



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

5 December 2011

Debt Collection Consultation
Consumer Affairs Victoria
Policy and Legislation Branch
GPO Box 123
Melbourne VIC 3001

By email: debt.collection@justice.vic.gov.au

Dear Sirs,

Consultation – Debt Collection Harmonisation Regulation

The Australian Collectors and Debt Buyers Association (ACDBA) represent the interests of the main debt collection agencies in Australia. Our members include both those who collect contingent debts and debt purchasers.

We welcome the Debt Collection Harmonisation Regulation Review (the Review) and the opportunity to provide our views on an appropriate regulatory environment for the debt collection and debt purchase industries.

Our Association seeks a regulatory outcome that recognises the maturity of the debt collection industry, its broad legislative framework, the contractual arrangements between principals and their collections agents, the relatively small number of people engaged in the area and our voluntary compliance with the ASIC/ACCC Debt Collection Guidelines.

Consequently, we support Option 4 which is the approach taken by Consumer Affairs Victoria to move to a negative licensing regime. This approach is justified given there is no substantive evidence of consumer detriment, the existing national regulatory regimes that govern market practices and consumer protection and the industry's adherence to the ASIC/ACCC Debt Collection Guidelines.

Please find attached our submission addressing our preferred position based on the Options Paper.

We look forward to working with Consumer Affairs Victoria and all other stakeholders engaged in the Review project to achieve this sensible outcome - to this purpose we confirm ACDBA would be pleased to host in the first quarter of 2012 with CAV a forum of stakeholders on implementing effective harmonisation of the industry.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Alan Harries', written over a light grey rectangular background.

Alan Harries
CEO

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Executive Summary

The Australian Collectors and Debt Buyers Association (ACDBA) supports a negative licensing regime, preferably under a national debt regulator, as the most effective means of addressing the regulatory burden faced by debt collectors and debt purchasers within the national context.

We represent the Collections sector which is demonstrably mature, professional and highly responsible in managing its wider compliance obligations. Consumer Affairs Victoria has validated our industry's professionalism by moving to a negative licensing regime.

We support a negative licensing regime because:

- Collections conduct is call-centre based with little, if any, face to face consumer contact
- Calls are usually monitored for quality control purposes
- The call centre model operates across all jurisdictions
- Complaint levels are very low in relation to customer contacts
- There is a range of national regulation which covers governance, market practices and consumer protection
 - further regulation simply duplicates what already applies nationally and under our contractual arrangements with our clients
- The industry has adopted the ASIC/ACCC Debt Collection Guidelines as the collections standard
- Regulatory enforcement action at either State or Commonwealth level is extremely rare
- Our clients require particular compliance standards which are contractual obligations under the commercial relationship
- Consumer Affairs Victoria recognises there are no, or insufficient, grounds to justify a positive licensing regime

Our preferred approach is consistent with the Options Paper's observation there are high levels of compliance and minimal regulator intervention within the Collections sector.

Our least preferred option is the continuation of State based licensing regimes. As evidenced by the finance sector, attempts to obtain State based consistency, even using template legislation, simply result in an inappropriate and moribund regime.

Consequently, we believe a negative licensing regime is an appropriate approach for a professional sector. The key outcomes of our proposed approach would be:

- Standards are set by existing national laws and the ASIC/ACCC Debt Collection Guideline which supports the Australian Competition and Consumer Act
- Inconsistencies across States and Territories are removed
- Regulators at both State and Commonwealth levels retain the power to take action against collectors who do not maintain appropriate standards
- Members purchasing consumer credit debts remain licensed under that regime
- There is no need to establish a new regulatory body
- Unprofessional conduct will be brought to regulator attention through consumer complaints, consumer action groups and the media

- A negative licensing regime is cost effective, given the small number of people engaged in the industry
- Our Association will support the regime through the establishment and maintenance of appropriate compliance and training standards
- Our clients continue to assist in the establishment and maintenance of compliance standards through their contractual relationships with our members

Our submission provides background on our industry and then outlines the rationale for our preferred model in response to the Options Paper. It is supported by a range of appendices which provide further explanations of our industry and its current regulatory environment.

Those appendices are:

Annexure A: Collections Sector Demographics

Annexure B: ACDBA Concerns - Current Regulatory Environment

Annexure C: Collections Sector Profile

Annexure D: Training

Annexure E: Complaint Data Comparisons.

Background

ACDBA represents members involved in the Collections sector, either as contingent collectors or as debt purchasers.

This section briefly summarises the current industry position which establishes the basis for our proposal. The matters covered are:

- Collections/Field Agent Distinction
- Collections Sector Profile, including
 - Service Delivery Methodology
 - Regulatory Environment

Collections/Field Agent Distinction

The Options Paper appropriately recognises the current scope and operations of the industry and that there have been significant changes over the past 10 years.

In particular, the Options Paper acknowledges the two very distinct specialisations within the current industry, being:

- The Collections sector; and
- The Field Agents sector.

The essential difference between those two specialisations is that Collections involves no face-to-face contact with consumers whereas the Field Agents specialisation involves actual face-to-face contact with consumers. The two business models are very different.

As the Collections specialisation involves no face-to-face contact with consumers, we believe a negative licensing regime is appropriate, given no substantive evidence of inappropriate conduct in the sector.

We acknowledge, however, the Field Agents specialisation, involving actual face-to-face contact with consumers, may require separate consideration. This specialisation generally involves small businesses with different operational requirements that may impact on the preferred regulatory regime.

Regardless, we propose a negative licensing regime as an appropriate model for our sector. This is because there is a range of legislation which governs our conduct, as does our contractual arrangements and all regulators would remain with the powers to take action against any collector who does not demonstrate appropriate standards.

Collections Sector Profile

To support our view our industry is mature and requires minimal regulation the following factors should be considered:

- Sector Demographics
- Corporatisation
- Commercial Relationships
- Technology
- Regulatory Environment
- Complaints/Incidents data

The key points for consideration are outlined below.

Sector Demographics

There are currently 15 members¹ of ACDBA – estimated to represent about 70% of the Australian Collections sector market.

ACDBA members as at 30 June 2011 collectively had 45 offices across Australia and 5 overseas offices with a total workforce comprising 1994 employees, of which 45.7% are engaged in contingent collections and 54.3% deployed to debt purchase collections.

We expect the overall workforce of the Collections sector taking into account those engaged by the smaller firms within the industry across Australia is in the order of 5000.

Despite the small number of people engaged in collection services, extrapolation of our members' data suggests as at 30 June 2011, the Australian Collections sector was actioning in excess of \$13.6 billion in debt represented by 5.47 million files.

Annexure A provides detailed Sector Demographics.

Corporatisation

All our members are major corporations, some of which are publicly listed companies. They all offer services on a national basis.

The corporate structure has resulted in a compliance ethos where governance structures, service delivery standards and risk management are embedded in those companies.

It also means those corporations are subject to a range of Commonwealth and State laws that impact on governance, market practices and consumer protection standards.

¹ Refer Annexure F for listing of members of ACDBA.

Commercial Relationships

Collectors and debt buyers have differing commercial relationships with the credit providers involved.

Under contingent collections, debts remain owned by the original credit provider and the collector acts strictly under an agency agreement (principal & agent) to the credit provider. There are service agreements in place between the credit provider and the agent collector specifying the required collector conduct and account management standards to be maintained by the collection company.

Under assignment agreements between credit providers and debt buyers, debt buyers are contractually only responsible for conduct post the assignment of the debt from the lender. Given the volumes of assigned debts per annum, the originating credit provider retains all the documentation generated up to the point of assignment.

There are a range of reasons for this, both legal and practical, including Privacy Act compliance, protection of commercially sensitive assessment and decisioning processes and document retention obligations under a range of legislation including the National Credit Code and the Anti-Money Laundering and Counter Terrorism Financing Act.

Debt buyers undertake debt recovery processes relating to charged off or non-performing accounts either directly or through related entities which are licensed as commercial agents under State and Territory licensing regimes.

Technology

The rapid development of technology has resulted in approximately 70% of collection action being taken through phone calls, SMS and texts.

Technology allows our members to work across jurisdictions from central offices. It also allows for much closer scrutiny of collector conduct through call recording and actions audit trails. Both the creditors and debtors benefit from internet access to their accounts and online payment methodologies.

Annexure B provides further detail on our sector's profile.

Regulatory Environment

Our members are subject to a broad range of national regulation, including key laws such as:

- Corporations Law
- National Consumer Credit Protection Act – for those collecting consumer credit debt
- Anti-money Laundering & Counter Terrorism Financing Act
- Australian Consumer Law
- Privacy Act

Given our members work across jurisdictions and are subject to a range of national laws, a negative licensing regime will not detract from existing governance, market practices and consumer protection compliance obligations.

Annexure C provides further detail on ACDBA's concerns with the current regulatory environment.

Complaints/Incidents Data

ACDBA members view incidents as any matter requiring some form of investigation. They are not necessarily complaints, although some matters do become complaints.

In the financial year ended 30 June 2011, ACDBA members able to provide detailed analysis of their activities in relation to some 3.6 million accounts reported making a total of 43.9 million contacts with debtors.

The total number of incidents reported when compared to the total number of contacts made in the period reveals a very low incident rate of 0.007% for the Collections sector.

The incident rate is actually significantly lower again when an appropriate adjustment is made for those incidents reported where there was no basis for reporting or there was insufficient detail to permit investigation (1224 incidents out of a total of 3,288 reported). The adjusted incident rate is then 0.005%.

Our complaints data speaks for itself. It would be one of the lowest across any consumer facing industry, much less one that operates in a challenging environment. It clearly points to a professional collections industry, warranting no specific collection industry regulatory intervention.

To further validate our view neither the Financial Services Ombudsman (FOS) nor the Credit Services Ombudsman (COSL) reports anything but a very few complaints about debt collection practices, despite covering the whole finance sector.

FOS handles disputes from consumers in relation to its members' financial products and services and has reported² a total of 24,953 disputes in 2009-10, made up in part as:

10,112	Credit
7,964	Insurance
2,022	Payment systems

Of the disputes reported on by FOS for the 2009-10 year, only 199 related to debt collectors or debt buyers.

COSL handles disputes from consumers in relation to its member financial services providers. COSL has reported³ a total of 1153 complaints were received in 2009-10 from consumers, only 78 of which related to debt collection.

Our members' data is validated by the low level of collections complaints managed by the External Dispute Resolution Schemes, particularly when consumers can lodge complaints about collections agents with those schemes under the principal lenders' memberships.

Annexure E provides further complaints data for comparison purposes.

² 2009-10 Annual Report of the Financial Ombudsman Service www.fos.org.au

³ 2009-10 Annual Report on Operations of the Credit Ombudsman Service www.cosl.com.au

Summary

From the information provided above, our industry can be summarised as:

- Corporatised, with a small number of corporations managing 70% of the demand
- Employing a relatively low number of employees – about 5,000 people across Australia & overseas
- A major contributor to the Australian economy by seeking the recovery of approximately \$13.6 billion in debt per annum
- A service provider to Government, industry and utilities providers
- Having a very low level of complaints/incidents per customer contact

These factors alone support our contention a negative licensing regime can be justified.

Licensing options

ACDBA supports Option 4, mandatory exclusion requirements, or negative licensing, as being the most appropriate option for a professional industry already regulated under a range of other laws, particularly laws that govern market practices and consumer protection conduct.

We also support this option because the Collections sector provides services to a broad range of creditors, some of whom are subject to regulatory licensing regimes (consumer credit providers) and many who are not (government departments, merchants, tradespeople, stores etc). Consequently, a negative licensing regime can accommodate these differences without being anti-competitive.

To further support our view, Victoria's mandatory exclusion requirements, which commenced on 1 July 2011, are not expected to lead to a lessening of standards or an increase in collector conduct complaints. Victoria is confident this model will work because Victoria has inserted its 'debt collection practices' provisions into the Fair Trading Act 1999 (Vic), which are similar to Victoria's previous harassment and coercion provisions before the implementation of the Australian Consumer Law (Cth). Also, as the Options Paper points out, the negative licensing approach will bring about savings for the Victorian industry of over \$2 million per year.

We provide brief comments on our main concerns with the other options provided.

Option 1: Status quo

Retention of the status quo of licensing for the Collections sector fails to address the glaring and fundamental issue: the inconsistency of existing licensing standards and obligations across the jurisdictions which vary from no regulation through to outdated, inefficient and inappropriate regulations.

On the basis of competition policy, maintenance of the status quo is neither fair nor sustainable.

Option 2: Removing exemption from National Credit Act

While ACDBA supports a licensing model similar to the NCCP regime, removing the collector exemption from the National Credit Act is not a viable option. It will result in some, but not all, collectors being required to comply with a Commonwealth licensing regime in addition to existing State/Territory regimes.

For consumer credit collectors, the regulatory burden will increase, compounding the current inconsistencies inherent in the State regulatory regimes. For collectors outside the consumer credit regime, they would either be unregulated should State/Territory regimes be repealed or still be regulated under inconsistent regimes.

This approach will add to the current regulatory overlay and increase inconsistencies across the various regimes. It cannot result in harmonisation. It also has the potential to be anti-competitive by imposing an additional regulatory regime on those collecting specific debt types.

Option 3: The national occupational licensing system (NOLS) model

The NOLS model generally at this time is not seen as presenting a viable option for the Collections sector for the following reasons:

- While the model is intended to reduce the regulatory burden by minimising inconsistencies, reducing interjurisdictional anomalies and providing some legislative clarity for its participants by eliminating overlap, it still sits within a State framework that can be counter productive to efficiency and expediency
 - The NCCP Act came into being because the States/Territories were unable to respond expediently to market changes and stakeholder demands
- The process required to develop an agreed model will be subject to the same problems faced under the UCCC template credit legislation regime
- All States/Territories will be required to enact new legislation to facilitate the NOLS requirements
- Any changes to the NOLS model will need to be agreed by all States/Territories, resulting in length consultation delays
- States/Territories may choose to withdraw from the NOLS arrangement at any time

Regulatory uncertainty is likely to be an ongoing issue with this approach.

Option 5: Deemed licensing via the national credit act or a separate national licensing act

This option also potentially presents an opportunity for a national harmonised regulatory model to be adopted for the Collections sector. While not our preferred option, ACDBA views this option as the next most appropriate model for the collections sector. It is certainly preferable to any continuation of State based positive licensing regimes.

Should this model be adopted, ACDBA envisages a regulatory model that would embrace key principles and concepts similar to the NCCP approach, but in a collector specific licensing regime.

The key principles would incorporate the majority of the NCCP licensing obligations including:

- An overarching obligation to operate honestly, efficiently and fairly
- Business entity, not individual, licencing
- Responsible manager appointments
- Competency & training obligations
- Resource adequacy obligations – human, technological and financial
- Compensation arrangements

The approach can be scalable and can accommodate some differences in obligations, depending on operational scope.

We consider some of these obligations in the collections context in more detail:

Business entity licensing

Should this model be preferred to negative licensing, then licensing of the business entity/organisation should be regarded as the appropriate level for regulations rather than any regulatory scheme being directed at individual employees of a business. It is at the organisational level that all contractual arrangements are made and all employers are responsible for employee/contractor conduct.

It should be incumbent upon the organisation to maintain its competence in engaging in the collection activities of its business. What would be required of each business to maintain its competence would ultimately depend upon the nature, scale and complexity of the business including its size, the activities undertaken and actual roles performed in the business unit by individual employees.

ACDBA members accept, and understand, that as employers they are liable and responsible for the activities of their employees at work. Individual employees should not be held accountable for non-compliant business policy and management as they are not in a position to influence those decisions.

We would be prepared to support the licensing of business entities and placing the obligation on those licensees to manage their staff in keeping with their licensing obligations and sound business practice.

Responsible managers

In respect to the obligation to maintain competence to engage in the collection activities of their businesses, ACDBA members could accept that it would be appropriate to require them to have responsible managers identified in respect to their business licence.

In effect, this approach would simply reflect current operational structures. It would, however, emphasise the importance of the managerial role in ensuring regulatory compliance, particularly given the personal consequences involved if the persons concerned do not discharge their duties responsibly.

ASIC has identified what it considers to be appropriate criteria for responsible managers to meet. Under a debt collector regime, responsible managers might, for example, be required to have at least two years relevant problem free experience with appropriate qualifications in the area of the member's business. Those qualifications could cover tertiary level collections courses or relevant higher level qualification such as a diploma or a university degree.

We may be prepared to support the appointment of responsible managers and the establishment of appropriate appointment criteria should this be the agreed model.

Organisational competence

Organisational competence is central to any contingent collector or debt purchaser obtaining business. If this cannot be demonstrated, then creditors will not refer accounts for collection. Including organisational competence as a licensing requirement would simply mandate what is current commercial practice.

It follows that measures would need to be in place to ensure the business maintains its organisational competence at all times including having measures in place for:

- The review of organisational competence on a regular basis or whenever responsible managers change;
- The maintenance and updating of qualifications and experience of responsible managers and ensuring that responsible managers undertake a certain level of continuing professional development - perhaps 20 hours per year for consistency with the obligations imposed upon licensees under the National Credit Act; and
- The keeping of records showing the business has reviewed its organisational competence and the steps taken to maintain such competence.

We may be prepared to support a positive competence obligation.

Training of employees

ACDBA members accept their responsibility to ensure their employees are adequately trained and competent to engage in the collection activities undertaken. Again, staff competence is crucial to commercial success. Training requirements, however, will vary across businesses depending on business model and the scope of the duties required.

Currently, training obligations for the Collectors sector across State and Territory jurisdictions vary from the Code of Conduct approach taken in Queensland, which places a positive onus on businesses to ensure a commercial agent has a reasonable knowledge and understanding of PAMDA and the Code⁴ to no specific requirements, as is currently the situation in a number of jurisdictions such as Victoria.

In NSW collectors are required to complete modules from the Financial Services (Mercantile Agents) Certificate III qualification of the national training framework. ACDBA members mostly regard this specific requirement to be excessive, counter-productive and a significant impediment to the ability of the Collections sector to employ staff in that state.

ACDBA's perspective is it is appropriate any training regulations for the Collections sector should always be relevant and cost effective and further that any prescribed training ought to be accessible, especially given the issue of staff turnover. As an example, ACDBA members indicate new staff turnover in NSW can range from a minimum of 35% to in excess of 60% of any intake.

Accordingly, it is appropriate our members determine what is appropriate for initial and ongoing training of employees to ensure organisational competence. This is consistent with the approach ASIC has taken for the majority of licensees under the NCCP regime. ASIC views them as being in the best position to determine training requirements.

In addition, our Association is well placed to support the industry in the continued development of an agreed industry standard for induction and refresher courses.

⁴ *Queensland Property Agents and Motor Dealers (Commercial Agency Practice Code of Conduct) Regulations 2001, reg. 5.*

We support the industry itself establishing appropriate training standards, rather than those standards being mandated by law, the same approach ASIC has taken under the NCCP regime.

Code of Conduct

ACDBA supports a non-prescribed Code of Conduct but has reservations about a mandatory Code under a national licensing regime. The reservation is based on how such a Code can be kept current given the number of stakeholders who would want to be involved in the process and how, in effect, compliance can be monitored.

We point to the ASIC/ACCC Debt Collections Guideline as an indicator of voluntary industry compliance with established conduct standards. While the Guideline has no legislative basis, the industry has adopted the conduct benchmarks as they provide a level of compliance certainty. Such compliance is further enhanced by the adoption of the Guideline as minimum conduct expectations in the Service Level Agreements entered into between the Collections sector and its clients.

A non-prescribed industry code of conduct for the Collections sector might be as simple as adopting the ACCC/ASIC Debt Collection Guideline with Associations requiring their members to comply with it. As previously noted, the Guideline is already widely adopted and accepted by the Collections sector as the foundation of its conduct obligations.

We believe it is appropriate for the industry itself to establish a Code of Conduct, rather than Code being prescribed by law.

Administration options

Option 2: Transfer administration to a dedicated debt collection regulator – should a national licensing regime be established

As will be clear from this submission, ACDBA supports a negative licensing regime. However, should a national licensing regime result, we would support the establishment of a dedicated debt collection regulator.

This approach will remove the ASIC/ACCC regulator dichotomy and look to achieve consistency and certainty across the licensing regime and the regulatory environment that impacts on both consumer protection and market conduct.

The clarity of a single responsible regulator to handle enquiries in relation to interstate matters for both consumers and businesses is attractive as is the establishment of appropriately trained specialist staff to handle and understand the compliance processes for the sector.

These advantages are seen by ACDBA members as strongly outweighing the minor disadvantages noted in the Options Paper.

Future consultation

The ACDBA welcomes the opportunity to discuss with industry stakeholders initiatives for national harmonisation of the debt collection industry.

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Annexure A Collections Sector Demographics

Surveys completed by ACDBA members⁵ allow an understanding of the current the Collections sector in Australia.

There are currently 15 members⁶ of ACDBA – estimated to represent about 70% of the Australian Collections sector market.

Debt Values and Volumes

ACDBA members collect for a range of clients involving government, commercial, utility and consumer debts. Over the past 3 years, collection activities by ACDBA members by type were:

Type of collection	At 30 June 2009		At 30 June 2010		At 30 June 2011	
	\$	No of Files	\$	No of Files	\$	No of Files
Contingent	30.5%	50.5%	42.5%	60.1%	34.7%	58.5%
Debt purchase	69.5%	49.5%	57.4%	39.9%	65.3%	41.5%
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Debts under collection by ACDBA members broken down by type of debt were:

Type of Debt	At 30 June 2009		At 30 June 2010		At 30 June 2011	
	\$	No of Files	\$	No of Files	\$	No of Files
Consumer	\$4,933,308,019	1,216,583	\$5,542,690,549	1,281,454	\$5,469,950,659	773,638
Utility	\$301,040,919	495,244	\$247,220,977	384,269	\$849,442,310	973,905
Government	\$572,769,981	290,620	\$2,266,431,510	724,416	\$1,546,019,359	665,746
Commercial	\$244,433,315	130,349	\$275,393,485	133,906	\$372,157,509	158,666
Other	\$732,386,903	887,709	\$1,095,888,623	1,174,673	\$1,286,943,515	1,258,479
Total	\$6,783,939,137	3,020,505	\$9,427,625,144	3,698,718	\$9,524,513,352	3,830,434

As noted, ACDBA membership is estimated to represent approximately 70% of the Australian collection and debt buying industry. Extrapolating this for the entire industry suggests, as at 30 June 2011, the Australian Collections sector was actioning in excess of \$13.6 billion in debt represented by 5.47 million files.

ACDBA members purchase millions of charged off accounts per annum. Of these, up to 75% of the contact details are incorrect, resulting in significant time and expense in locating the debtors involved.

On average, 35% of debtors are never located. This results from debtors relocating but failing to update their contact details with their credit providers.

⁵ ACDBA members participate in an annual data survey aggregated by ACDBA's auditors, Messrs Thomas Simpson Partners.

⁶ Refer Annexure F for a listing of members of ACDBA.

Workforce

ACDBA members as at 30 June 2011 collectively had 45 offices across Australia and 5 overseas offices with a total workforce comprising 1994 employees, of which 45.7% are engaged in contingent collections and 54.3% deployed to debt purchase collections. The overall workforce of the Collections sector taking into account those engaged by the smaller firms within the industry across Australia is estimated to be in the order of 5000.

Debtor Contacts

In the financial year ended 30 June 2011, ACDBA members able to provide detailed analysis of their activities in relation to some 3.6 million accounts reported making a total of 43.9 million contacts with debtors. Contacts were broken up as follows:

Telephone calls to debtors	68.0%
SMS/text messages to debtors	7.7%
Letters to debtors	23.8%
Emails to debtors	0.5%
Total contacts	100.0%

Complaints/Incidents Data

Complaints/Incidents recorded as part of each member's IDR process were considered to be any matter relating to alleged unsatisfactory professional collector conduct lodged as requiring investigation. They excluded genuine requests made by debtors for additional information to better understand the terms of an account, the balance outstanding or the history of payments made.

Members reported the following number of incidents received from debtors:

Incidents received via:	Year ended 30 June 2011
IDR	2564
EDR	704
Regulators	20
Total Incidents Received	3288

The total number of incidents reported when compared to the total number of contacts made in the period reveals a very low incident rate of 0.007% for the Collections sector.

The incident rate is actually significantly lower again when an appropriate adjustment is made for those incidents reported where there was no basis for reporting or there was insufficient detail to permit investigation (a total of 1224 incidents). The adjusted incident rate is then 0.005%.

Annexure B ACDBA Concerns – Current Regulatory Environment

Our high level concerns about the existing regulatory models in place across the state and territory jurisdictions, include:

- inconsistent licensing requirements and standards across jurisdictions;
- licensing overlay for those regulated under the NCCP Act;
- inconsistent conduct requirements across jurisdictions;
- unwarranted intrusion into commercial arrangements between businesses;
- inappropriate, restrictive and expensive training delivery requirements which ignore workplace training; and
- administrative inefficiencies across all jurisdictions.

The sophistication, maturity and size of the Collections sector which increasingly functions on a multi-jurisdictional basis together with its significant overall contribution to the Australian economy warrants a streamlined national approach to regulation removing costly, artificial and antiquated regulatory requirements.

The modern day reality is business and corporate behaviour generally is already well regulated in Australia. Such wider business and corporate regulations directly impacts upon and shapes the businesses operating in the Collections sector. There is no evidence of the Collections sector failing to be good citizens with respect to business and corporate regulatory requirements and expectations.

It is significant that the Review's Options Paper acknowledges the current industry has changed greatly over the past 10 years and now comprises two very distinct specialisations, being the Collections sector and the Field Agents sector.

Those specialisations have very different operational activities and considerations with an essential difference being the Collections sector is not involved in face-to-face contact with consumers whereas the Field Agents sector has actual face-to-face contact with consumers.

The major players in the Collections sector are now public companies or owned by professional investors including financial service providers and private equity investors.

Collectors act for government, commercial, utility and consumer debts with the work being undertaken either as contingent collections or debt purchase collections. The important distinction between the two is that in contingent collections, the collector is acting strictly on a "principal and agent" basis whereas in debt purchase collections, the rights to the outstanding debt have been assigned to the debt buyer.

This distinction is very important as under "principal and agency" arrangements a contingent collector does not have the power or authority to address or resolve a consumer's issues with the creditor. This essential fact obviates all rationale for requiring mandatory membership of contingency collectors to an ASIC approved external dispute resolution scheme. Instead, in all contingent collections, a consumer aggrieved about a collector's contact is always able to refer to a third party, the principal creditor.

The task of eradicating current inconsistencies imposed by existing industry licensing which create unwarranted compliance complications and intrusions into commercial arrangements is long overdue in order to allow the important Collections sector to more efficiently perform given the value and impact it adds to the overall financial performance of the national, state and territory economies.

Annexure C Collections Sector Profile

For the purpose of understanding ACDBA's preferences and reasons in relation to the various options proposed in the Options Paper it is appropriate to detail the current characteristics of the Collections sector:

Corporatisation

Debt collection activity across Australia has moved from being a niche back office activity to a fundamental aspect of most business models and a key driver in the profit performance of the Collections sector of the industry. Sophistication drove the development of outsourcing to the Collections sector greatly increasing volumes and values assigned to it – in turn, this brought mainstream investment and management practices into the sector, such that it has moved from entrepreneurial to professional over the past decade.

Accompanying this influx of investment and expertise to the sector was the introduction of debt sale to the market just over 10 years ago. This development further attracted capital and has meant that most of the major players in the Collections sector are now public companies or owned by professional investors including financial service providers and private equity investors.

The specific fiduciary demands of independent directors and major corporations have meant collection methods, compliance structures and risk management strategies are now fundamentally embedded within the organisations. Combined with the expectations of a more demanding market, Collections sector participants have had to improve their governance and compliance systems or lose the custom of the major vendors and suppliers.

The debt collection/debt purchase functions of the sector are characterised by high volume telephone based activity completed from large call centres leveraging the latest contact technology and software.

The majority of ACDBA members are large corporations, some of which are listed on the Australian Stock Exchange and most work in multiple jurisdictions.

Adoption of Technology

The sector's investment in technology has required very significant capital investment and has also contributed to the consolidation of the sector. Technology allows the delivery of services across multiple jurisdictions without the need for a physical presence in each jurisdiction.

Technology advances significantly contributing to change in the operations of the Collections sector include:

- Improvements to sector specific software leveraging off new technologies especially communications;

- Telephone call recording linked to sector specific software to verify collector and debtor communications and allow greater transparency in the event of any issue arising;
- Improvements to communications, including:
 - Digital telephony;
 - Improved broadband speed and reliability;
 - Improved telephony systems supporting computerised answering, navigation and queuing;
 - SMS messaging;
 - Customer Information Management technology to manage blended voice, email and web-based communications to improve efficiency of collectors by:
 - Automated dialling to eliminate manual repetitive dialling tasks;
 - Allowing the proving of a telephone number;
 - Facilitating the ability to conduct conference calls between a debtor and his/her appointed third party;
 - Ensuring a correct first party or third party contact;
 - The system allowing the debtor to self-navigate the call to:
 - a professional credit consultant/collector;
 - a cashier if it is a payment;
 - a disputes negotiator if a dispute; or
 - a help assistant for other needs.
 - Online portals allowing:
 - Clients to independently access their account information including adding new matters and receiving reports securely;
 - Debtors to access their account to:
 - attend to repayments;
 - seek verification of the account being due;
 - approve the use of SMS and email messages on the account;
 - complete and submit a financial statement of position;
 - complete, submit and receive adoption of a repayment plan;
 - complete, submit and implement a “Hardship Application“;
 - message the collector; and
 - Agents to work remotely to deliver services.
 - Improved secure data transfer technology; and
 - Improved auto payment systems.

Compliance Obligations

Compliance obligations for the Collections sector have increased significantly over the years although some outside the sector may well be unaware of the actual reach of obligations imposed or of the significant level of duplication and conflict across state and national jurisdictions. Currently, the sector has compliance obligations which include:

- The ACCC/ASIC Debt Collection Guideline (the Guideline) and the Consumer Affairs Victoria Guidelines for Debt Collection (the CAV Guidelines) both of which provide the industry with clear guidances on appropriate debt collection practices.

Some observers wrongly downplay the effectiveness of the Guideline on the contention it is guidance only and does not have the same effect as “black letter” law. However, the sector regards such contentions are unfounded as:

- Compliance with the Guideline is usually part of the contractual agreement between sector members and their clients; and
- Compliance with the Guideline routinely provides the framework on which members base all their collection activities with debtors.

The ACCC and ASIC both have extensive regulatory powers which allow them to access company sites and files, review activity and compliance systems and negotiate enforceable undertakings or seek penalties or incarceration through the courts.

The impact of these powers is that the sector actually treats its obligations under these guidelines as law and structures its compliance systems with the Guideline at the centre.

- The sector works under a variety of State and Territory industry regulation depending upon where offices are located.
- The Queensland Property Agents and Motor Dealers Act 2000 (PAMDA) under S348 and specifically under the Queensland Property Agents and Motor Dealers (Commercial Agency Practice Code of Conduct) Regulation 2001 provides a Code of Conduct for Commercial Agents in that State.

Aspects of the Code of Conduct for Commercial Agents in Queensland under PAMDA are similar to but not entirely consistent with the Guideline.

- The Australian Privacy Act, 1988 regulates how the industry and its clients can collect, use and disclose credit and personal information.
- Debt buyers as assignees are obliged to comply with the National Credit Act, the Banking and Credit Union Codes of Practice and the Consumer Credit Code for consumer credit debt, where relevant, in addition to their contractual obligations to the assignors.
- Debt buyers since January 2011 hold an Australian Credit Licence pursuant to the National Consumer Credit Protection Act, 2009 and as part of such licensing regime are members of an ASIC approved External Dispute Resolution Scheme.
- ACDBA members are subject to strict legal agreements with their creditor clients which cover legal compliance, collector conduct and dispute resolution processes in addition to other contractual arrangements including reporting and auditing requirements. The agreed obligations are generally broader than the current outdated debt collection specific legislation.
- Sector members are in a competitive market where they must protect not only their own brand through quality service provision, but also their clients' brands.

Actual compliance standards for the Australian Collections sector are very high given the contractual and legislative obligations with which our members comply.

Complaints Data

The overall professionalism of the Collections sector is evidenced by an extremely low rate of complaints against ACDBA members.

The value of the work undertaken by the Collections sector to the ultimate benefit of the overall Australian economy is obvious given at any point in time there is currently in excess of \$13.6 billion in debt value represented by some 5.4 7 million individual files being handled by the sector.

Analysis of ACDBA member data in relation to 3.6 million account files reveals a total of 43.9 million contacts were made with debtors in the 12 months ended 30 June 2011 by way of telephone, SMS messages, letters and emails.

Given this very high volume of interaction with consumers the actual incidents (alleging unsatisfactory professional collector conduct) reported as part of members' internal dispute resolution processes numbered a surprisingly low 3288 - revealing a very low incident rate of 0.007% of contacts made.

To provide some perspective on the very low level of complaints each year raised by consumers in relation to the very high volume of debtor contacts by the Collections sector it is appropriate to look to the level of complaints experienced by other organisations and/or industries:

The Commonwealth Ombudsman handles complaints from consumers dissatisfied with Commonwealth Departments and Services – the Ombudsman's most recent annual report⁷ details in respect to the total of 17,407 complaints received in relation to Commonwealth activities, specific complaints included:

2,626	Australia Post
1,810	Australian Taxation Office
5,199	Centrelink
2,280	Child Support Agency
153	Dept of Climate Change & Energy Efficiency
1,600	Dept of Immigration & Citizenship

The NSW Ombudsman handles complaints from persons dissatisfied with NSW Government Departments and Services – he has reported⁸ 8,917 formal and 24,147 informal complaints were received in the 2010-11 year and noted formal complaints included:

1,381	Departments & authorities
912	Local government
864	Correctional centres and Justice Health
865	Employment related child protection
3,256	NSW Police

⁷ 2009-10 Annual Report of the Commonwealth Ombudsman www.ombudsman.gov.au

⁸ 2010-11 Annual Report of the NSW Ombudsman www.ombo.nsw.gov.au

The Telecommunications Industry Ombudsman has reported⁹ new complaints received from consumers in relation to telecommunication suppliers totalled 197,682 in 2010-11.

The Energy & Water Ombudsman NSW has reported¹⁰ handling a total of 15,048 consumer disputes about all electricity and gas suppliers in NSW and some water suppliers during the 2009-10 year.

The Private Hospital Insurance Ombudsman has reported¹¹ complaints received in respect to private health insurers totalled 3070 in 2010-11 and 2610 in 2009-2010. Complaints made to Medicare Australia¹² in 2010-11 numbered 4471.

The Financial Services Ombudsman (FOS) handles disputes from consumers in relation to its members' financial products and services and has reported¹³ a total of 24,953 disputes in 2009-10, made up in part as:

10,112	Credit
7,964	Insurance
2,022	Payment systems

Of the disputes reported on by FOS for the 2009-10 year, only 199 related to debt collectors or debt buyers.

The Credit Ombudsman Service (COSL) handles disputes from consumers in relation to member financial services providers. COSL has reported¹⁴ a total of 1153 complaints were received in 2009-10 from consumers, only 78 of which related to debt collection.

Our members' complaints data speaks for itself in comparison to other industries. It is amongst the lowest across any consumer facing industry, much less one that operates in a challenging environment.

Service Delivery

As noted earlier ACDBA's focus in this submission is on collectors and debt buyers, being the Collections sector which undertakes debt collection functions with no face to face debtor contact, except on extremely rare occasions.

⁹ 2011 Annual Report of the Telecommunications Industry Ombudsman <http://annualreport.tio.com.au>

¹⁰ 2009-10 Annual Report of the Energy & Water Ombudsman NSW www.ewon.com.au

¹¹ 2011 Annual Report of the Private Health Insurance Ombudsman www.phio.org.au

¹² Dept of Human Services Annual Reports 2010-11: Medicare Annual Report 2010-11, Chapter 6 - Customer Service www.humanservices.gov.au

¹³ 2009-10 Annual report of the Financial Ombudsman Service www.fos.org.au

¹⁴ 2009-10 Annual Report on Operations of the Credit Ombudsman Service www.cosl.com.au

Collectors act for a range of clients involving government, commercial, utility and consumer debts. Collection work is undertaken either as:

Contingent collections:

Agencies collect debts on behalf of the original creditor under a “principal and agent” agreement for an agreed fee (either as a percentage of the debts recovered or as a flat fee per file or activity). The debt is owned at all times by the original creditor.

Debt purchase collections:

Debt buyers are involved in purchasing charged off or non-performing accounts being debts where the credit provider has been unable to collect and where no further credit will be extended. The credit provider generally writes the debts off and assigns its rights to the debt buyer.

The business functions of contingent collectors and debt purchasers are exactly the same - the only difference between them relates to the ownership of the debt and other than this ownership distinction, the collection processes are the same.

Sector members with the opportunities afforded by technology (some of which requires significant capital investment) operate from professional offices which include dedicated call centres.

Specialist software adopted by the individual businesses generates and determines the workflows for their staff. Employees of sector firms rarely if ever have any face to face contact with consumers.

There is no standard collection process adopted across all portfolios of accounts or by the sector, instead the specific strategy adopted by collection firms for the recovery of individual debts is dependent upon a variety of factors including but not necessarily limited to:

- The size and age of the account;
- The basis of collections, whether being undertaken on a third party or first party basis; and
- The instructions of the specific client.

The main methodologies adopted are:

- Issuing written demands for payment;
- Contacting the debtor by telephone to demand payment; and
- Instigating legal action to recover payment.

Each activity includes an invitation to the debtor to discuss/explore opportunities with the collector to resolve payment of the outstanding account. Negotiation commences with a clear courteous demand for immediate payment of the account in full.

When first contacting a debtor in relation to an outstanding account, a collector will have the following objectives:

- i. To make contact with the correct debtor and confirm proof of identity details;
- ii. To demand payment;
- iii. To assess the intent and capacity of the debtor to pay;
- iv. To discuss and explore any issues with the debtor in relation to the account including the debtor's financial state; and
- v. To assess the viability for legal action in the event the debtor does not pay.

Where immediate full payment cannot be made by the debtor, a general negotiation follows and typically progresses through the options of:

- A request to pay the full amount immediately or soon;
- An invitation to pay an immediate lump sum payment with a short payment arrangement period in the event of genuine financial difficulty; and
- Assessing the debtor's capacity and intent to pay prior to the collector considering longer term arrangements – this last option is based upon confirmation the debtor is willing but unable to pay in full.

The processes followed in the collection of an account can be multi-faceted and are ultimately dependent upon the responses or otherwise from the debtor when contacted.

Annexure D Training

Currently, training obligations for the Collections sector across State and Territory jurisdictions vary from the Code of Conduct approach taken in Queensland, which places a positive onus on businesses to ensure a commercial agent has a reasonable knowledge and understanding of PAMDA and the Code¹⁵ to no specific requirements, as is currently the situation in a number of jurisdictions such as Victoria.

In NSW collectors are required to complete modules from the Financial Services (Mercantile Agents) Certificate III qualification of the national training framework. ACDBA members mostly regard this specific requirement to be excessive, counter-productive and a significant impediment to the ability of the Collections sector to employ staff in that state.

ACDBA's perspective is it is appropriate any training regulations for the Collections sector should always be relevant and cost effective and further that any prescribed training ought to be accessible, especially given the issue of staff turnover. As an example, ACDBA members indicate new staff turnover in NSW can range from a minimum of 35% to in excess of 60% of any intake.

Putting aside the regulatory requirements which vary across jurisdictions, the Collections sector already embraces effective training of its workforce, based upon compliance, quality and performance management outcomes.

Our members believe effective training should always be:

- Tailored to specific job roles and competency levels;
- Inclusive of client specific training materials in respect to major account portfolios;
- Strongly linked to performance management; and
- Concentrate heavily on compliance obligations.

Considerations as to the level of training appropriate for each new employee include: pre-existing skills at the commencement of employment; the actual position role to be performed; and the career aspirations of the individual employee.

Training materials developed and used by our members in training their employees include information relating to industry relevant Australian legislation and best practices.

At the commencement of employment with ACDBA members, new recruits typically undertake induction training which includes:

- I. Orientation providing
 - The history and service ethos of the employer;
 - Workplace expectations;
 - The employer's core values and performance management systems; and
 - An overview of the employer's systems and processes.

¹⁵ Queensland Property Agents and Motor Dealers (Commercial Agency Practice Code of Conduct) Regulations 2001, reg. 5.

II. Initial compliance training on:

- Australian legislation relevant to the employee's role;
- The role of ASIC and the ACCC;
- Harassment;
- Coercion;
- Misleading and deceptive conduct;
- Unconscionable conduct;
- Identifying debtors in special circumstances, with special needs or in financial hardship; and
- Collection ethics.

Dependent upon the size and nature of the specific member's business, new recruits typically start within a call centre environment which are structured to provide significant and appropriate support to new employees. A feature of working in such an initial role is such work is regarded as being less demanding than general collection or account management roles.

Such training is reinforced by workplace mentors and supervisors who provide significant one-to-one training in such matters as system use, procedures, adherence to scripts and client specific requirements. Employees are provided both regular and informal performance feedback.

As employees complete their probationary period mentors, supervisors and managers generally complete a probation completion report, allowing the opportunity for additional training needs and retraining to be identified and subsequently provided.

Typically, within 6 to 9 months of commencing to work in a collections environment, a new recruit will have had sufficient exposure to basic tasks such as reminder calls and at this point employers turn to providing strategic training to address:

- Communication techniques;
- Negotiation strategies;
- Litigation process overviews;
- Managing aggression;
- More detailed complaint handling training; and
- Revision of prior training.

An employee progressing to work as a Collections Officer, typically after 12 months or so from commencement of employment is required by the employer to undertake and successfully complete customised training units dealing with:

- Collecting debts;
- Customer service; and
- Client specific requirements.

The determination of whether the employee has satisfactorily completed the training is based upon written assessment(s) and direct observation assessment(s).

Additional to the training provided as employees enter each new job function, ACDBA members at a frequency of not less than annually require their employees to attend a refresher collection and compliance training session as a minimum – dependent upon the work function, determination of whether such refresher training has been successfully completed may include written assessment.

It is appropriate to point out the modern collections environment of our members embraces compliance monitoring and quality management as integral parts of operating processes and as a consequence employees are subject to regular direct observation assessment and/or call monitoring and file reviews.

ACDBA members believe responsibility for the delivery of appropriate training should always sit with the directors or principals of the business entities operating within the Collections sector, supported by the Association.

Such an approach will provide a more reasonable, responsible and appropriate training regime for collectors to achieve outcomes of higher standards whilst also ensuring regulator and consumer confidence compared to the training requirements of the existing regimes across the various jurisdictions.

Annexure E Complaint Data Comparisons

To provide some perspective on the very low level of complaints raised each year by consumers in relation to the very high volume of debtor contacts by the Collections sector it is appropriate to look to the level of complaints experienced by other organisations and/or industries.

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²² 2009-10 Annual report of the Financial Ombudsman Service www.fos.org.au

²³ 2009-10 Annual Report on Operations of the Credit Ombudsman Service www.cosl.com.au

Annexure F - ACDBA Membership

The members of Australian Collectors & Debt Buyers Association are:

- ACM Group Ltd
- Austral Mercantile Collections Pty Ltd
- Australian Receivables Ltd
- Baycorp (Aust) Pty Ltd
- Charter Mercantile Pty Ltd
- Credit Corp Group Limited
- Dun & Bradstreet (Australia) Pty Ltd
- EC Credit Control Pty Ltd
- Insolvency Management Services Pty Ltd
- National Credit Management Limited
- Pioneer Credit Management Services Pty Ltd
- Recoveries Corporation Pty Ltd
- Shield Mercantile Pty Ltd
- State Mercantile Pty Ltd
- The ARMS Group Pty Ltd