



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

26 August 2009

Ms Gillian Kreuter
Acting Senior Lawyer
Strategic Policy
Australian Securities and Investment Commission
GPO Box 9827
SYDNEY NSW 2001

By email: policy.submission@asic.gov.au

Dear Ms Kreuter

**Australian Collectors & Debt Buyers Association Submission
ASIC Consultation Paper 113: Training and competence for credit licensees**

The Australian Collectors & Debt Buyers Association (ACDBA) appreciates the opportunity to provide comment on the ASIC Consultation Paper 113: *Training and competence for credit licensees*.

The ACDBA welcomes harmonised and fair regulation to ensure the activity of debt collection (whether as an agent or debt buyer) is managed to community standards. The NCCP regime, however, is not the appropriate vehicle to bring about a national regulatory framework for our industry. Nor is it appropriate to develop a 'one size fits all' training and competency regime that imposes the same onerous and unnecessary standards on service providers who offer narrower services than credit providers.

We are strongly of the view both contingent collectors and debt purchasers should be exempt from the National Consumer Credit Protection (NCCP) regime. While only debt collectors currently have an exemption for 12 months pending a review, the reality is both groups provide exactly the same services. The only difference is debt ownership. Consequently, we wish to comment on ASIC's Consultation Paper 113 so our industry perspective, in its entirety, is considered in its development, particularly given the competition issues that result from inconsistent regulation of those providing exactly the same services.

In our view, the training and competency requirements are based on flawed premises that do not account for the diversity of business complexity and service provision within the lending cycle.

Those flawed premises include:

- All businesses are large and complex
- All businesses have significant resources available to manage compliance
- All businesses are located in cities with easy access to professional development services
- All businesses have a direct contractual relationship with consumers
- Educational standards deliver business competence
- Educational courses on offer are relevant and cost effective

From our members' perspective, the following is true:

- The businesses vary in size from small, single jurisdiction service providers to large, national businesses
- The debt collection services provided are simply a small, functional, non-complex part of the lending cycle
- The businesses are located across all parts of Australia, including regional and remote areas
- Debt collectors have no contractual relationship with consumers
- Businesses have run successfully for many years without the key persons holding formal qualifications and there are no indicators of business failure to suggest otherwise
- There are no tertiary courses relevant to our business

In addition, any consideration of the training and competence requirements must take into account both relevance and cost effectiveness, particularly in terms of business size and operational scope. Educational qualifications do not necessarily equate to managerial competence or sound operational outcomes. Neither a degree nor a Certificate IV qualification may be of any operational benefit or result in competence, particularly given the lack of substantive, relevant content available at any educational level.

We are of the view RTO Certificates provide little specialist training on which to build training and competency standards in our sector. Certificate III in Financial Services (Mercantile Agency) is based mainly on general office functions, with little practical application to the operational environment. Such Certificates add little, if anything, to the skill sets needed to run a mercantile agency.

It is worth noting, the content of the Certificate III in Financial Services (Mercantile Agents) Course No. FNS30404. All collectors working in NSW have been required to undertake this course, regardless of position or field of expertise.

For collectors, the compulsory core units are:

- Work in the financial services industry
- Communicate in the workplace
- Use technology in the workplace
- Apply health and safety practices in the workplace
- Locate subjects
- Prepare reports for management
- Apply principles of professional practice to work in the financial services industry
- Resolve disputes
- Collect debts
- Develop and document case recommendations
- Initiate legal recovery of debts

The majority of the course is focussed on general office functions and is grossly excessive to the actual needs of those working as collectors. Modules such as “locate subjects” and “initiate legal recovery of debts” are specialist functions which few, if any, collectors would undertake. There is only one module that is specifically relevant to a collector’s role, “collect debts”. The course is too general to be of benefit to key persons with senior management responsibilities.

There is no Certificate IV as when the training package was validated after wide industry and RTO consultation it was decided the occupational training for the work associated with collection activities was so straightforward and basic as to make elevation of the training qualification to a Certificate IV grossly inappropriate.

Consequently, we are of the view mandated educational standards do not necessarily guarantee competence, as the ACCC action against the James Hardy directors indicates. The standards proposed are more about perceptions than of actual relevance or benefit to the businesses which must comply. As there is no evidence of market failure, or guaranteed outcomes, to support the proposed standards, there can be no expectation of any significant benefit to consumer or our clients to justify these obligations.

ASIC should be quite clear we are not opposed to tertiary qualifications. Our members engage staff with a broad range of educational qualifications, qualifications that suit the business and positions involved. However, reliance on educational standards to demonstrate competence also creates a bias that devalues business experience as an inferior competency standard to an academic one. Such a bias is unjustified, particularly in the debt collection sector. Competence, however, can be measured through a range of objective criteria so that outcomes, rather than perceptions, are a better indication of business integrity and compliance with the NCCP regime.

In our view, a focus on operational outcomes is a better indication of organisational competence than the establishment of educational standards. Given the businesses captured by the NCCP regime range from the sole traders to highly complex banking organisations, it is not possible to specify educational standards that bring value to the varying business models, particularly given the limited application of the course content of many programs on offer.

Educational standards of key persons are matters best left to the business to decide, exactly the same as the approach ASIC is taking in relation to representatives. That approach accommodates all business models and leaves the onus on the business to determine the standards its operations require. Organisational competence is then more appropriately demonstrated by key persons meeting the ‘fit and proper test’ to which we are already subject, business solvency and the annual compliance report.

In addition, the ongoing training requirement of 20 hours per year far exceeds what is required of other professionals, such as lawyers and accountants. Lawyers in NSW are only required to undertake 10 hours of professional development a year. A requirement to undertake 20 hours per year is clearly predicated on the resources available to big business and a geographical location that makes attendance at various forums possible.

It is simply incomprehensible as to what the subject matter could be that could ever justify such a high and unreasonable impost of 20 hours per year!

This requirement is also predicated on key persons having the skill set and interest to conduct training and write articles. It is based on an academic approach to business rather than a realistic appreciation that not all service providers in the finance sector require degrees to run successful businesses. The approach clearly does not consider the operational and resource impact on small business and those who are not located in cities. It completely ignores relevance, another disadvantage of attempting the 'one size fits all' approach to regulating a diverse industry.

There are a number of ways for licensees to keep up with industry and regulatory developments that are relevant to their business operations and not predicated on the big business model of professional development, particularly one that exceeds all other industry standards. Peak bodies, such as ourselves, provide members with a range of services, including bulletins, journals and annual conferences etc, which keep members informed of regulatory and market developments. This is of far more practical value than specific hours of approved professional development activities that may either be of little, or no, relevance or unobtainable given business location. Once again, the focus should be on outcomes achieved rather than perceptions. And that should be something each business decides for itself based on its own needs.

We strongly support licensees determining for themselves what is appropriate training for their representatives. This should be the approach to all educational and professional development requirements as it allows our members to manage relevance, cost effectiveness and differing jurisdictional requirements. It is particularly important in a sector with a high staff turnover.

The collections industry generally has a high staff turnover, as many employees take positions to supplement income while studying or raising families. Few view debt collection as a career path. Members indicate new staff turnover in NSW can range from a minimum of 35% to in excess of 60% of any intake. The requirement in NSW for a Certificate III qualification directly contributes to this turnover as it is viewed as largely irrelevant to the work environment, expensive and difficult to access.

Private RTO colleges charge \$3,000 to \$4,000 per candidate for their training courses leading to the Certificate III qualification in Financial Services (Mercantile Agency). Additionally, employers must meet the cost of the time spent by their employees in undertaking such training which as noted above has proven to be largely irrelevant to the actual work performed.

Fortunately, the NSW regulator has recently recognised its requirement that all licensees hold the Certificate III qualification of Financial Services (Mercantile Agency) has been nothing more than an unnecessary and inappropriate impost upon the sector - and has since significantly reduced the competency training standards required of applicants to be only particular modules of the qualification to better reflect the work undertaken and the training qualifications available.

Our members have appropriate in-house training in place which covers the key compliance elements associated with collections functions. It is targeted at the services provided and the way in which those services are delivered so it is relevant and cost effective. To require anything more imposes a financial burden which will increase collections costs and force staff to undertake training irrelevant to their position requirements. Again, the outcome would be form over substance.

We are also concerned about the anti-competitive nature of the proposed competence and ongoing training obligations detailed in the Consultative Paper.

If the obligations proceed without appropriate downgrading to properly reflect the realities of this sector, **the inevitable outcomes ASIC will achieve** include:

- a widened gulf between the micro-businesses and the larger companies comprising the sector;
- increased costs for all businesses in the sector and ultimately for consumers; and
- pushing out many small and longstanding successful businesses from the industry.

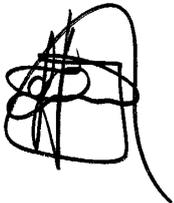
In summary, we make the following recommendations:

- ASIC allow credit licensees to determine the educational, training and professional development standards that best suit their business operations
- Organisational competency be outcomes based, demonstrated by key persons meeting the 'fit and proper' test, business solvency and the annual compliance report

Alternatively, we would appreciate the opportunity to work with ASIC to develop a guidance specifically for the debt collection and debt purchase sectors that provides clarity around its compliance expectations for an industry already burdened with inconsistent regulatory regimes should our exemption be revoked.

We thank you for the opportunity to present our view and look to the opportunity to participate in further discussion.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Alan Harries', with a stylized, somewhat abstract shape.

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