AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

9 June 2018

Manager
Insurance and Financial System Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ccr.reforms@treasury.gov.au

Dear Sir/Madam

Mandatory Comprehensive Credit Reporting Regulations

We refer to Treasury's consultation project in respect to the exposure draft of the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Regulations 2018* and now provide this Submission in response to matters potentially impacting upon ACDBA's members.

About ACDBA

The Australian Collectors & Debt Buyers Association (ACDBA) was established in 2009. Membership[1] is voluntary and open to all debt collectors and debt buyers. Our members represent the majority of the collection market in Australia.

Our Submission

Although our members as debt buyers are not directly captured within the scope of the legislation we understand an "eligible licensee" assignor will be required to pass on its mandatory reporting obligations to any assignee as s133CO(b) refers to an account being held with "a credit provider" and "credit provider" is sufficiently broad to include an assignee.

We note, despite submissions during the last round of consultations, Treasury has not excluded accelerated debts from its drafting of s28T in the Exposure Draft Bill.

ACDBA submits an additional sub-section should be included in s28T as follows:

(f) accounts:

(i) in respect of which the full balance owing has been accelerated; and

(ii) which have subsequently been assigned to a person who is not an eligible licensee for the purposes of section 133CN of the Act.

[1] Refer Annexure A for list of ACDBA members

In support of this proposed additional sub-section, we submit the following for Treasury's consideration:

1. The present drafting of the Bill requires that an eligible licensee continue to maintain CCR data even after debts have accelerated and assigned to another party.

   This creates an obvious practical difficulty because it fails to account for the requirement under the Privacy Act that any assignment be notified to a CRB within 45 days of assignment so that the CRB can update the identity of the creditor.

   Once the eligible licensee complies with its obligation under the Privacy Act and notifies the CRB it will not be able to maintain any data relating to the account, including CCR data.

2. Once a debt has been accelerated, the amount owing is immediately due and payable, so there really isn't any credit to be reported. There is no longer the essential element of "deferment" which defines credit. Accordingly, it will be impossible to provide any sensible repayment history information from the point of acceleration.

3. The monthly provision of repayment information on a previously accelerated debt would not provide relevant data to prospective lenders. This is because there is unlikely to be any sensible information to report and consumers with accelerated debts and existing default listings are not creditworthy and will not be attractive to any fintech lender.

4. The maintenance of monthly repayment information on the large and ever-growing pool of accelerated and assigned debts would be a costly and inefficient burden without any informational or competitive benefit and would be contrary to the objectives of the Bill. The imposition of costs without benefits will simply serve to increase the price of credit for all consumers.

5. Many, if not most or all, customers with accelerated debts are likely to be in hardship giving rise to complex, contested and unresolved issues around how any payments might be reported. This will undoubtedly lead to technical complaints and costs associated with dealing with such complaints, including through EDR schemes. The imposition of costs without benefits will simply serve to increase the price of credit for all consumers.

6. The Australian Retail Credit Association has stated that assignees of accelerated debts (debt buyers) do not have sensible repayment history information to provide, which means that even if a debt buyer provides such information for its accelerated and assigned accounts it will not meet the standard required for reciprocity and, therefore, will not be entitled to receive repayment history information. This means the Bill as presently drafted will produce an unacceptable outcome where debt buyers will incur all the costs of providing such information without any corresponding benefit.

7. Much of the background to the Bill cites experience from other jurisdictions, including the USA, while ignoring the way such jurisdictions have dealt with the issue of repayment information on accelerated debts and assigned debts.

   In the USA once debts have been accelerated, repayment information is no longer reported and the account is simply noted with a "collections" identifier.

Similarly, when such debts are sold in the USA, the original credit provider will simply close the account (known as a "tradeline") at the CRB.

8. The Australian Privacy Act, and the CCR provisions in particular, are deficient and do not include appropriate measures to deal with accelerated and assigned debts. In order to deal with this shortcoming an appropriate carve out must be inserted in the Mandatory CCR Bill.

Yours sincerely
AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

Alan Harries
CEO

ANNEXURE A
Members of Australian Collectors & Debt Buyers Association as at 9 June 2018

- ACM Group Limited
- Australian Receivables Limited
- Axess Australia Pty Ltd
- Baycorp (Aust) Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd
- Charter Mercantile Pty Ltd
- Collection House Limited
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited
- Credit Four Pty Ltd
- Credit Solutions Pty Ltd
- Dun & Bradstreet (Australia) Pty Ltd
- National Credit Management Limited
- Panthera Finance Pty Ltd
- Prushka Fast Debt Recovery Pty Ltd
- Shield Mercantile Pty Ltd