**Credit Law Toolkit**

Sample Letters

This toolkit is copyright. Non-profit community groups have permission to reproduce parts of this book as long as the original meaning is retained and proper acknowledgement is given. All other persons and organisations wanting to reproduce material from the book should obtain permission from the Consumer Credit Legal Centre (NSW).

The Credit Law Toolkit is jointly produced by the Consumer Credit Legal Centre (NSW) and Legal Aid NSW.

The Credit Law Toolkit is written by Katherine Lane with invaluable comments and substantial review by Karen Cox.

IBSN 978-0-9807517-1-0

# **Table of Contents**

Sample letter: Financial hardship | credit law 3

Sample letter: Financial hardship | no credit law 5

Sample letter: Challenging a lending decision—credit cards & personal loans 7

Sample letter: Challenging a lending decision—home loans 9

Sample letter: Requesting documents 11

Sample letter: Debtor harassment complaint 12

Sample letter: Confirming a repayment arrangement 13

Sample letter: Illegal car repossession 15

Sample letter: Requesting a debt release 16

Sample letter: High cost small loans 17

Sample letter: High cost small loans (finance brokers) 19

Sample letter: Inaccurate business purpose declaration (From 1 July 2010) 20

Sample letter: Inaccurate business purpose declaration (Pre 1 July 2010 contracts) 21

Sample letter: Complaining to ASIC 22

## **Sample letter: Financial hardship | credit law**

|  |
| --- |
| Date  Credit provider  (Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)  Address |
| Dear,  **RE: Request for change on the grounds of hardship**  **Client name**  **Type of loan account no.**  I am assisting (client name) in relation to the above loan account.  Please find attached an authority to release information, signed by my client.  My client wishes to apply to you for a variation of the above loan contract on the grounds of hardship under s. 72 of the *National Credit Code* (Schedule 1 of *National Consumer Credit Protection Act 2009*) (“NCC”).  Choose one of the options below if applicable:  *Where the credit provider is a bank (check whether the bank is a subscriber to Code of Banking Practice at www.codecompliance.org.au):*  I/we also refer to the commitment of the bank to:   * Relieving Mortgage Stress – A common approach for assisting borrowers facing financial hardship (Media Release from the Federal Treasurer)(for home loans only) * s. 25.2 of the Code of Banking Practice   *Where the credit provider is a credit union or building society (check whether the credit union or building society is a subscriber to Mutual Banking Code of Practice at www.abacus.org.au):*  I/we also refer to the commitment of the credit union/building society to:   * Relieving Mortgage Stress – A common approach for assisting borrowers facing financial hardship (Media Release from the Federal Treasurer) * s. 24 of the Mutual Banking Code of Practice   *Where the non–bank lender is a member of the Mortgage and Finance Association of Australia (check at www.mfaa.com.au):*  I also refer to your commitments under ss. 65–72 of the Mortgage and Finance Association of Australia Code of Practice.  I assume you will stay all enforcement action while you consider this application. If this is not possible, please let me/us know immediately in writing.  Section 72 of the NCC sets out the general principle that a debtor who is unable, reasonably, because of illness, unemployment, or other reasonable cause to meet their obligations under a credit contract but reasonably expects to be able to repay the debt if the contract is changed in the ways described, may apply to the lender for such a change.   1. **Illness, Unemployment, or other reasonable cause**   My client(s) have been in financial hardship because of illness and/or unemployment, and/or [examples of other reasonable causes are family breakdown, decreases in income, children’s illnesses, and/or caring responsibilities].  The details of my client’s illness/unemployment and/or other reasonable cause are as follows:  [Give Details, eg, My client was unwell with a heart condition for six months ending in February 2009. A medical certificate is attached.]   1. **Expectation of being able to reasonably repay the loan if the variation is granted**   My client(s) expect to be able to reasonably repay the loan if the requested variation below is granted. My client has been paying loan repayments of $ per fortnight/per month while s/he/they have been in hardship.  My client has now returned to work and can now afford the scheduled repayments on the loan. OR  My client(s) expect to return to work on [give date or number of months] and then my client will be able to afford the scheduled loan repayments.   1. **The requested change to the contract**   My client requests the following change to his/her/their contract:  A reduction of the amount of each repayment to $ per week/fortnight/month. This change is requested for [number of months] months. The term of the loan will be extended and any arrears will be added to the loan (capitalised). AND/OR  Postponing the repayment due on / / so that it is now due on / / . AND/OR  Postponing the repayments due between / / and / / and extending the term of the loan.  In support of my client’s application, I give the following details:  Details of Income and Expenditure:  Current income is $ per week/fortnight/month  Current major expenses are:  Mortgage: $ per week/fortnight/month  Other loan repayments: $ per week/fortnight/month  Please send a detailed Financial Statement of Position to be completed by my client, if required.  I assume that you will not continue to charge default fees, default interest or make an adverse listing on my client’s credit report while my client(s) hardship request is being considered.  As can be seen from the above information, my client will be able to discharge his/her/their obligations under the above contract if you agree to the proposed change. I/we ask that you consider this application as a matter of urgency.  I await your reply in writing within 21 days of the date of this letter.  Yours faithfully, |

## **Sample letter: Financial hardship | no credit law**

|  |  |
| --- | --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address | |
| Dear,  **RE: Request for change on the grounds of hardship**  **Client name**  **Type of loan account no.**  I am assisting (client name) in relation to the above loan account.  Please find attached an authority to release information, signed by my client.  My client wishes to apply to you for a variation of the above loan contract on the grounds of hardship.  Choose one of the options below if applicable:  *Where the credit provider is a bank (check whether the bank is a subscriber to Code of Banking Practice at www.codecompliance.org.au):*  I/we also refer to the commitment of the bank to:  Relieving Mortgage Stress – A common approach for assisting borrowers facing financial hardship (Media Release from the Federal Treasurer)(for home loans only)  s. 25.2 of the Code of Banking Practice  *Where the credit provider is a credit union or building society (check whether the credit union or building society is a subscriber to Mutual Banking Code of Practice at www.abacus.org.au):*  I/we also refer to the commitment of the credit union/building society to:  Relieving Mortgage Stress – A common approach for assisting borrowers facing financial hardship (Media Release from the Federal Treasurer)  s. 24 of the Mutual Banking Code of Practice  *Where the non–bank lender is a member of the Mortgage and Finance Association of Australia (check at www.mfaa.com.au):*  I also refer to your commitments under ss. 65–72 of the Mortgage and Finance Association of Australia Code of Practice.  I assume you will stay all enforcement action while you consider this application. If this is not possible, please let me/us know immediately in writing.  **My client’s financial hardship**  My client(s) have been in financial hardship because (give reason that is causing hardship – can be anything). | |
| The requested change:  My client requests the following change to his/her/their contract:  Choose from any of the following:   * A reduction of the amount of each repayment to $ per week/fortnight/month. This change is requested for (number of months) months with no interest to be charged during this time. The term of the loan will be extended and any arrears will be added to the loan (capitalised). * A moratorium on repayments for (number of months) months with the arrears to be capitalised with no interest to be charged during this time.   In support of my client’s application, I give the following details:  Details of Income and Expenditure:  Current income is $ per week/fortnight/month  Mortgage: $ per week/fortnight/month  Other loan repayments: $ per week/fortnight/month  Please send a detailed Financial Statement of Position to be completed by my client, if required.  I assume that you will not continue to charge default fees, default interest or make an adverse listing on my client’s credit report while my client(s) hardship request is being considered.  I ask that you consider this application as a matter of urgency.  Yours faithfully, | |

## 

## **Sample letter: Challenging a lending decision—credit cards & personal loans**

|  |
| --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address |
| Dear,  **RE: Client name**  **Type of loan account no.**  I am assisting (client name) in relation to the above loan account.  Please find attached an authority to release information, signed by my client.  My client wishes to raise a dispute about the granting of his/her credit card and/or credit card limits. My client contends that (name of credit provider) has granted my client when you knew or should have known my client could not afford to repay the increased debt without substantial hardship.  **My client’s circumstances**  My client instructs me that:  Example only of matters to mention   * My client’s sole source of income is Centrelink benefits since 1996. My client receives the Disability Support Pension. Evidence of my client’s income is attached. * My client has a number of chronic illnesses, including emphysema. * My client is 62 years old. * My client obtained a credit card from you on or about 2005 with an initial limit of $2,000. Since that time there have been three increases in her credit card as follows: * Increase from $2,000 to $3,000 in 2006 * Increase from $3,000 to $5,000 in 2007 * Increase from $5,000 to $7,000 in 2009   **My client’s dispute**  My client contends that:  She could not pay the increased minimum repayments without substantial hardship for the limit increases after $2,000.  The increased limits are unjust and/or unsuitable under:   * Section 76 of the National Credit Code. * Section 25.1 of the Code of Banking Practice (if a subscribing bank) or Section 7 of the Mutual Banking Code of Practice (if a subscribing credit union or building society) (if applicable). * The Responsible Lending Conduction provisions of the *National Consumer Credit Protection Act 2009*.   **Settlement Offer**  My client wishes to offer to settle this dispute on the following basis:  Example of a settlement offer  The debt is reduced to $2,000.  My client repays the debt at $50 per month.  No interest or fees to be charged.  The credit card is cancelled (usually already cancelled so delete if not applicable).  No default listing on my client’s credit report.  Please respond by / / .  I assume you will not take any further action against my client (including making any adverse listing on my client’s credit report) while you are investigating my client’s dispute and considering the above offer. If this assumption is incorrect, please advise me in writing immediately.  Yours faithfully, |

## 

## **Sample letter: Challenging a lending decision—home loans**

|  |
| --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address |
| Dear,  RE: Client name  Type of loan account no.  I am assisting (client name) in relation to the above loan account.  Please find attached an authority to release information, signed by my client  My client wishes to raise a dispute about the granting of his/her loan. My client contends that (name of credit provider) has granted my client a loan when you knew or should have known my client could not afford to repay the debt or not without substantial hardship.  My client’s circumstances  My client instructs me that:  Example only of matters to mention  Delete the options that are not applicable:   1. My client obtained a loan/lease from (name of credit provider) of $(insert amount borrowed) for (insert purpose of the loan/lease) on / / and/or my client received limit increases of: insert details of limit increases – amounts and dates. 2. At the time of the seeking the loan, my client’s financial position was as follows: insert details of client’s income, expenditure, assets, and debts. (Note: if there are multiple limit increases or refinances details of the client’s circumstances at each point will need to be provided). 3. My client’s situation at the time of getting the loan was: age, number of dependents, any illness or disability, employed, any other relevant factor. 4. My client’s requirements and objectives in relation to the loan were: insert details of client’s requirements and objectives. Examples might include – refinancing his home loan to save money, to consolidate debts in order to save money, to purchase a motor vehicle. How much details will depend on the nature of the complaint and the complexity of the product. 5. My client was told: insert details of any conversations or representations that are relevant to the dispute. 6. My client could not afford the loan. Give details of any hardship 7. The loan did not meet my client’s objectives and requirements because: insert details of why loan was unsuitable. 8. (name of credit provider) failed to:  * Make reasonable enquiries as to my client’s financial situation; * Take reasonable steps to verify my client’s financial situation; * Make reasonable enquiries as to my client’s needs and objectives; * Adequately assess whether my client could meet the financial obligations under the loan without substantial hardship; * Adequately assess whether the loan granted met my client’s requirements and objectives.  1. My client’s loan is unjust under s. 76 of the NCC because: (address any of the list of factors included in s. 76 (see *Chapter 12 – Unjustness*) that are relevant to the case). 2. I attach copies of:  * My client’s completed loan application; * My client’s loan contract; * A copy of the assessment provided by the (name of Credit Provider) under the *NCCP Act* (if applicable); * A copy of correspondence with (name of credit provider) in relation to this dispute; * Any supporting evidence to establish the client’s financial situation at the time of the loan being granted.  1. My client is also in financial hardship: (insert details of client’s income, expenditure, assets, and debts). 2. My client’s situation now is: age, number of dependents, any illness or disability, employed, any other relevant factor.   **My client’s dispute**  My client contends that:   1. He/she/they could not pay the home loan repayments without substantial hardship. 2. The loan is unjust and/or unsuitable under:  * Section 76 of the National Credit Code; * Section 25.1 of the Code of Banking Practice (if a subscribing bank) or Section 7 of the Mutual Banking Code of Practice (if a subscribing credit union or building society) (if applicable); * The Responsible Lending Conduction provisions of the *National Consumer Credit Protection Act 2009*.   **Settlement Offer**  My client wishes to offer to settle this dispute on the following basis:   * My client has or will put their home on the market to be sold. My client will provide evidence of this including a copy of the contract of sale and contract with the real estate agent within 14 days of the date of this letter; * My client will exchange contracts on the sale of their home within four months of your acceptance of this offer; * All set–up costs are refunded, including any interest charged on those costs; * All default fees and enforcement costs are refunded; * No default listing made on my client’s credit report.   Please respond by / / .  I assume you will not take any further action against my client (including making an adverse credit listing on your client’s credit report) while you are investigating my client’s dispute and considering the above offer. If this assumption is incorrect, please advise me in writing immediately.  Yours faithfully, |

## **Sample letter: Requesting documents**

|  |
| --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address |
| Dear,  **RE: Client name**  **Type of loan account no.**  I am assisting (client name) in relation to the above loan account.  Please find attached an authority to release information, signed by my client.  My client requests copies of the following documents and information:  Delete the documents not required   1. Copy of the credit contract. 2. Copy of the loan application form(s). 3. Copy of the preliminary assessment (for loans after 1 July 2011). 4. Details of the original limit and any limit increases on my client’s credit card account including:  * The amount of the original limit granted; * The date of the limit increase; * The amount of the limit increase.  1. A copy of the assessment performed pursuant to s. 129 of the *National Consumer Credit Protection Act*. 2. Any credit related insurance contract in your possession. 3. Any notices under the *National Credit Code* or *Consumer Credit Code* previously sent to my client. 4. Account statements for the period from / / to / / . 5. A statement of the payout figure as at / / with details of how this amount is calculated.   Please provide the requested information by / / .  If enforcement action is threatened  I assume that you will not take any legal action in relation to the above account until 28 days after the documents and information requested above have been received. If this assumption is not correct, please advise me in writing immediately.  Yours faithfully, |

## **Sample letter: Debtor harassment complaint**

|  |
| --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address |
| Dear,  **RE: Client name**  **RE: Alleged debt to (name of creditor)**  **Type of loan account no.**  I am assisting (client name) in relation to the above loan account.  Please find attached an authority to release information, signed by my client.  My client has instructed me to raise a dispute about your conduct in relation to the collection of my client’s alleged debt. I also refer to your obligation under the ASIC/ACCC Debt Collection Guideline: for collectors and creditors.  Write the details of your client’s experience of harassment by the debt collector. Include dates, times, events, and names of people involved. See *Chapter 4 – Debt collection* for examples of conduct by a debt collector that may be considered debtor harassment. Some examples of harassment appear below:  Example 1: A representative (name) of your business has been ringing my client very frequently. During the last four weeks, my client has been contacted over 30 times by phone. Some of those phone calls occurred after 9:00 PM.  Example 2: A representative (name) of your business rang my client at their workplace (name of workplace) and spoke to a co–worker about my client’s alleged debt. The representative also asked my co–worker for personal details about my client including my client’s home address and phone number. My client was terribly embarrassed and I believe that your conduct caused significant harm to my client’s professional reputation.  Example 3: On or about (date) (name) of your business contacted my client by phone. At that time, my client was told s/he owed a debt. You told my client that if s/he did not pay the debt immediately, the Sheriff would come around and take his/her possessions (including her car to pay the debt). My client has since found out there is no court judgment against her/him that would enable the sheriff to seize his/her possessions.  I demand that the harassment of my client detailed above stop immediately.  I request that all future correspondence in this matter be in writing to me as an authorised representative of my client.  Yours faithfully, |

## **Sample letter: Confirming a repayment arrangement**

|  |
| --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address |
| Dear,  **RE: Client name**  **Type of loan account no.**  I am assisting (client name) in relation to the above loan account.  I refer to the telephone conversation with (person’s name) of your office on / / .  In that telephone conversation, you agreed to the following repayment arrangement:  For example  Repayments of $200 per month commencing on / / .  The repayments to increased to $300 per month after three months.  Any arrears to be capitalised.  As this is an agreed variation to the contract, no further default fees or interest should be charged. It is also my understanding that if my client defaults on this arrangement a further default notice under s. 88 of the *National Credit Code* (being Schedule 1 of the *National Consumer Credit Protection Act*).  Yours faithfully, |

## **Sample letter: Illegal car repossession**

|  |
| --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address |
| Dear,  **RE: Client name**  **Type of loan account no.**  I am assisting (client name) in relation to the above loan account.  Please find attached an authority to release information, signed by my client.  My client has told me that his/her/their car was repossessed in breach of the *National Credit Code* because:  Delete the options that are not applicable:   * My client negotiated an agreed repayment arrangement with you on / / . This arrangement remains in place as my client has kept to the required repayments of $ per week/fortnight/month. As there is an agreed repayment arrangement, my client is no longer in default. * My client has not been served with a default notice under the *National Credit Code*. * My client received a default notice dated / / . The 30 days given under this notice to fix the default has not expired or my client has paid the default in full. * The amount owing on the loan is less than 25% of the amount borrowed. Under s. 91 of the *National Credit Code* my client’s car cannot be repossessed without a court order. * My client’s car was situated on private residential property at the time it was repossessed. My client or the owner of the property did not consent to the repossession. No court order was produced. Under s. 99 of the *National Credit Code* my client’s car cannot be repossessed from private residential property without written consent or a court order.   My client’s car repossession is in breach of the *National Credit Code*. My client demands:  The return of his/her/their car immediately.  All enforcement costs refunded and interest recalculated.  Compensation of $ (increasing each week by $ ) (amount of costs caused by the inconvenience of having no car).  The return of my client’s car is urgently required because (eg, to get to work, take children to school, get to doctor’s appointments).  Please respond by / / .  Yours faithfully, |

## **Sample letter: Requesting a debt release**

|  |
| --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address |
| Dear,  **RE: Client name**  **Type of loan account no.**  I am assisting (client name) in relation to the above loan account.  Please find attached an authority to release information, signed by my client.  My client requests that you consider releasing my client from the above debt on compassionate grounds.  **My client’s circumstances**  My client instructs me that:  Example only of matters to mention   1. My client’s sole source of income is Centrelink benefits since 1996. My client receives the Disability Support Pension. Evidence of my client’s income is attached. 2. My client has a number of chronic illnesses (details. My client has significant medical costs for his health conditions.). 3. My client is 59 years old. 4. My client does not have any other outstanding debts apart from the debt to you. 5. My client does not own a home. His rental costs are $ per week/fortnight/month. He has a car worth $3,000, with which he needs to get to medical appointments. 6. See attached money plan, which shows that my client cannot reasonably afford to make repayments to the debt. 7. My client’s financial situation is unlikely to change.   **Request for a release from the debt**  As can be seen from the above information, my client is unable to repay the above debt and will not be able to repay the debt in the foreseeable future.  My client requests that s/he be released from the debt given her/his poor financial circumstances.  If you require any further information, please let me know.  I assume you will not take any further action against my client while you are considering the above request. If this assumption is incorrect, please advise me in writing immediately.  I look forward to your reply.  Yours faithfully, |

## **Sample letter: High cost small loans**

|  |
| --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address |
| Dear,  **RE: Client name**  **Type of loan account no.**  I am assisting (client name) in relation to the above loan account.  Please find attached an authority to release information, signed by my client.  My client wishes to raise a dispute about your conduct in granting my client a loan.  **My client’s circumstances**  For example:   1. My client’s sole source of income is Newstart. My client has been unemployed for over a year. At the time the loan was granted her income was $ . 2. My client also receives family tax benefit to cover the car of her two children, being 8 and 10 years old. 3. At the time my client obtained the loan with you she had the following regular expenses:  * List Expenses  1. My client has been struggling to make the repayments since the loan was granted.   **Irresponsible lending/unjustness**  My client contends that the loan granted to her by you is unsuitable because she could not afford to repay the loan without substantial hardship. My client contends that the granting of the loan is in breach of:   1. The responsible lending conduct provisions of the *National Consumer Credit Protection Act 2009* (NCCP): and 2. The unjustness provisions of the *National Credit Code* (s. 76).   Under the NCCP, you are required to:   1. Make reasonable inquiries about the consumer’s financial situation. 2. Take reasonable steps to verify the consumer’s situation. 3. Make an assessment that the contract is “not unsuitable”.   According to the loan application, my client did not have sufficient disposable income to cover the repayments on the loan.  **Breaching the interest rate cap**  QLD, NSW, ACT, and VIC (no fees incl. in interest rate calculation for VIC) only.  As the loan has an interest rate of 48% p.a. plus set up fees of $200, the effective interest rate is in breach of:   1. Section 14 of the Consumer Credit (Queensland) Act 1994 OR 2. Section 11 of the Consumer Credit (New South Wales) Act 1995 OR 3. Sections 39 & 40 of the Consumer Credit (Victoria) Act 1995 OR 4. Part 4A of the *Fair Trading Act* (Australian Capital Territory).   A breach of the interest rate cap is a prohibited cost and is in breach of s. 23 of the *National Credit Code*. A breach of s. 23 makes the interest charges void. Section 23 is also a key requirement and my client has the right to apply for a civil penalty if a key requirement is breached.  **Proposed settlement**  My client offers to settle this matter in full and final settlement on the following terms:  All interest and fees are refunded.  The amount borrowed being $ less all payments previously made is repaid at $ per month until the balance is repaid in full.  Any default listing on my client’s credit report is removed.  If enforcement proceedings are imminent …  I assume you will not take any further action against my client (including making an adverse listing on my client’s credit report) while you are investigating my client’s dispute. If this assumption is incorrect, please advise me in writing immediately.  Please respond by / / .  Yours faithfully, |

## **Sample letter: High cost small loans (finance brokers)**

|  |
| --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address |
| Dear,  **RE: Client name**  **Loan arranged with (name of credit provider)**  **Type of loan**  I am assisting (client name) in relation to a loan you arranged with…….(insert name of credit provider).  Please find attached an authority to release information, signed by my client.  My client wishes to raise a dispute about your conduct in arranging the loan for my client.  **My client’s circumstances**  For example:   1. My client’s sole source of income is Newstart. My client has been unemployed for over a year. At the time the loan was granted her income was $ . 2. My client also receives family tax benefit to cover the car of her two children, being 8 and 10 years old. 3. At the time my client obtained the loan with you she had the following regular expenses:  * List expenses  1. My client has been struggling to make the repayments since the loan was granted.   **Unsuitable loan**  My client contends that the loan arranged by you with (name of credit provider) is unsuitable because she could not afford to repay the loan without substantial hardship. My client contends that the arranged loan is in breach of the responsible lending conduct provisions of the *National Consumer Credit Protection Act 2009* (NCCP).  Under the NCCP, you are required to:   1. Make reasonable inquiries about the consumer’s financial situation. 2. Take reasonable steps to verify the consumer’s situation. 3. Make an assessment that the contract is “not unsuitable”.   According to the loan application, my client did not have sufficient disposable income to cover the repayments on the loan. I contend that you did not take reasonable steps to verify my client’s ability to repay the loan.(Get advice if an interest-rate cap applies in your state and include any additional arguments on this point.)  **Proposed settlement**  My client offers to settle this matter in full and final settlement on the following terms:   * The broker fee plus interest is refunded to the loan or to my client   Please respond by / / .  Yours faithfully, |

## **Sample letter: Inaccurate business purpose declaration (From 1 July 2010)**

|  |
| --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address |
| Dear,  **RE: Client name**  **Type of loan account no.**  I am assisting (client name) in relation to the above loan account.  Please find attached an authority to release information, signed by my client.  **My client’s dispute**  My client wants to raise a dispute about his/her loan. My client’s loan is described as a business/investment loan (delete as required) on the loan contract. My client appears to have signed a declaration stating that the purpose of the loan was business/investment (delete as required).  My client has told me that the purpose of his/her loan was (complete). This is a personal, domestic, or household purpose/purchase, renovate, or improve residential property investment purpose (delete as required) as required under s. 5 of the *National Credit Code* (being Schedule 1 of the *National Consumer Credit Protection Act 2009*).  Examples of matters to cover  My client instructs me that:   1. S/he did not understand the meaning and purpose of the declaration. The declaration was signed as part of a pile of papers. The significance of the declaration was not pointed out or explained to my client. 2. My client clearly explained the purpose of the loan to (insert name and details of person they explained it to). The purpose of the loan was to refinance an existing home loan. 3. If the credit provider had made reasonable enquiries about the purpose of the loan, it would have been obvious that the purpose of the loan was to refinance a home loan. 4. The loan application clearly shows that there was an existing loan to repay. The credit provider was aware of the type of loan to be refinanced because they requested copies of the credit card statements on the previous loan. 5. My client’s credit report refers to the application in the consumer applications part of the credit report.   Based on the above circumstances, my client contends that the declaration they signed is ineffective pursuant to s. 13(3) and the *National Credit Code* applies to his/her loan.  As the National Credit Code applies my client wishes to raise a dispute on the grounds of (details of the dispute).  *If enforcement proceedings are imminent …*  I assume you will not take any further action against my client (including making an adverse listing on my client’s credit report) while you are investigating my client’s dispute. If this assumption is incorrect, please advise me in writing immediately.  Yours faithfully, |

## **Sample letter: Inaccurate business purpose declaration (Pre 1 July 2010 contracts)**

|  |
| --- |
| Date  Credit provider  *(Write to the IDR contact person for the credit provider available at  www.fos.org.au or www.cosl.com.au. – use search for members)*  Address |
| Dear,  **RE: Client name**  **Type of loan account no.**  I am assisting (client name) in relation to the above loan account.  Please find attached an authority to release information, signed by my client.  **My client’s dispute**  My client wants to raise a dispute about his/her loan. My client’s loan is described as a business/investment loan (delete as required) on the loan contract. My client appears to have signed a declaration stating that the purpose of the loan was business/investment (delete as required).  My client has told me that the purpose of his/her loan was (complete). This is a personal, domestic, or household purpose as required under s. 5 of the *National Credit Code* (as applicable to pre 1 July 2010 contracts).  Examples of matters to cover  My client instructs me that:   1. S/he did not understand the meaning and purpose of the declaration. The declaration was signed as part of a pile of papers. The significance of the declaration was not pointed out or explained to my client. 2. My client clearly explained the purpose of the loan to the finance broker. The purpose of the loan was to refinance an existing home loan. 3. The loan application clearly shows that there was an existing loan to repay. The credit provider was aware of the type of loan to be refinanced because they requested copies of the credit card statements on the previous loan. 4. My client’s credit report refers to the application in the consumer applications part of the credit report.   Based on the above circumstances, my client contends that the declaration they signed is ineffective pursuant to s. 13 and the *National Credit Code* applies to his/her loan.  As the *National Credit Code* applies, my client wishes to raise a dispute on the grounds of (details of the dispute).  *If enforcement proceedings are imminent …*  I assume you will not take any further action against my client (including making an adverse listing on my client’s credit report) while you are investigating my client’s dispute. If this assumption is incorrect, please advise me in writing immediately.  Yours faithfully, |

## **Sample letter: Complaining to ASIC**

|  |
| --- |
| Date  ASIC Complaints Australian Securities and Investments Commission PO Box 9149 Traralgon Vic 3844 |
| **RE: Dispute about the conduct of (name of credit provider or broker)**  **Client name**  I am assisting (client name) in relation to the above loan.  My client wants to raise a dispute about the conduct of (name of credit provider).  **The complaint**  The details of my client’s complaint are:  For example:   1. On / / , My client entered into a rent–try–buy contract with BIG RENTAL COMPANY for a computer. 2. My client was told at the time of entering the contract that she would own the computer after one extra repayment at the end of the contract. 3. My client got to the end of the contract and went to make another payment so she would then own the computer. BIG RENTAL COMPANY told my client that one extra payment was not enough – she had to pay $500. My client complained about the increase and was told that she had no right to own the goods at all and if she did not pay the $500 she had to return the computer immediately. 4. My client believes BIG RENTAL COMPANY misled her about the contract. My client instructs me that she would not have entered the rental contract if she had known:  * She would not own the computer at then end of the contract; and * The amount to buy the computer could be changed.   **Relevant documents**  Please find attached:   1. A copy of the rental contract. 2. A copy of the letter from BIG RENTAL COMPANY about the purchase of the computer.   **Possible systemic problem**  I am concerned that consumers are being misled about rent–try–buy arrangements. This appears to be a systemic problem.  Please investigate the issues raised in this letter.  Yours faithfully, |