional restriction to provide that any proceedings commenced by a credit provider must be instituted in the registry nearest to where the debtor resides at the date of filing and if that address is not known, at the address where the debtor resided at the date of the contract.

- The default notice containing a prominent heading at the top stating that it is a default notice and specifying that if legal proceedings are commenced they will be commenced at the court registry nearest to where the debtor resides at the date of filing and if that address is not known, at the address where the debtor resided at the date of the contract.

- If a credit provider issues proceedings in the incorrect jurisdiction:

    - The proceedings should be discontinued with the credit provider required to pay the debtor's additional costs incurred as a result of issuing in the incorrect jurisdiction on a solicitor-client basis; and

    - A relevant penalty prescribed in the legislation levied against the credit provider.

2. Proposal to establish a small claims division

Legal representation

a. Remove section C100 (7) or if section C100 (7) remains, it should invoke the court's consideration of unfair disadvantage described in section C100 (6).

Lack of detail as to how the small claims process will operate

b. Commonwealth Treasury, Attorney General's Department and the Australian Securities and Investments Commission urgently provide legal services that regularly assist consumers an opportunity to be consulted on the development of procedures that will operate in the small claims jurisdiction before it is finally settled.

3. The application of the Code

Timing of declaration

a. Amend s 11(2) to read "….if the debtor declares, **before the credit is provided**, that the credit is to be applied wholly or predominantly for a purpose that is not a Code purpose, unless the contrary is established"

b. Amend s 11(6) to read "A declaration not substantially in the form (if any) required by the regulations is ineffective for the purposes of this section."

c. Amend s 150(6) in relation to consumer leases in a similar way.

Timing of knowledge

d. Amend s 11 (3) to include knowledge attributed to the credit provider up to the time the credit provider unconditionally approves the provision of credit.

Relevant Person

e. Expand the definition of "*associated with the credit provider*" to capture third parties such as solicitors and conveyancers who obtain the declaration from the borrower.

Coverage of the Code

f. Amend Section 11(2) to include:
any written answer given before the credit is provided by a debtor in response to a question by the credit provider about the intended purposes of the credit, is a declaration for the purposes of this section.

g. Amend s 6(1)(b) to read:
"the debtor **intended to apply** the credit wholly or predominantly:
- for personal, domestic, or household purposes; or
- to purchase, renovate or improve residential property for investment purposes;"

h. Amend s 6(5) to read:
"for the purposes of this section, the predominant purpose for which the **debtor intended to apply** the credit is ….."

i. Clarify in the Explanatory Memorandum that what is intended in

s 6(1) (b) is the purpose of the borrower.

Use of statutory declarations

j. That the regulations provide that declarations in the form of statutory declarations are not in the form required by the regulations.

4. Changes on the grounds of hardship

No requirement for reasons in rejecting a request for hardship assistance

a. Section 66 (2A) include a requirement to provide written reasons for any rejection or partial rejection of an application made on the grounds of hardship.

Unnecessary formality

b. The Bill should provide a definition of what it means to 'apply' for hardship relief, relevant to this part and indicating that:
- the substance rather than the form of the request is what is important; and
- specifically recognise any communication that indicates a borrower is in hardship and unable to meet a commitment under a credit contract.

Reliance on External Dispute Resolution

c. That these issues (see pages 8 and 9 above) be resolved prior to the introduction into Parliament of any legislation concerning the proposed framework.

Lack of clarity in who must respond to a request for hardship assistance

d. Introduce a requirement for all licensed providers or representatives involved in a credit transaction to facilitate the prompt transfer of hardship requests to the decision maker should be included with the hardship sections in the principal legislation.

No automatic stay on enforcement proceedings whilst a report of hardship/request for assistance is being considered

e. Insert an additional General Conduct Obligation of Licensees under LIC170 (1)(n) which requires a licensee holder to stay any court proceedings that have been started against a consumer when they bring a dispute before an External Dispute Resolution Scheme, including where they are seeking an assessment of a hardship application.

Australian Credit Licence Requirement that credit providers be a member of an ASIC Approved External Dispute Resolution Scheme

f. The default notice required to be served under s 80 of the Code should also refer consumers in default to the free legal services available in their State of residence.

5. The availability of support services

a. Provide a legislative impact statement on the flow-on effect on Legal Aid, Community Legal Centres, and financial counsellors from the proposed framework required in order to ensure consumers are able to effectively participate in legal processes under the proposed framework.