AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

12 February 2021

Senior Manager, Behavioural Research and Policy Unit
Australian Securities and Investments Commission
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Dear Sir/Madam,

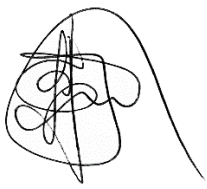
Addendum to ASIC Consultation Paper 311

Internal Dispute Resolution: Update to RG 165

The Australian Collectors & Debt Buyers Association (ACDBA) is pleased to provide the attached Submission in response to the above Consultation Paper's Addendum issued 16 December 2020.

Please do not hesitate to contact the writer to discuss any aspect of the Submission.

Yours sincerely
AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION



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Submission to Addendum to ASIC Consultation Paper 311

Internal dispute resolution:

Update to RG 165

February 2021

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Introduction

Australian Collectors & Debt Buyers Association (ACDBA) welcomes the opportunity to provide perspectives and considerations on the matters further canvassed by the Australian Securities & Investments Commission (ASIC) in respect to Consultation Paper 311 (CP311).

Established in 2009 for the benefit of companies who collect, buy and/or sell debt – ACDBA's members (refer Appendix 1) represent the majority of the collection market in Australia.

The core business of our members within the financial services industry is in the credit impaired consumer segment, whether as collectors or debt purchasers, working with consumers who for various reasons, have found themselves in default of their credit obligations.

ACDBA members purchasing debt, each hold an Australian Credit Licence and are members of the Australian Financial Complaints Authority (AFCA). Our members do not provide financial advice.

Debt purchasing

Accounts assigned to debt purchasers typically involve debts where an acceleration clause in the financial agreement has been triggered by the customer's default in making repayments.

Many with accelerated debts are in hardship giving rise to complex, contested and unresolved issues. Debt purchasers are specialists in dealing with and managing hardship as they almost exclusively interact with customers in some form of financial difficulty.

An expanded explanation of how debt purchasing operates in Australia is included as Appendix 2.

Perspectives

Prior to setting out responses to the specific questions raised in the Addendum to CP311 and acknowledging Attachment 1 to Media Release (20-327MR) details ASIC's preliminary positions on a number of issues related to data reporting, we take the opportunity to first set out some initial perspectives and observations which we submit warrant further consideration before ASIC publishes the final Internal Dispute Resolution (IDR) data reporting requirements and framework for financial firms, including ACDBA members:

Firstly, ACDBA does not resile from its earlier submission to CP311 that the proposed IDR reporting requirements impose an unnecessary burden on financial firms which will be counterproductive to the objective of promoting strong and efficient IDR processes.

Given the expansive definition of "complaint", being "an expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required", a significant number of interactions will contain at least some expression of dissatisfaction thereby constituting a "complaint". This is the case in any call centre environment and particularly for debt collection.

First contacts

Our earlier representation that for a variety of reasons a level of dissatisfaction is frequently expressed during the first contact for debt collection was noted at paragraph 35(c) in Report 665 but ASIC's response then fails to directly address this issue.

We confirm these expressions of dissatisfaction are handled by frontline staff trained and empowered with sufficient authority to respond to, and immediately resolve such dissatisfaction and contend the inclusion of such expressions wholly and immediately resolved during first contacts as complaints under the proposed IDR reporting requirements, will directly give rise to an overwhelming and unhelpful perspective about complaints for the sector.

Collectors in first conversations with consumers, regularly are confronted by a range of questions and concerns - here are just a few examples:

- *You called me - why do I have to identify myself?*
- *Why are you charging me interest?*
- *Why didn't you contact me sooner?*
- *I had an agreement with the bank, not your firm!*
- *The bank had no right to assign the debt!*
- *Why am I default listed?*

With trained and empowered collections staff as noted earlier, the majority of these questions and concerns are resolved with the individual on the spot, by providing a satisfactory explanation including about privacy obligations, further details, agreeing to hardship variations or by emailing the individual relevant documents.

The impost of an onerous reporting burden for all expressions of dissatisfaction will lead to disempowered frontline staff, as even simple expressions will need to be queued to dedicated complaints teams who have specialised training to accurately record the 23 data fields required by ASIC's proposed reporting regime.

Further, published IDR statistics which include expressions of dissatisfaction wholly resolved within a first contact are unlikely to help consumers make informed decisions about which firm to do business with, as such statistics are likely to be overstated and will be influenced by the subjective reporting decisions of individual firms and may be misleading.

Although all firms will be required to comply fully with the reporting obligations, we are concerned the inclusion of expressions of dissatisfaction wholly resolved within the first contact will unnecessarily skew statistics already dependent upon the success of each firm in enforcing its reporting procedures.

Complaints resolved within 5 days

As noted earlier, the proposed requirement to record all expressions of dissatisfaction will impose a significant burden on industry. RG 165 recognised this impost and dealt with it practically, by excluding minor expressions of dissatisfaction resolved within 5 days from the requirements as detailed at RG165.77:

> *"We recognise that applying this definition may result in increased administrative burdens and compliance costs in relation to capturing and maintaining records of minor expressions of dissatisfaction. Therefore, where a complaint or dispute (except for a complaint or dispute relating to hardship, a declined insurance claim, or the value of an insurance claim) is resolved to the customer's complete satisfaction by the end of the fifth business day after the complaint or dispute was received, you will not be required to apply the full IDR process—that is, to capture and record the complaint or dispute, as set out at Appendix 1 under 'Section 8.1— Collection of information'."*

The increased administrative burdens and compliance costs are no different today, than when RG 165 was first given operative effect. These costs if now to be imposed will ultimately be borne by consumers in the form of increased costs to credit.

For the reporting regime to move away from the exclusion referenced above, we submit runs contrary to current government policy which reportedly aims to reduce administrative burdens on financial service providers, reduce costs and improve the flow of credit to the economy.

Further we contend based on the rationale explaining the proposed IDR data reporting framework, ASIC has not articulated any persuasive benefit that would outweigh this impost.

In Table 1 on page 2 of Attachment 1 to Media Release (20-327MR) we note the following summary is provided in regard to whether firms should record all complaints they receive:

> *In RG271 we removed the exception that allowed firms to not record complaints resolved within five days. This means that financial firms must record all complaints from 5 October 2021.*
>
> *We consider that all complaints must be recorded in order to have a full dataset that will meet the Australian Government's policy objectives. These objectives are legislated for in Treasury Laws Amendment (Putting Customers First – Establishment of the Australian Financial Complaints Authority) Act 2018.*
>
> *Retaining the status quo (i.e. for a firm to report only complaints resolved after five days) would have:*
>
> *(a) reduced transparency, as the data reported to ASIC would only be a subset of the true number of complaints;*
>
> *(b) risked creating an incentive for firms to close some types of complaint prematurely, to avoid reporting and regulatory scrutiny;*

(c) resulted in some complaints remaining unrecorded; and

(d) been out of step with comparable jurisdictions (e.g. the Financial Conduct Authority (UK), which requires financial firms to record all complaints.)

We contend the proposed reporting requirements are at odds with the government's policy objectives as outlined in the explanatory memorandum accompanying the *Treasury Laws Amendment (Putting Customers First – Establishment of the Australian Financial Complaints Authority) Bill* and relevantly included at paragraph 2.10 that:

> *"Publishing such information will provide valuable information to consumers and drive firms to improve their IDR practices by increasing transparency about the performance of their firm relative to other firms."*

It is our view, publishing all minor expressions of dissatisfaction, even where those are resolved to the customer's satisfaction within 5 days, will do nothing to aid transparency or support the provision of "valuable information" to consumers. Instead, the reporting of significant volumes of minor expressions of dissatisfaction will only add unhelpful 'noise' to the reporting and obscure the more meaningful information relating to those pervasive complaints which cannot be immediately resolved.

A more balanced approach

The value of reported data is potentially at risk due to the significant variations certain to exist in how firms interpret and operationalise their IDR reporting obligations and processes. We expect there is generally likely to be consistency amongst firms in recording complaints that remain unresolved after 5 days, whereas the same consistency may be unlikely to exist across industry for recording minor, immediately resolved expressions of dissatisfaction.

ASIC raises concerns that the exclusion of expressions of dissatisfaction resolved at 5 days may risk creating an incentive for firms to close some types of complaint prematurely, to avoid reporting and regulatory scrutiny. An alternate perspective is the inclusion of minor, immediately resolved expressions of dissatisfaction unnecessarily skews statistics and is unlikely to add to the utility of the reporting process. We note financial firms still have obligations to report significant matters to ASIC under the updated breach reporting obligations.

Excluding the reporting of expressions of dissatisfaction resolved in the first 5 days, we submit is a more balanced approach, providing an effective incentive for firms to be proactive in resolving complaints leading to improved customer outcomes to meet the underlying objective of the IDR reporting regime.

Noting and supporting that ASIC "may also consider whether there is merit in applying enhanced data reporting requirements to a particular cohort of financial firms" in the interests of a more balanced approach to aid transparency and support the provision of valuable information to consumers, we submit ASIC should reconsider its position on the proposed inclusion of complaints resolved within 5 days in the IDR data to be reported.

In any event, to support the further objectives of aiding transparency and providing useful information, we encourage ASIC to provide reduced data reporting requirements for financial firms involved in the debt collection sector such that expressions of dissatisfaction wholly and immediately resolved during the first contact are explicitly excluded.

Responses to consultation questions

We provide responses below to the additional consultation questions specifically in relation to debt purchasing:

1. **Will the draft data dictionary be practical for industry to implement? If not, why not?**

   The updated draft data dictionary with reduced data elements is an improvement, is expected to aid in the implementation by financial firms. Below for your consideration are a number of concerns and recommendations in relation to specific data elements:

   - **Data element # 13** requires financial firms to report the date a complaint is reopened.
     How are firms to report reopened complaints in circumstances where other elements are brought into the dispute upon re-opening?

     Will this be considered a new complaint, a re-opened complaint, or both a new complaint in respect of the new matters raised, and a reopened complaint in respect of the former matters raised?

   - **Data element # 19** requires the recording of the complaint issue and refers to Table 13.

     Table 13 is not exhaustive, particularly in light of the expansive definition of a complaint - this will lead to complaints that do not fit any of the proposed complaint issue categories/types.

     For example, there does not appear to be an appropriate category and/or type for complaints relating to hardship (other than those already declined); third party contact or disclosure; poor customer service; inability to access an internet banking facility; denials of liability; requests for proof of debt; and fraud.

     The element requires an additional category or alternatively an additional type under each existing category of “Other”.

   - **Data element # 21** requires reporting of who the outcome is in favour of overall and provides binary options as: in favour of the complainant; or in favour of the entity.

     Outcomes will often not be binary. For example, a consumer may express dissatisfaction that they cannot access their internet banking facility. The financial firm assists the customer in navigating to the password unlock facility - it is misleading to record this as an outcome in favour of either party.

     Another example may be where a customer raises dissatisfaction with their current interest rate which is higher than a special offer rate by a competing bank. In response the firm seeks permission to discuss other products it offers, with the customer subsequently electing to move to a different product. While this move may benefit the consumer, it is misleading to record the outcome as being in the consumer’s favour.

     The element requires a further Code as “3 = Not Applicable”.

     There may be multiple reasons why a complaint is resolved in favour of a customer even where there is no wrongdoing on the part of the firm. For example, we understand even an ex-gratia payment to a customer where a complaint involves no wrongdoing by the firm is categorised by AFCA in its Datacube as an outcome in favour of the consumer - this is misleading and unhelpful in categorising the actual outcome of complaints.

     ASIC should consider the outcomes to be recorded in this data element and how ASIC will publish the reported data as a failure to appropriately contextualise outcomes will potentially unfairly disadvantage firms working willingly to come to an agreement with their customers even in the absence of any wrongdoing by the firm.

- **Data element # 22** requires the recording of monetary compensation.

  In many cases, monetary compensation will not be quantifiable. For example, in resolution of a hardship dispute, there may be an agreed interest concession - while this is, in effect, monetary compensation, the amount may not be quantifiable as it will depend on the timing of payments that are made by the consumer.

  The element requires an option of "Not quantifiable".

2. **If your financial firm has multiple business units or brands under the one licence, would you prefer to report the complaints data separately or as one single file?**

   Such financial firms should be provided with the flexibility to choose whether to report IDR data separately or as a single file - the critical aspect will be for ASIC to ensure it appropriately validates the data to ensure accuracy in subsequent reporting and commentary on IDR data.

3. **The data dictionary captures multidimensional data by allowing each complaint to have one product or service, up to three issues and up to three outcomes. Where there are multiple issues and outcomes, this is captured using in-cell lists, rather than multiple rows or columns. Is this approach appropriate?**

   No response.

4. **Do you support quarterly reporting of IDR data? If not, what are the additional costs of reporting data on a quarterly rather than half yearly basis?**

   Our members support half yearly reporting of IDR data as this will align with existing obligations to reconcile and verify the reporting by AFCA's Datacube.

5. **Do you support the two proposed additional data elements that would capture consumer vulnerability flags and the channel via which the complaint was received? If not, why not?**

   An issue we see with the proposed data element flagging a customer as "experiencing vulnerability at the time the complaint is made" is that such an assessment could be volunteered by the customer or otherwise could be potentially subjective, varying between firms and/or frontline staff dependent upon the firm's definition of a vulnerable customer. Accordingly, the element should provide a range of Codes rather than simply being a Flag.

   We support the addition of a data element to record the channel through which a complaint is received however, the element should include an option to record multiple channels for the same complaint.

6. **When we publish the IDR data, how can we best contextualise the data of individual firms? Are there any existing metrics of size and sector that would be appropriate for this purpose?**

   The use of metrics will be vital to ensure whatever published IDR statistics are useful to consumers and others when either making informed decisions about who to do business with or in comparing firms within the same sector.

The starting point we submit should be contextualising individual firms by adopting the AFCA Datacube metrics of business sector and business size but caution even this form of metrics which is dependent upon recording firms by broad sizing categories will detract from the usefulness of the reported data, making it difficult for effective comparison and benchmarking.

7. **Which IDR data elements do you think will be most useful for firms to benchmark their IDR performance against competitors?**

   IDR reporting is inherently unreliable and as a consequence any use of ASIC's IDR data for benchmarking is of questionable benefit when compared to more preferable and reliable EDR benchmarking available through the AFCA Datacube.

   Not always universally accepted as ideal, EDR does provide an independent assessment of a financial firm's performance in terms of compliance and processes whereas the IDR data self-reported by firms to ASIC will not be verified and likely devalued by the significant variation certain to exist in how firms interpret the obligations and operationalise their IDR reporting processes.

Contact

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Appendix 1 - Members of Australian Collectors & Debt Buyers Association

- Axess Australia Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd
- Charter Mercantile Pty Ltd
- CollectAU Pty Ltd
- Collection House Limited (ASX: CLH)
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Lyndon Peak Pty Ltd t/as Access Mercantile Services
- PF Australia Pty Ltd
- PRA Australia Pty Ltd
- Prushka Fast Debt Recovery Pty Ltd
- Shield Mercantile Pty Ltd

Appendix 2 - Debt Purchasing explained

Debt sale contracts exhibit the features of outsourced service provision rather than asset divestment - the contracts contain substantial ongoing conduct obligations and restrictions imposed on the purchaser, which are supported by warranties, indemnities and other potential penalties. The conduct obligations deal with matters such as ongoing compliance with laws, codes, guidelines, data security, principles of fairness and policy directives of the seller.

These contractual requirements are supported by ongoing reporting obligations for matters including breaches, complaints and the identification of customers in sensitive circumstances. There are provisions for extensive auditing, on-site visits and regular review meetings to share emerging issues. Sellers retain substantial discretion to recall individual customer accounts at any time.

The contractual elements create an outsourcing relationship granting the seller substantial control over the ongoing conduct of the purchaser and the experience of individual consumers.

It is appropriate to note ASIC as the regulator for the financial services industry provides guidance in respect to conduct relating to a debt[1]:

> *A creditor may also remain liable for conduct regarding a debt despite having sold or assigned the debt. Liability will generally remain for misconduct occurring before the sale or assignment of the debt.*

Accounts assigned to debt purchasers by original credit providers typically involve debts where an acceleration clause in the financial agreement has been triggered by the consumer's default in making repayments. Once a debt has been accelerated, the amount owing is immediately due and payable.

Many, if not most consumers with accelerated debts are likely to be in hardship giving rise to complex, contested and unresolved issues.

Debt purchasers are specialists in dealing with and managing hardship as they almost exclusively interact with customers in some form of financial difficulty.

Debt purchasers do not establish separate hardship teams and do not need to implement protocols and systems to identify hardship. Rather, they proceed on the basis that every customer is in hardship. This means that every customer receives an empathetic and understanding experience designed to reach mutual agreement on a sustainable repayment arrangement.

The debt purchase business model includes two key features being:

a. The model is uniquely suited to the promotion of affordable and flexible long-term payment arrangements which most effectively respond to individual customer circumstances

b. Debt purchasing involves the assignment of permanent tenure to defaulted loans at prices which represent a substantial discount to the face value outstanding

The benefit of these two features is allowing debt purchasers to agree to longer-term payment arrangements with lower and more affordable repayments for the customer in hardship and to take a patient approach to understanding and accommodating individual customer circumstances.

[1] Equifax Default Information Guide version 23.0 - February 2019

Each year ACDBA members and other industry firms participate in a data survey to provide industry wide demographics. Reviewing the data survey for FY2020 reveals there were 2.99 million accounts with a total face value of $15.5 billion under collection that had been purchased from originating credit providers.

These aggregated figures reveal a low average value per account of only $5,184.

Debt purchasers handle a range of debt values in their portfolios from lesser amounts in respect to telecommunication debts through to larger amounts for higher value credit card and other banking product debts.

Survey respondents in FY2020, reported for both debt purchase and contingent collections collecting $2.37 billion of defaulted consumer credit obligations, restructuring $2.86 billion into sustainable repayment arrangements together with a $1.46 billion in hardship arrangements and waiving a further $31.3 million owed by vulnerable customers in financial hardship.