

Review of the National Hardship Register

Legal Aid NSW submission to
Australian Collectors & Debt
Buyers Association

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Legal Aid
NEW SOUTH WALES 

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About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are socially and economically disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 32 community legal centres and 29 Women's Domestic Violence Court Advocacy Services.

The Civil Law Division provides legal advice, minor assistance, duty and casework services to people through the Central Sydney office and 13 regional offices. The Division focuses on legal problems that impact most on disadvantaged communities, such as credit, debt, housing, employment, social security and access to essential social services. Consumer issues constitute the largest category of service for our Civil Law Division.

Legal Aid NSW's dedicated Civil Law Service for Aboriginal Communities provides advice, assistance and case work for a range of civil law problems. The team focuses on systemic consumer issues. This submission draws on the casework experience of civil law solicitors in providing these services.

Legal Aid NSW welcomes the opportunity to make a submission to the Australian Collectors & Debt Buyers Association (**ACDBA**) in relation to the Review of the National Hardship Register. Should you require any further information, please contact:

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Introduction

Legal Aid NSW welcomes the opportunity to contribute to the ACDBA review of the National Hardship Register (NHR) initiative. The NHR initiative benefits consumers, consumer advocacy and industry by reducing futile debt collection activities against vulnerable consumers experiencing long-term and severe financial hardship. We consider that steps should be taken to expand its coverage, both by broadening the type and number of creditors participating in the scheme, and by increasing marketing efforts to consumer advocates and financial counsellors.

Purpose and benefit of NHR initiative

1. The NHR initiative's purpose is to address the serious issue of long-term and severe financial hardship experienced by a small but growing number of vulnerable consumers.

a) Is the NHR initiative achieving its purpose?

Yes. Legal Aid NSW considers that the NHR initiative is an invaluable debt relief mechanism for vulnerable consumers experiencing long-term and severe financial hardship. While the NHR initiative cannot address the underlying causes of long-term and severe financial hardship, it provides significant relief for eligible applicants by relieving them of debt collection activity and the significant burden of repaying the debt.

b) What has been the benefit to stakeholders including community groups/consumers and creditors?

The NHR initiative represents a unique collaboration between creditors and consumer advocates. The collaboration has helped to align the objectives of these sectors. In working together to identify and protect vulnerable consumers experiencing severe and long-term financial hardship, the NHR initiative is transforming the collections culture by raising awareness of the impact of severe and long-term hardship on the ability of vulnerable consumers to repay certain debts.

For NHR applicants and those working with vulnerable consumers experiencing long term hardship there are two key benefits:

1. Time efficiency: the NHR initiative allows consumer advocates to deal with multiple debts through one application process. This represents a significant time saving to consumer advocates who are not required to approach each Participating Creditor and undertake individual advocacy in relation to each debt.
2. Outcome certainty: the clarity of the NHR initiative eligibility criteria offers a high degree of outcome certainty for eligible applicants whose creditors are Participating Creditors under the terms of the NHR scheme. If an applicant is registered on the NHR, collection activity against them by an NHR Participating Creditor will cease

and the debt will be waived if the applicant remains continuously registered for three years.

c) What is the ongoing and future benefit?

In addition to the benefits outlined in 1(a) - (b) above, the NHR initiative has the ongoing benefit of benchmarking best practice debt collection standards regarding the treatment of vulnerable consumers experiencing severe and long-term financial hardship. When engaging with creditors who are not Participating Creditors, consumer advocates can refer to the good practice or industry standards of the NHR initiative to bolster their submissions for debt waiver in respect of their particular client.

Changes to the NRH initiative

2. There may be cause to look at changes to the NHR initiative so as to achieve a greater potential. The current framework is highly regulated by the Participating Creditors Agreement and binds creditors to a mandate as to how to manage accounts-this limits the NHR initiative to a subset of only ACDBA membership.

a) Can the reach of the NHR initiative be expanded, or is there a better existing scheme which makes the NHR initiative redundant?

Yes. Legal Aid NSW supports an expansion of the reach of the NHR initiative. At present, the NHR initiative is a unique and nationally relevant debt waiver scheme. We are not aware of a better existing scheme that makes the NHR redundant.

However, Legal Aid NSW notes that NHR initiative's ability to fulfil its purpose is limited by two key factors:

1. Some NHR participating entities collect debt both as creditors, and on behalf of others. Those entities are able to waive the debt that they own, but not the debt that they are collecting on behalf of others. Eligible consumers may continue to be exposed to collection activity from an NHR participating entity collecting on behalf of an entity not participating in the scheme.
2. The class of creditors currently participating in the scheme is limited. The NHR's primary beneficial function of debt relief does not currently encompass debts owed to telecommunications and energy providers, banks, non-bank lenders and other Australian credit licence holders.

The NHR initiative would be greatly enhanced by broadening the type and number of creditors participating in the scheme. However, strict creditor account management processes for registered applicants should be maintained, according to the terms of the Participating Creditors Agreement. The primary benefit of the initiative is the outcome certainty referred to above.

Expansion of the NHR initiative should focus on engaging with entities that are true creditors with authority to waive the debts of eligible applicants.

b) What would be the consequence if the NHR initiative ceased to exist?

If the NHR initiative ceased to exist, vulnerable consumers with debts to Participating Creditors would need to return to negotiating relief with each individual creditor. The loss of efficiency and outcome certainty noted above would be a significant loss to vulnerable consumers and their advocates. The case study of Jose, below, demonstrates the benefits of the NHR initiative.

Case Study: Jose

Legal Aid NSW recently assisted Jose, who was in severe and long-term financial hardship and had several thousand dollars in unsecured debts to NHR Participating Creditors. Ongoing collection activity on these debts was causing Jose significant anxiety and emotional distress. He had multiple mental health issues and his sole source of income was the Disability Support Pension. This vulnerable consumer was unable to make any repayments on the debts. A Legal Aid NSW solicitor was able to register Jose with the NHR via the online portal and all of Jose's debts to Participating Creditors were subsequently waived in full.

Without access to a rapid and dependable debt relief mechanism such as the NHR initiative, it would not have been possible to achieve this outcome for Jose. Futile debt collection efforts would likely have continued, causing ongoing distress to Jose and ongoing costs to creditors. If the NHR initiative ceased to exist, industry would suffer from the loss of an efficient and cost-effective mechanism to avoid futile debt collection and trading in debts for this profile of consumer. Legal Aid NSW notes that this is a foundational purpose for the NHR initiative according to the recitals of the Participating Creditor Agreement.

3. If the NHR initiative did not maintain and publish to Participating Creditors a list of approved consumers but instead continued to evaluate hardship applications against the established criteria and notified creditors (of the consumer's choosing) of successful applications, would this be a superior model?

Legal Aid NSW requires more specific details about the proposed model before indicating whether the proposed model is superior. In our experience, vulnerable consumers experiencing severe and long-term financial hardship seldom present to our service with a complete or comprehensive understanding of the extent of their indebtedness. Our clients often struggle with record keeping due to transient living arrangements, financial abuse, mental health issues, literacy issues and other forms of disadvantage.

It is unlikely that vulnerable consumers would be able to provide correct and exhaustive notification details of all existing creditors. This may result in continued collection activity that is both harmful to the vulnerable consumer and inefficient for the relevant creditor. In light of these concerns, our current view is that it is most appropriate to continue publishing the details of registered applicants to all Participating Creditors.

Marketing the NHR initiative

5. Thinking about the extent the NHR initiative is being actively used to assist vulnerable consumers:

- c) How well is it being communicated/marketed?
- d) How could communications and marketing of the NHR initiative be improved?

The experience of Legal Aid NSW is that there is a general awareness about the NHR initiative among consumer advocates and financial counsellors. However, there is scope for improvement in the extent and quality of communication about the NHR initiative. Given the regularity of staff movements, funding changes and new service delivery initiatives in the sector, there is a need for regular communication.

Legal Aid NSW also supports an increase in communication and marketing about the NHR initiative from the ACDBA within broader support networks for vulnerable consumers such as crisis refuges, community hubs including neighbourhood centres and within the NGO sector generally.

Regular updates about the current list of Participating Creditors and upcoming NHR training for new or existing users would greatly assist the internal promotion of the NHR initiative within Legal Aid NSW.

A physical presence by members of the ACDBA or the dissemination of relevant marketing material at key stakeholder conferences, such as the Legal Aid NSW Civil Law conference, the Financial Counselling Association NSW annual conference, Financial Services and Credit and Insurance Ombudsman conferences and NGO sector events (including Homeless Connect days), would further assist the effective marketing of the NHR Initiative.

- a) Do you see it as a valuable industry initiative?

Legal Aid NSW supports the NHR initiative and considers the NHR initiative to be valuable to industry, vulnerable consumers and consumer advocates.

Other efforts to address hardship

6. Hardship management has changed a lot in recent years:
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| a) How relevant is the NHR initiative today given the greater focus on financial hardship issues, policies, systems and regulations from within industries generally? |
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While industries are focusing more on financial hardship policies, Legal Aid NSW continues to assist a high volume of vulnerable consumers in severe and long-term financial hardship. The work done within industries thus far is not sufficient to reduce the prevalence of vulnerable consumers experiencing financial hardship, debt collection activities, and unmanageable debt.

Legal Aid NSW solicitors frequently engage with creditors who demonstrate an insensitive and inflexible approach to collection. The NHR initiative stands as an important best practice example for industry with respect to demonstrating the mutual benefit to both consumers and industry creditors of not persisting with fruitless collection activity against vulnerable consumers in severe and long-term financial hardship.

It must also be noted that vulnerable consumers often present with debts to multiple creditor classes including government, banks, telecommunications companies, utility companies and individuals (among others). Having a reliable debt relief mechanism like the NHR initiative to readily deal with specific debts to Participating Creditors allows Legal Aid NSW solicitors to focus their advocacy on creditors who require direct financial hardship advocacy and engagement.

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| b) Specifically have the improvements in hardship management by creditors since 2012 made the purpose for the NHR initiative redundant? |
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Since 2012, Legal Aid NSW has observed an increased general understanding from some creditors about the dire personal and financial consequences that can result from severe and long-term hardship. Legal Aid NSW has built relationships with certain creditors to streamline hardship and debt management processes and assist creditors to understand the impact of collection activity on vulnerable consumers.

Despite some improvements in hardship management by creditors, the consistently high volume of hardship advocacy undertaken by Legal Aid NSW indicates that there is still room for improvements in hardship management by creditors. Legal Aid NSW still sees inconsistent approaches to debtor hardship and inconsistent creditor culture and behaviour with respect to assisting consumers experiencing severe and long-term financial hardship.

In these circumstances Legal Aid NSW considers that the small improvements in hardship management by creditors since 2012 have not made the purpose for the NHR initiative redundant. The NHR initiative is still very much required by vulnerable consumers experiencing severe and long-term financial hardship.

c) Do the low numbers on the NHR register point to this or rather do they point to a need to expand its use by the broader financial counselling community?

The low numbers on the NHR register point to a need to expand its use. It could be the case that only a small percentage of vulnerable consumers are reaching out to support services to help manage their debts. The comprehensive application process required for successful listing might also be a disincentive to consumer advocates who may choose direct engagement with creditors as a more efficient approach. Regardless of the reasons for the low numbers on the NHR register to date, Legal Aid NSW supports the expanded use by the broader consumer advocate community.

Currently, consumer advocates can be registered with the scheme by attending a formal webinar delivery, which is only delivered every three months. We suggest that a self-accreditation model where the advocate views the webinar in their own time would expand registration opportunities for consumer advocates.

Legal Aid NSW recommends that the ACDBA separately engages with key stakeholders of the NHR initiative on how to improve uptake and application registration numbers.

d) Are there now better and more accessible schemes to meet the need for which the NHR initiative was created?

The NHR initiative stills serves a crucial role in addressing severe and long-term financial hardship. Legal Aid NSW is not aware of any better or more accessible schemes to meet the demand for which the NHR was created. While there are many distinct hardship relief schemes in operation that seek to facilitate better outcomes for the debtors of particular creditors, the NHR initiative is unique in its central hardship identification and waiver function across the industry.

However, Legal Aid NSW considers that the application process required by the NHR initiative requires a significant amount of work from the advocate and information from the vulnerable consumer. Legal Aid NSW supports streamlining the application to reduce barriers to listing.

7. What, if any co-operation is possible with the Vulnerability Roundtable and other national hardship initiatives to improve the reach and effectiveness of the NHR initiative?

Legal Aid NSW does not have any specific feedback regarding co-operation with the Victorian Vulnerability Roundtable initiative. In general, collaboration can achieve mutually beneficial outcomes for all participating stakeholders and drive long-term support for multiple interest undertakings like the NHR initiative. The diverse contributions from each party to a collaboration can improve the design, scope, reach and impact of important systemic change projects. Legal Aid NSW supports any future co-operation with other national hardship initiatives that may enable the NHR initiative to achieve its purpose of addressing the serious issue of long-term and severe financial hardship.