



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

25 June 2009

Debt Collection Feedback
Australian Competition & Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Sirs,

Debt Collection Practices In Australia

We refer to the paper jointly issued by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC) on 14 May 2009 (the "Paper") and provide our Responses to the various matters canvassed in the Paper.

For ease of reference, in this document we adopt the same numbering used in the Paper.

The Australian Collectors & Debt Buyers Association ("ACDBA") regards the engagement of ACCC and ASIC with the collections and debt buying industry sectors has significantly improved over the past two years and gives hope to those sectors that the two regulators will continue to gain an improved understanding of the Australian industry to ensure as regulators, they have an accurate context in which to regulate and make commentary upon the industry and its practices.

Whilst the Paper is helpful in communicating perspectives, the ACDBA again invites ACCC and ASIC to maintain ongoing dialogue with the industry. To this end, it would be useful for this association to join a consultative committee with the regulators and other stakeholders to create an effective forum for informed consideration of issues which might arise from time to time involving the collections and debt buying sectors – exclusion of industry from such discussions potentially denies the regulators the opportunity for its recommendations to be fully informed of current industry practice, objectivity and commercial practicality.

In no way denigrating the findings of the regulators in respect to *"reports of poor debt collection practices in Australia"* which are noted to *"include serious allegations of harassment, coercion and other problems experienced by debtors when businesses seek to recover outstanding debts"* the ACDBA does have concerns about the objectivity of the way in which such reports are brought to attention of the regulators.

As an example, the debt collection phone-in day held on 31 July 2008 and its marketing via the media portrayed to the industry sectors a perception of a lack of objectivity in approach. This adverse perception was unfortunately heightened by the "phone-in day" being extended to be a "phone-in week" due to the low number of calls actually received on 31 July 2008. Callers were apparently invited to simply make a complaint but not required to provide a timeline as to whether such alleged activity occurred either in the preceding 12 months or earlier – the issue being the data collected in this manner is unreliable for any proper or reliable conclusion to be drawn as to the extent such events might be continuing.

Those observations aside, in terms of a proper perspective now being maintained, it is pleasing to note the regulators publicly acknowledging in the Paper *"that the number of complaints received is statistically low compared to the volume of debt collection activity undertaken in Australia"*.

About the industry generally:

Environmental changes over the past ten years have resulted in a stronger, more professional collections industry in Australia. Those changes range from technological impacts on collections practices, industry consolidation, regulatory developments and increased government usage of debt collection services.

The majority of our members work in multi-jurisdictions. The professionalism of our members is unaffected by jurisdictional differences in licensing regimes. This professionalism is evidenced by an extremely low rate of complaints against our members. Any complaints that arise are resolved promptly and efficiently, as evidenced by the lack of enforcement action by regulators.

The key environmental changes to the collections industry over the past ten years include:

- Members collect government, commercial, trade union and consumer debts
- Debt collection agencies have consolidated, resulting in larger corporations which usually work across multiple jurisdictions
- Technology has allowed the industry to deliver services with no face to face contact with debtors
- Technology allows members to deliver services across multiple jurisdictions without the need for a physical presence in each one
- The industry has moved to specialisation in service delivery:
 - debt collection, with no face to face debtor contact
 - field call, repossession and process service functions – with face to face debtor contact
- Our members are subject to strict legal agreements with their clients (creditors) which cover legal compliance, collection conduct and dispute resolution processes in addition to other contractual arrangements
- The Guidelines and the Consumer Affairs Victoria *Guidelines for Debt Collection* have provided members with clear guidance on appropriate debt collection practices
 - Compliance with these Guidelines is usually part of the contractual agreement with clients
 - Compliance with these Guidelines routinely provides the framework in which members base all their collection activities with debtors
- The *Privacy Act* (Cth) regulates how members (and their clients) can collect, use and disclose credit and personal information
- Debt purchase assignees are obliged to comply with 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

Standards in the Australian industry are high given the contractual and legislative obligations with which our members comply.

Apart from compliance with the legislative environment the industry's clients (creditors) have strict service agreements in place which specify conduct and account management standards.

Client service agreements generally include the following clauses:

- Performance standards, including quality management systems
- Duties, obligations and warranties
- Compliance with relevant legislation – including the Trade Practices and Fair Trading Acts, Consumer Credit Code, Privacy Act and ASIC/ACCC Debt Collection Guidelines
- Dispute resolution procedures
- Reporting obligations
- Auditing requirements

These business to business contractual arrangements indicate the high service delivery standards agreed between members and their clients. The agreed obligations are broader than debt collection specific legislation.

Debt Collection Guidelines:

In respect to the revised edition of the Guidelines released by the ACCC and ASIC in October 2005, the ACDBA agrees the industry associations promote the Guidelines which have been responded to positively by the majority of industry participants.

To the limited extent to which the Guidelines haven't been adopted by all creditors/collectors or have not been sufficiently communicated within some organisations, the ACDBA encourages the regulators to properly recognise the overwhelming compliance of the industry and instead to appropriately target activities at those who have not heeded the Guidelines.

An observation is necessary in respect to the following incorrect reference which is claimed to be a reference to the Guideline and appearing on Page 11 of the Paper: *"contacting the debtor or a third party at unreasonable hours, such as on the weekend, on public holidays or late at night or early in the morning"*.

This is a misstatement of the Guideline as currently available at www.accc.gov.au, which details:

Only contact the debtor or a third party at reasonable hours, taking into account their circumstances and reasonable wishes. You can normally assume that the following are appropriate contact times, subject to the qualifications set out:

Reasonable contact times

These times apply to both debtors and third parties¹¹ and are the local times in the debtor's state or territory.

Contact by telephone

Monday to Friday	7.30 am–9.00 pm
Weekends	9.00 am–9.00 pm
National Public Holidays	No contact recommended

Face-to-face contact

Monday to Friday	9.00 am–9.00 pm
Weekends	9.00 am–9.00 pm
National Public Holidays	No contact recommended

All workplace contact

Debtor's normal working hours if known, or 9.00 am–5.00 pm on weekdays

ACDBA regards telephone contact and face-to-face contact between the hours of 9.00am and 9.00pm remains both reasonable and appropriate as contact times. This is particularly so, given the changes to the "standard" working hours for many Australians whereby their time off, is no longer the traditional Saturday or Sunday.

ACDBA encourages the regulators to ensure that the established contact times as detailed in the Guideline be widely and properly communicated to consumers and consumer advocates so that the Guideline is consistently applied – by doing so, the regulators will ensure confusion and unsubstantiated claims of harassment against collection agencies working diligently within the Guidelines are avoided.

If the Guidelines are to be revised the ACDBA signals its willingness to cooperatively consult with the regulators on the proposed changes to ensure the amended publication is based upon current industry practices and is appropriate, objective and commercially viable.

Responsibilities and Behaviour of Debtors:

The comments made in the Paper on the responsibilities of debtors are noted. This is an area which the industry believes legislators should extend greater obligations to the regulators to improve overall debt collection processes in Australia.

Regulators will often contend their powers are limited and that in any event the legislation of States and Territories provide remedies in the event of adverse behaviour by individual debtors which on occasions can involve subjecting a collector to humiliating or intimidating conduct, such as:

- abusive, offensive, obscene or discriminatory language;
- adopting an aggressive, threatening or intimidating manner;
- threatening to use, or using, violence or physical force against a collector or against the collector's property;
- misleading a collector about the debtor's ability to repay a debt.

The reality is that the State and Territory Police Forces are under-resourced and consequentially complaints lodged with Police about the behaviour of individual debtors are rarely acted upon, even where physical violence is involved.

It would significantly improve behaviour associated with collection activities in Australia if the regulators were obliged to regulate the conduct of all parties involved in collections transactions.

Responses to Identified Issues in Paper:

1. Harassment and coercion

As acknowledged in the Paper, industry members do not regard harassment or coercion is common in the sector with great improvement in recent years following significant resources being invested by industry members by way of compliance programs and training to minimise the risk of harassing or coercive conduct being adopted by collection staff.

ACDBA supports generally the development of appropriate and effective mechanisms to detect and respond early to complaints involving allegations of harassment or coercion – our members already have extensive internal mechanisms for this purpose. Debt buyers are expected under the proposed National Consumer Credit Protection legislation to be required to join an appropriate External Dispute Resolution Scheme to afford an opportunity for debtors to raise any complaints unable to be resolved by way of internal dispute resolution schemes maintained by the members.

2. Disputes about the debt

As noted in the Paper the industry doesn't agree that such conduct as detailed as a consumer concern is widespread but agrees disputes about a debt should be resolved as quickly as possible.

Industry members increasingly report some debtors (and the counsellors and the "debt repair" firms they consult) routinely use disputes as a tactic to avoid responsibility to repay debts. It would be useful for the regulators to help stamp out such inappropriate practices by providing in the Guidelines that debtors and their representatives (including financial counsellors and debt repair consultants) should not engage in deceptive conduct and instead ensure all dealings are conducted openly and in good faith.

The industry has already generally developed robust and effective internal complaints and dispute resolution procedures to respond to disputes appropriately and consistently. That such systems are in place and generally working to improve collection practices is perhaps best illustrated by the acknowledgement of the regulators in the Paper *"that the number of complaints received is statistically low compared to the volume of debt collection activity undertaken in Australia"*.

This statistically low complaint level is even more remarkable when it is recognised every matter referred to a collector or debt purchaser is already "distressed" or in dispute, that is, a creditor says the debt is owed and yet for a variety of reasons, the debtor is not paying.

As is often remarked upon by the industry its low level of complaints would be envied by other organisations including government departments, regulators and other service providers of a similar high number of transactions.

3. Debt assignment and/or selling

In the Paper, reference is made to "members of the ACCC's Consumer Consultative Committee and ASIC's Consumer Advisory Panel have reported an increase in complaints about poor debt collection practices" but the basis, timing and objectivity of such reports is not apparent.

The industry regards issues can arise from a lack of relevant information being passed on or made available upon request to the debt vendors creating difficulties for a debt purchaser to respond constructively when a consumer denies liability in part or entirely or asserts that the debt is statute-barred.

The ACDBA agrees there is a role for the original creditor to ensure the accuracy and completeness of information sold to the debt purchaser and is prepared to work with the regulators in determining what should be industry best practice in this area for inclusion in a guideline.

Original creditors already provide the debtor with a notice of the sale of the debt under assignment and whilst the issuing of such notice does not breach the Privacy Act, it none-the-less remains that restrictions imposed by the Privacy Act contribute to the difficulty of both creditors and collectors to access basic information such as debtor addresses, telephone numbers and/or places of work.

4. Incorrect Credit Default Listing

Whilst appropriate to remind industry members of their obligations under the Credit Reporting Code of Conduct it is equally important for the regulators to recognise from the perspective of collectors and debt buyers such problems of incorrect credit default listings are not routinely encountered suggesting there is already strong compliance by these sectors.

5. Difficulties Negotiating Repayment Arrangements

Repayment arrangements is indeed the very nature of the industry's business and members in the main respond constructively to debtor difficulties in meeting repayment obligations by taking appropriate account of the debtor's financial situation.

The industry from experience is concerned some debtors and consumer agencies expect an assertion made that a debtor cannot afford repayment should require the debt be immediately waived without providing any evidence of claims regarding the debtor's financial position.

The ACDBA will work on a best practice approach to deal with this issue by way of developing a recommended standard level of inquiry which collectors ought to use when assessing a debtor's capacity to repay.

6. Representations on Consequences of Non-Payment

The ACDBA confirms it believes this alleged practice is not widespread and represents a very small minority of creditors/collectors. Its members already ensure their employees are highly trained in this area and maintain robust internal compliance practices to maximise compliance with the relevant provisions of the Guidelines.

7. Jurisdiction in Which Proceedings are Instituted

Options available to collectors and debt buyers in relation to the venue for the commencement of an action against a debtor continue to legitimately include jurisdiction. In establishing the jurisdiction where proceedings should be commenced, the domicile of the debtor is only one of the necessary considerations, the others being the location in which the transaction occurred and where payment is to be made.

Generally, the industry regards the jurisdiction to use is where the original contract was created – this can be dependent upon this being clear in the original documentation, otherwise the debtor has the right to access legal proceedings (as the defendant) at the closest court to their address. The industry in dealing with collections on behalf of third parties regard the jurisdiction for initiating proceedings (issue of summons through to default judgment) should be based upon the location of the creditor client and in the less frequent situation where a hearing is required, then the matter can be transferred to the debtor's closest court.

Further, we note, with the now wide use of electronic commerce in Australia, creditors may have no presence in the State in which the debtor resides and so the suggested simplistic approach of always choosing the jurisdiction where the debtor resides would in such circumstances impose a cost disadvantage upon the creditor not necessarily contemplated when the original transaction was agreed to.

The reality is that the current collection processes offer adequate opportunity for debtors to object to proceedings on the grounds of jurisdiction.

It is also true to point out the majority of legal actions commenced against debtors are resolved without court attendances.

In all of these circumstances, the proposed amendment to collection processes to simply issue proceedings in the jurisdiction where the debtor resides would be unnecessarily and unreasonably onerous upon creditors and debt buyers for the very small number of matters impacted – importantly, current processes do allow the transfer of proceedings commenced in another jurisdiction to be transferred to the jurisdiction where the specific debtor is domiciled.

8. Enforcement Responses

The regulators acknowledge the rights of a creditor/collector to pursue enforcement proceedings as a legitimate tool in the collections process.

As previously noted our industry recognises ignoring the personal circumstances of debtors is generally not in the best interests of creditors/collectors. Industry members for commercial reasons wherever possible work with consumers rather than moving quickly to other enforcement options. Consumer groups should be encouraged by the regulators to assist debtors to work with creditors/collectors in a frank disclosure of their ability to repay as a genuine effort to avoid the legitimate enforcement actions.

The industry members already maintain procedures to follow when determining an appropriate enforcement response in certain circumstances for the very reasons set out in the Paper.

9. Compliance Programs

ACDBA regards the assertions of consumer groups in respect to alleged misunderstandings of consumer protection laws by junior officers (including call centre staff) in the collection industry and that that small organisations in the industry may place less priority on compliance and training as lacking objectivity and evidence.

The Paper acknowledges the industry has noted its significant efforts in recent years to improve compliance in the collection sector and the importance it attaches to compliance and training, including the strict requirements imposed on third party collectors and debt purchasers by the original creditor. Further, external compliance audits are regularly conducted by original creditors to ensure such terms and conditions are followed.

Most industry members use specialist software packages to carry out debt collection activities – a growing feature of such packages are compliance controls to ensure no breach occurs together with a audit trail for all activities undertaken in the life of the particular matter. Industry experience in recording all telephone contact with debtors is that such practice quickly allows defence and resolution of complaints from debtors falsely alleging compliance breaches by staff.

10. Complaints Handling—Internal Dispute Resolution

The industry understands establishing and maintaining effective internal dispute resolution (IDR) and complaint-handling processes is essential for its longevity. To this end, industry members have invested significantly to identify and attempt to respond to complaints at the earliest possible opportunity – the commercial imperative to do so is in terms of minimising costs and achieving recovery rates.

Sometimes, complaints are lodged in anger simply due to the collector having correctly located the debtor and made a legitimate demand for repayment of a debt, which the debtor had hoped to avoid. In such circumstances the intransigence of individuals can thwart the collector's genuine desire to resolve any complaint.

11. Complaints Handling—External Dispute Resolution

The Federal Government's National Consumer Credit Protection legislation is expected to require debt buyers to join an EDR Scheme thereby providing access to debtors with complaints to a third party to appeal to – whether such membership and access will reduce the extent of complaints to regulators will quickly become clear.

The industry remains concerned however given its past experience with some complainants that the EDR could be potentially exploited by vexatious litigants and of the adverse cost implications of EDR membership in such situations.

12. Financial hardship

In respect to the suggestion that original creditors be encouraged to ensure that existing payment arrangements are not affected by the sale of a debt, it necessarily follows that debt buyers should also be encouraged to ensure they have compliant hardship response provisions in place, as part of the responsibilities transferred/assigned with the rights to the debt.

In the case of contingency collections, there is no commercial sensibility in collectors pursuing debtors suffering hardship. Most collectors have sophisticated processes and systems for identifying and managing hardship. Where identified, such cases are generally immediately referred back to the originating creditor clients, who will then apply their own hardship policy to the matter.

13. Third party authorisations

As noted in the Paper, our members don't agree that third party authorisations are ignored and some of the frustrations expressed by or on behalf of consumers directly arise because of measures required to ensure compliance with the Privacy Act.

ACDBA agrees consistency in approach to the establishment of third party authorities across the industry may resolve the frustrations of debtor advocates and recalls the ACCC and ASIC undertook at the Industry Forum in September 2008 to assist in the development of a standardised third party authorisation form in consultation with the Australian Privacy Commissioner. The ACDBA remains willing to assist the regulators in developing such an authority.

Concluding Comments:

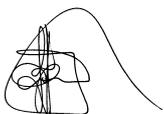
The ACDBA appreciates the opportunity to provide feedback to the regulators on the matters canvassed in the Paper and encourages both regulators to continue in their genuine efforts to work with the industry to continue to improve collections practices in Australia to the benefit of all stakeholders in an approach which acknowledges actual current industry practice, objectivity and commercial practicality for any recommended improvements.

As the regulators will be aware from the recent Launch of ACDBA, this association is commencing a project to develop an effective voluntary Code of Practice for its members and will be consulting all stakeholders to the industry as part of the project which will be undertaken in consultation with both ACCC and ASIC.

Should any discussion on the matters canvassed in this Response be required, please don't hesitate to contact the writer.

Yours faithfully,

AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION



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