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## Review of National Hardship Register

Thank you for the opportunity to comment on the Review of the National Hardship Register (NHR). The Financial Rights Legal Centre operates the National Debt Helpline in NSW with a relatively large team of financial counsellors and solicitors. Although we often help vulnerable debtors who are seeking debt waivers we have not used the NHR since its inception. We agree with the purpose of the initiative (creating an efficient and cost-effective mechanism for financial counsellors and industry to avoid futile debt collection activity for people in severe financial hardship), but we believe the Register suffers from several design flaws which prevent us from wanting to use it for our clients:

- three years of uncertainty is a long time when waivers can often be obtained immediately for clients who would qualify. The NHR provides no guarantee of eventual waiver;
- there is a lack of clarity about future implications;
- there is a lack of clarity about the credit reporting implications;
- there is a lack of clarity about statute of limitations effect (Does the NHR count as an acknowledgement of debt? Could the limitations time be extended because of the collections break?)
- bankruptcy could often result in discharge in 3 years, so does that make the NHR redundant?; and
- we have concern that greater use or expansion of the NHR might mean that creditors would stop giving waivers and refer to debtors to the NHR instead (this has happened for one of our clients).

In practice we have found that none of our clients have had the right combination of creditors for the NHR to be useful. Usually only one or maximum of two creditors are participating with the NHR and often several others are not. In these circumstances our financial counsellors and solicitors decide that applying for the NHR will not provide the benefits to outweigh the risks and uncertainty of putting our client on the NHR. We have always decided that it would be better to apply separately for waivers from each creditor.

## Answers to specific questions

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?*

Unfortunately our organisation almost never uses the NHR even though we do regularly help clients in long term financial hardship. In our experience putting a client on the NHR is never a better option than simply getting waivers directly from the creditors. Even if we do need to

repeat the waiver process across multiple creditors, getting a waiver immediately gives our clients certainty, which is something they are desperately looking for. The three year waiting period required to get a waiver through the NHR is just not the best option for our clients.

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

No comment

c. *What is the ongoing and future benefit?*

No comment

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 the 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?*

We think a better option would just be for all creditors and debt collectors to have a waiver policy published on their website. Ideally these policies would be relatively uniform and the same type of evidence of hardship could be provided to each one. The certainty of a waiver decision right away is better than the three year waiting period required by the NHR.

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

We don't know because we don't use it.

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?*

Yes. There is a lot of confusion from people in financial hardship as to the purpose of the NHR or the value of being "on the NHR list". Some people are worried that being listed will only make them more of a target to debt collectors, predatory lenders such as pay day lenders, be damaging to them or humiliating on a personal level as the information may become known.

As an alternative, if the initiative continued to evaluate applications against a set of established criteria and notified creditors could give waivers immediately that would be a great outcome for people.

4. *To what extent if any do the skills of Financial Counsellors (with respect to such things as proper training or computer literacy) affect the success and growth of the NHR initiative?*

No comment.

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

a. *Has it been adequately embraced by the broader financial counselling community?*

Not to our knowledge.

b. *How well is it being communicated/marketed?*

Because we don't use the NHR we have not been very aware of its marketing.

c. *How could communications and marketing of the NHR initiative be improved?*

No comment.

d. *Do you see it as a valuable industry initiative?*

No, not in its current form for the reasons set out above on page 1.

6. *Hardship management has changed a lot in recent years:*

a. *How relevant is the NHR initiative today given the greater focus on financial hardship issues, policies, systems and regulations from within industries generally?*

We do not believe the NHR initiative is very relevant at the moment.

As stated above, our preference is to seek waivers directly from creditors and debt collectors in order to provide certainty for our clients. Most of the time there are better alternatives to the NHR.

b. *Specifically have the improvements in hardship management by creditors since 2012 made the purpose for the NHR initiative redundant?*

Yes. Since NHR began there have been significant developments in hardship practices, including waivers offered immediately by most major creditors and the big banks have all started to publish their waiver criteria online.

Waivers obtained directly from creditors offer our clients greater certainty and peace of mind. Credit reporting consequences can be individually negotiated depending on circumstances.

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?*

We think it is a combination of redundancy and the initial design flaws.

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

Yes, but they do not cover the field. What the initiative was trying to fix is that you have to go to every creditor individually, a centralised scheme is a good idea but the design is bad. The three year waiting period is confusing to consumers and provides them no certainty at a time when they are under a great deal of financial stress.

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?*

No comment.

8. *What impact might changes to the Credit Reporting Code have, and potentially could the Credit Reporting Bureaus effectively integrate the NHR initiative into their systems so as to get a wider reach for the initiative?*

We do not understand what relationship the NHR has with the credit reporting system, and we don't understand this proposal. We would seek you provide further details as to how credit reporting and the NHR could be integrated and what you are suggesting.

Thank you again for the opportunity to comment in this Initial Consultation. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



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