



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

3 June 2009

CAPI Act Review
The Director General
Ministry for Police
Level 13
201 Elizabeth Street
SYDNEY NSW 2000

Dear Director General

CAPI Act Review

The Australian Collectors and Debt Purchasers Association (ACDBA), formerly the Australian Collectors Association, welcomes the opportunity to respond to the *Commercial Agents and Private Inquiry Agents (CAPI) Act Review* (the Review) recommendations.

We strongly support the Review's recommendation to work towards harmonisation of industry regulation. The commitment is timely as the proposed capture of the consumer credit collections industry by the *National Consumer Credit Protection Bill* licensing regime further complicates our regulatory obligations.

While we agree with the majority of the Review's recommendations, we recommend a development approach which prioritises harmonisation agreement over the implementation of the proposed *Commercial Agents Act (CAA)*. Many of the Review's recommendations can be implemented within the existing regime pending the outcome of harmonisation discussions.

This approach will allow NSW to develop nationally agreed legislation that can provide the national regulatory template. It avoids the prospect of future regulatory amendments to the proposed CAA to meet the agreed national position on industry regulation. It also allows NSW to deal immediately with the most adverse impacts of the CAPI legislation.

The ACDBA is committed to achieving consistent, and relevant, regulation across all jurisdictions to promote competition and to ensure stakeholder and public confidence in the debt collection industry. We strongly support the Government's commitment to work with Western Australia to achieve this aim.

We look forward to working further with the Ministry and other stakeholders to implement many of the Review's recommendations as expeditiously as possible and in the development of nationally consistent regulation.

Please find attached our responses to the Review's recommendations.

Yours faithfully

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Executive Director

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Australian Collectors and Debt Buyers Association

CAPI Review 2009 Recommendations - Response

1. ACDBA Policy Recommendations

The ACDBA strongly supports the Ministry's recommendation to actively pursue nationally consistent licensing regimes for commercial agents.

Active pursuit of nationally consistent regulation has become even more urgent given the Commonwealth Government's *National Consumer Credit Protection Bill*, due into Parliament in June, captures the consumer credit debt collections industry in its licensing regime. This is despite recognition by Government policy bodies such as the Productivity Commission, the Council of Australian Governments (COAG) and the Ministerial Council on Consumer Affairs (MCCA) recognising harmonisation of the debt collection industry regulatory regimes is a policy priority.

Our response to the Review recommendations addresses the policy process for the CAPI Act and nationally consistent regulatory reform as well as the specific Review recommendations. Outlined below are our reform process recommendations and our views on key recommendations particularly relevant to our members.

Our position on all recommendations is summarised in the table below.

2. Process recommendations

We make the following process recommendations for consideration to ensure Ministry resources are appropriately targeted in achieving harmonisation in the debt collection industry:

- The Ministry seek stakeholder agreement on harmonisation or national legislation before introducing the proposed *Commercial Agents Act (CAA)* to avoid unnecessary regulation and/or ongoing amendments
 - if regulation is to remain at State level, then the new CCA could become the template legislation
- The CAPI Act, as it relates to commercial agents, be transferred to the Office of Fair Trading as soon as possible
- The CAPI Act be amended immediately to implement the agreed recommendations e.g. repeal finger-printing requirements and amend licensing requirements for call collectors etc

To avoid a plethora of regulatory amendments and unnecessary expense, we strongly encourage the Ministry to establish an industry/government working party to develop an appropriate regulatory framework. With policy support from MCCA, COAG and the Productivity Commission, it should be possible to reach agreement in a relatively short time frame. This will result in regulator and market certainty which, in turn, will result in competition with associated stakeholder costs benefits.

3. Key Recommendations

Many of the Review’s recommendations adequately address the issues we (as the Australian Collectors Association) raised in our submission to the Review. They recognise market specialisation and maturity, diverse work environments, operational scales and technological service delivery. More competitive and cost effective service delivery should result.

There are some recommendations, however, which we only partially support. We have made further recommendations on amending those recommendations to address our concerns.

There are also other recommendations to which we are fundamentally opposed, particularly licensing. We outline our views on the key recommendations below.

3.1 Supported Recommendations

The ACDBA supports the following recommendations:

- Transfer of regulatory responsibility for commercial agents from the Ministry to the Office of Consumer Affairs
 - This facilitates regulator consultation through MCCA, reinforces the consumer protection aspects of the regulation & removes negative industry conduct inferences resulting from community perceptions about the regulator choice
- Clerical and secretarial staff be exempted from the licensing provisions
- Licensing of all who provide physical debt collection services in NSW
- The exemption of all financial services organisations currently regulated under the *Corporations Act* and/or the *Financial Sector (Collection of Data) Act 2001 (Cth)* and/or the *National Consumer Credit Protection Act*
- Training requirements for commercial agents and private investigators be reviewed by the regulator in conjunction with peak industry associations, to determine their relevance, cost and availability
- Qualifications of auditors of trust accounts for commercial agents be broadened to include members of a Professional Accounting Body
- The restriction on commercial agents trust accounts earning interest be removed
- The fingerprinting requirements be removed for commercial agents
- The requirement to cite a licence number at the beginning of a collections call be removed

We propose NSW adopt the following licensing/regulatory principles until harmonisation of the regulatory environment is achieved:

- Service providers regulated under Commonwealth legislation be exempt from the NSW regime
- Service providers who employ staff engaged in physical debt collection services in NSW be regulated by the NSW regime
- Service providers located in any other State or Territory who have no physical services presence in NSW be exempt from the regulatory regime under Mutual Recognition principles

3.2 Partially Supported Recommendations

We partially support the following recommendations:

- Call Centre Collectors be exempt from the licensing requirements
 - We recommend this be extended to all who are engaged in collection calls only, regardless of work environment
- Mandating a Code of Conduct, possibly the ASIC/ACCC Debt Collection Guidelines, in consultation with ASIC and the ACCC

While we support recommendation 8 to exempt call centre collectors from the operator licensing regime provided they are supervised by a licensed manager, it is on the proviso it is extended to all call only collectors. The exemption must apply to all call only collectors, regardless of the work environment, as it is the limited function, not the employment arrangement, that justifies the exemption. Anything else is anti-competitive as it favours a call centre environment over the small business operator.

We recommend the Ministry extend the exemption from operator licensing requirements to all collectors who engage in collections call only, regardless of work environment

We partially support a Code of Conduct, but not mandating the ASIC/ACCC Guidelines. Any Code of Conduct must be consistent across jurisdictions, particularly as Queensland already has a Code under the PAMD Act. We also believe further consideration should be given to the expected benefits of a mandated Code of Conduct as opposed to a voluntary one.

We disagree with mandating the ASIC/ACCC Guidelines as the Code of Conduct. Guidelines are simply that so should not be made absolutes by legislation. A mandatory Code of Conduct should be broader in content and must be developed in consultation with stakeholders.

The ACDBA has already made a public commitment to the development of a voluntary Code of Conduct. We intend the Code of Conduct to be registered with ASIC and the ACCC under the most appropriate legislation instrument. Consultations with stakeholders, including the ACCC, have commenced. The ACCC's Code Development Unit has indicated the development of a Code of Conduct generally take 6 to 12 months to achieve stakeholder agreement.

Given our commitment to a Code of Conduct we would be pleased to work with the Ministry and/or OFT and other stakeholders to develop an appropriate Code of Code for the industry.

We recommend the Ministry consult stakeholders about the benefits of a Code of Conduct in the harmonisation context.

3.3 Opposed Recommendations

The recommendations to which we most strongly object are:

- Continuation of a licensing regime where there is no market detriment to justify it
- Application of the licensing regime to debt buyers of consumer debt
- Paper licences
- A licence be taken to be rejected if not approved within 60 days

We are disappointed the Ministry recommends the continuation of the licensing regime. It provides no justification for this view. As we pointed out in our submission to the Review, licensing is only appropriate where there is significant market failure. Other jurisdictions which have registration, or lesser regulatory, regimes do not demonstrate market failure or increased regulator enforcement action. Consequently, grounds justifying a licensing regime are not evident.

We also do not support the application of the licensing/registration regime to debt buyers of consumer debt (recommendation 15). Debt buyers of consumer debt will be regulated under the *National Consumer Credit Protection (NCCP) Act*. Consequently, they will be subject to a robust ASIC licensing regime and should not be burdened with two, or more, licensing regimes. This is anti-competitive and adds nothing in consumer protection.

We recommend the Ministry exempt debt purchasers of consumer debt from the CAPI Act and/or CAA as they will be subject to a national licensing regime under the NCCP Act. (We appreciate this development was unknown to the Ministry when developing its recommendations.)

Photographic identification provides debtors with confidence in the identity and authorisation of the commercial agent. Paper licences can be easily forged and do not convey the same confidence or certainty. We strongly recommend photographic identification be retained, regardless of cost, to provide debtors and the industry with confidence in the identity and authority of the agent.

It is completely unacceptable that a licence be considered rejected if not approved within 60 days. This proposition rewards/protects the regulator for its inefficiencies and, at the same time, penalises the applicant for the regulator's inefficiencies. In effect, regulator inefficiency can result in a business being unable to trade. This is completely unacceptable. If the regulator cannot approve the licence within 60 days, the applicant must be entitled to consider it approved and to continue trading until advised otherwise.

While we are opposed to some of the other regulations, we have addressed our concerns in the table below which summarises our position on all recommendations

4. CAPI Review Recommendations – ACDBA Position Summary

Our position on all the Review recommendations is summarised in the table below.

We appreciate several of these recommendations are yet to be finalised, as indicated by the highlighted comments. Where there is an indication recommendations may be withdrawn, we have provided our view on both the recommendation as it currently stands and the implications if withdrawn.

| Recommendation No. | Recommendation | ACDBA Response |
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| 1 | That NSW, possibly in conjunction with Western Australia, actively pursue nationally consistent licensing regimes for both commercial agents and private investigators through the Ministerial Councils and COAG. | Strongly agree |
| 2 | That the CAPI Act be abolished and replaced with the <i>Commercial Agents Act</i> to regulate commercial agents, and that the new Act incorporate the relevant recommendations discussed in Chapter 5. | Partially agree – abolition of the CAPI Act should be placed on hold pending harmonisation agreement across jurisdictions. We strongly recommend the CAPI Act be amended to repeal or amend a range of current anti-competitive or onerous provisions while harmonisation processes are in train. |
| 3 | That the transfer of commercial agent regulation from the NSWPF to the OFT be completed by the end of 2010. Pending Government approval. | Strongly agree – but recommend an amended CAPI Act be transferred to OFT pending stakeholder agreement on a harmonised, or national, regulatory regime. |
| 4 | That private inquiry agents be renamed private investigators. | Agree , provided terminology is nationally consistent |

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| <p>5</p> | <p>That a new subclass be created under the <i>Security Industry Act</i> to regulate private investigators, and that:</p> <ul style="list-style-type: none"> - The exemptions under the CAPI Act, incorporating the proposed amendments discussed in Chapter 4, be carried across to the <i>Security Industry Act</i> for that subclass. Appropriate exemptions remain under consideration. - That the new subclass be exempted from the requirement under Section 29 of the <i>Security Industry Act</i> to display their licence at all times. | <p>No view</p> |
| <p>6</p> | <p>That the objectives of the Act are valid and should be maintained, with the exception of that in Section 3(b) of the Act – ‘to provide for the licensing of persons carrying out, and persons carrying on business in relation to, commercial agent and private inquiry agent activities’.</p> | <p>Disagree – we believe licensing is no longer required and a registration regime will provide regulators with knowledge of industry participants</p> |
| <p>7</p> | <p>That a licensing system be maintained for commercial agents and private inquiry agents/investigators.</p> | <p>Disagree – registration is an appropriate regime given the maturity of the industry</p> |
| <p>8</p> | <p>That operator licensing requirements be removed for debt collectors working in a call centre environment, as long as they are under the direct supervision of a licensed manager.</p> | <p>Agree – with modification. The provision, to avoid being anti-competitive should apply to all who make collections calls only, not just call centres.</p> |
| <p>9</p> | <p>That the probationary period for commercial agents and private investigators should be waived at the discretion of the regulator for licensees who already possess the relevant required qualifications.</p> | <p>Partially agree – criteria should be clearly established for the waiving of the probationary period to provide industry certainty – “relevant required qualifications” should be clearly defined</p> |

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| <p>10</p> | <p>That the probationary period for commercial agents and private investigators should be waived at the discretion of the regulator for licensees who are entering the industry from law enforcement or a similar investigative role, if they have served in that role for five years or more and have a clean record.</p> | <p>Disagree – we do not support legislated probationary requirements. The master licensee is legally responsible for the appropriate conduct of its probationary licensees at all times under a range of legislation and is accountable to the contracting principal for that conduct.</p> <p>These obligations ensure probationary periods are managed appropriately and negate the need for additional regulatory intrusion into business operations.</p> <p>Recommend: Repeal all statutory probationary period requirements as the master licensee is responsible for the new agent’s conduct at all times</p> <p>Alternative view, if probationary periods remain in the legislation regime</p> <p>Partially agree – relevant qualifications should be specific and cover money handling and trust account management, sound knowledge of the legislative environment, process serving experience etc, not just law enforcement experience</p> |
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| <p>11</p> | <p>That the definition of ‘supervision’ for a probationary licence holder should be clearly defined in the <i>Commercial Agents Act</i> or accompanying Regulation, along similar lines as</p> | <p>Disagree: refer to our view on probationary periods for commercial agents above (10). We do not support legislated probationary and supervisory provisions.</p> <p>Alternative view, should probationary periods remain in the legislation regime</p> <p>Partially Agree – a straight application as the definition contained in Section 19 of the <i>Security Industry Regulation</i> is not appropriate for the industry given the nature of the work and its fee structure e.g. same premises, line of sight supervision etc .</p> <p>Recommend further industry consultation is required on an appropriate “supervision: definition.</p> |
| <p>12</p> | <p>That a new offence should be included in the <i>Commercial Agents Act</i>, and added into the <i>Security Industry Act</i>, for permitting a probationary licensee to carry out any unsupervised commercial agent or private investigation activity (in line with the definition recommended above).</p> | <p>Disagree: refer to our view on probationary periods for commercial agents above. We do not support legislated probationary and supervisory provisions (10 & 11).</p> <p>Alternative view, should probationary periods remain in the legislation regime</p> <p>Partially Agree – as noted above, the definition of “supervision” must be relevant to the nature of the industry and services provided. Direct supervision (e.g. line of sight) is not practicable or cost effective given the nature of the task involved.</p> <p>Recommend the new offence apply to licensees who permit probationary licensees to exceed the agreed scope of work.</p> |

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| <p>13</p> | <p>That consideration be given to the introduction of a ‘log book’ system for probationary licensees under the <i>Commercial Agents Act</i> and the <i>Security Industry Act</i>, to allow them to work under contract under the supervision of multiple master licensees.</p> <p>Note re Recommendations 9 to 13: These recommendations rework the probationary system – consideration is also being given to abolishing the probationary system (for commercial agents in particular).</p> | <p>Disagree: refer to our view on probationary periods for commercial agents above (10, 11 & 12).</p> <p>We do not support legislated probationary and supervisory provisions and see no value in mandating a “log book” validation of in-house supervisory management processes.</p> |
| <p>14</p> | <p>That both the <i>Commercial Agents Act</i> and the <i>Security Industry Act</i> be amended so that the Public Service and public authorities of any State, Territory or the Commonwealth are exempt from commercial agent and private investigator licensing requirements, in addition to their employees.</p> | <p>Agreed</p> |
| <p>15</p> | <p>That the definition of debt collection in the <i>Commercial Agents Act</i> be appropriately worded to clarify that it includes the collection of debt purchased from a second party, but excludes in-house debt collecting.</p> | <p>Partially disagree – purchased consumer credit debt should be exempt as debt buyers are regulated as credit providers and will be subject to the <i>National Consumer Credit Protection Act (Cth)</i> licensing regime when it is enacted later this year.</p> <p>All other consumer and commercial debt, however, should be caught.</p> <p>Recommend purchased consumer credit debt be exempt, should consumer credit debt buyers be subject to the NCCP Act</p> |
| <p>16</p> | <p>That loan managers, loan brokers, loan servicers and real estate agents should not be subject to commercial agent licensing.</p> | <p>Agree</p> |

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| 17 | <p>That debt factoring facilities and invoice discounting facilities be specifically exempted from the Act, where the following definitions apply:</p> <p>“debt factoring facility or invoice discounting facility means a financing facility involving the conditional assignment of debts by a client to a financier on a continuing basis” Definition to be confirmed.</p> | <p>No view</p> |
| 18 | <p>That the exemption for authorised deposit taking institutions be extended to cover all financial services organisations currently regulated under the <i>Corporations Act</i> and/or the <i>Financial Sector (Collection of Data) Act 2001</i> (Cth). This recommendation could be reworded to refer to the pending National Consumer Credit Protection Bill.</p> | <p>Agree – extend the exemption to include entities regulated under the NCCP Act, including purchasers of consumer debt.</p> |
| 19 | <p>That smash repairers and hire car companies be exempt from the <i>Commercial Agents Act</i> when acting in a recovery capacity for repairs or hire car charges associated with a vehicle repair insurance claim.</p> | <p>Agree</p> |
| 20 | <p>That the definition of ‘Investigation of persons’ under the <i>Security Industry Act</i> be restricted to ‘Any activity on behalf of a second person (not being his or her employer) that involves finding a third person, or investigating a third person’s business or personal affairs WITHOUT THEIR WRITTEN CONSENT’.</p> | <p>Agree</p> |
| 21 | <p>That an exemption be introduced for any person whose duties when employed by a licensed commercial agent or private investigator consist of no more than office based clerical or secretarial work.</p> | <p>Agree</p> |

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| <p>22</p> | <p>That offshore call centres be allowed to operate in NSW without regulation under NSW commercial agent legislation, if employed or subcontracted by an Australian company and with a specific clause in their contract agreeing to abide by the ACCC/ASIC <i>Debt Collection Guidelines for collectors and creditors</i> and that the contract would be cancelled if the Guidelines were breached.</p> | <p>Disagree – the provision is unenforceable by a State based regulator which has no extra-territorial jurisdiction or rights over commercial contracts.</p> <p>Nor are the Guidelines legally enforceable or intended to be by either ASIC or the ACCC. They simply provide a benchmark for conduct standards.</p> <p>Regardless, businesses which engage offshore collectors generally require compliance with the Guidelines under principal & agent contracts so conduct standards are managed appropriately under commercial agreements.</p> <p>We question whether there is evidence of market failure resulting from the use of offshore call centres to warrant a regulatory response.</p> <p>In addition, as the proposed provision only captures commercial agents, any business which offshores collections will not be caught. This will lead to market distortion.</p> <p>This is an issue for harmonisation if there is sufficient evidence of market failure to warrant regulatory intervention beyond principal/agent commercial arrangements.</p> <p>Recommend: NSW seek the cooperation of its State/Territory counter-parts to develop a consistent position on an appropriate regulatory response to offshore collections if there is evidence of market failure in the current arrangements.</p> |
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| <p>23</p> | <p>That commercial agents based interstate be required to be licensed in NSW if ‘carrying on business’ in NSW, where carrying on business for an organization is specifically defined along the lines of:</p> <ul style="list-style-type: none"> - having property related to its business within the jurisdiction, or a fixed or certain place of business within the jurisdiction from which it conducts business - having agent or agents within the jurisdiction who are authorised to conduct the company’s business on its behalf - carrying out or performing physical acts through human instrumentalities within the jurisdiction, and/or - performing any such physical acts systematically and regularly with a view to profit. | <p>Partially Agreed. Recommendation can be simply worded to require interstate businesses to hold a NSW licence if physical debt collection services are provided in NSW. Clerical and secretarial services must be exempt as per recommendation 21</p> |
| <p>24</p> | <p>That a legislative requirement be introduced for all advertising material for commercial agents and private investigators to clearly display the name and master license number of the advertiser.</p> | <p>Agreed</p> |
| <p>25</p> | <p>That the <i>Commercial Agents Act</i> specify that a licence is to be granted within 60 days or be considered refused, with subsequent rights for the applicant to appeal to the ADT.</p> | <p>Strongly Disagree – a licence must be granted within 60 days or the application can then be taken to be approved</p> <p>This proposition rewards/protects the regulator for its inefficiencies AND at the same time penalises the applicant for the regulator’s inefficiencies. This is unacceptable as regulator inefficiency can result in a business being unable to trade.</p> |

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| <p>26</p> | <p>That equivalent provisions to Section 29(3) and Section 15(6) and (7) of the <i>Security Industry Act</i> be included in the Act to clarify that criminal intelligence information can be considered in licensing decisions, without being disclosed to the applicant or as part of review proceedings.</p> | <p>Disagree – the applicant is entitled to be aware of information taken into account. “Criminal intelligence information” is not a conviction and should not be considered grounds for refusal of a licence as it is unproven.</p> |
| <p>27</p> | <p>That it be clarified that Section 12 of the <i>Criminal Records Act 1991</i> does not apply to the application for a licence under the <i>Commercial Agents Act</i>. Note re Recommendations 26 and 27: Consideration is being given to removing the use of criminal intelligence from licensing decisions for commercial agents.</p> | <p>Agree with the note – remove criminal intelligence from licensing decisions as per our comments above (26).</p> |
| <p>28</p> | <p>That the <i>Commercial Agents Act</i> not require a notice of cancellation, or the ability to make written submissions, where the cancellation is mandatory.</p> | <p>Unclear – the application of the provision is vague. It requires a regulatory context before a view can be formed.</p> |
| <p>29</p> | <p>That training requirements for commercial agents and private investigators be reviewed by the regulator in conjunction with peak industry associations, to determine their relevance. Consideration should also be given to the cost and availability of training, particularly in rural areas.</p> | <p>Agreed – recommend immediate removal of specified mandatory training requirements e.g. Certificate regime under the Australian Quality Training Framework</p> |

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| <p>30</p> | <p>That consideration be given, in consultation with ACCC and ASIC, to incorporating a Code of Conduct (possibly the ACCC/ASIC <i>Debt collection guidelines for collectors and creditors</i>) into the legislation, with clear penalties for breaches of the Code. This recommendation may be removed.</p> | <p>Agree, in principle, with a Code of Conduct but it must be consistent across jurisdictions, particularly as Queensland already has a Code under the PAMD Act.</p> <p>Disagree with mandating the ASIC/ACCC Guidelines. Guidelines are simply that so should not be made absolutes by legislation.</p> <p>A mandatory Code of Conduct should be broader in content and must be developed in consultation with stakeholders.</p> <p>ACDBA has already committed to engage with stakeholders, including regulators, to develop an effective voluntary Code of Conduct for the industry to be registered with ACCC & ASIC.</p> <p>Advice from the Code Development Unit of ACCC indicates the appropriate development process is likely to be a project of 6 to 12 months duration.</p> |
| <p>31</p> | <p>That a new clause be inserted into the <i>Commercial Agents Act</i> to specify that debtors must be notified of any overpayments made, unless the reasonable cost to the debt collector of processing the refund would exceed the amount of the overpayment.</p> | <p>Unclear. The provision requires clarification as to what constitutes “over payment”. Is it in excess of an agreed repayment amount or any residual post “paid in full”?</p> <p>If the latter, agreed.</p> |

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| <p>32</p> | <p>That the qualifications of auditors of trust accounts for commercial agents be broadened to include members of a Professional Accounting Body as defined under the <i>Australian Securities and Investment Commission Regulations 2001</i> (such as CPA Australia, the Institute of Chartered Accountants in Australia and the National Institute of Accountants) who hold a Public Practice Certificate with one or more of those bodies.</p> | <p>Agreed</p> |
| <p>33</p> | <p>That a restriction on debt collectors charging costs to debtors be maintained, however that longer term consideration be given to transferring this restriction to an Act with broader coverage such as the <i>Fair Trading Act</i> so that all agencies collecting debts, whether licensed CAPI agents or not, have the same conditions applied to them in this regard.</p> | <p>Disagree – provision is unclear. Needs to clarify debt collectors can only charge their principals for collections costs, not debtors directly.</p> <p>Disagree with transferring this restriction to <i>Fair Trading Act</i> as it intrudes unnecessarily into general commercial arrangements where there is no evidence of market detriment.</p> |
| <p>34</p> | <p>That the restriction on trust accounts for commercial agents earning interest be removed. Could recommend that portion of interest goes to regulator to cover licensing costs?</p> | <p>Agreed – but not to percentage/portion being directed to licensing costs. It is inappropriate for regulators to intrude into how a business manages its commercial liabilities, particularly in its own interests.</p> |
| <p>35</p> | <p>That a note be added into the <i>Commercial Agents Act</i> stating that licensees are also subject to offences under various other State and Commonwealth laws, including the <i>Fair Trading Act</i> and the <i>ASIC Act</i>.</p> | <p>Disagree – licensees are responsible for understanding their regulatory environment. CAA should limit itself to CAA provisions only.</p> <p>Such a provision can be misleading unless very generic. And it has no regulatory application.</p> |

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| <p>36</p> | <p>That a new offence for misrepresentation of services be introduced into the <i>Commercial Agents Act</i> and into the <i>Security Industry Act</i>, along with a requirement for private inquiry agents to provide all prospective clients with a document clearly articulating the services that they are able to provide.</p> | <p>Agree</p> <p>NB: Given the commercial relationship between agents and their principals, remedies already exist for misrepresentation etc under FTAs or the TPA etc. Duplication may not be required, unless tied to licensing renewal criteria</p> |
| <p>37</p> | <p>That commercial agent and private investigator fees be indexed to inflation to allow for increases in costs charged by the RTA and CrimTrac.</p> | <p>Unclear – we assume the provision is meant to apply to licence fees, not fees in general. While we are not opposed to indexation, indexing fees to inflation is an arbitrary approach which does not necessarily correlate with the cost of providing the service. Other factors such as technological improvements etc may impact on costs.</p> |
| <p>38</p> | <p>That fingerprinting requirements be removed for commercial agents.</p> | <p>Strongly agree</p> |
| <p>39</p> | <p>That the requirement to provide a 9 digit number on the phone should not be transferred to the new <i>Commercial Agents Act</i>.</p> | <p>Strongly agree</p> |
| <p>40</p> | <p>That no additional access to information be granted by virtue of a commercial agent or private investigator licence.</p> | <p>Unclear. This appears to be a statement of fact rather than a regulatory provision as its intended application has not regulatory context.</p> |
| <p>41</p> | <p>That the Register of Licences for commercial agents and private investigators be made more available to the public, through an expanded search system such as that used on the OFT website or a published Register list as in WA.</p> | <p>No objection.</p> |

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| <p>42</p> | <p>That the requirement for repossessed vehicles to be reported to police by repossessors within 24 hours not be reintroduced.</p> | <p>Strongly agree</p> |
| <p>43</p> | <p>That Section 39(c), Section 40(1)(a), Section 41(1)(C)(iii), and Section 41(3) of the <i>Roads and Traffic (Driver Licensing) Act</i> be amended to include licences under the <i>Commercial Agents Act</i>.</p> <p>Note: Photo licenses for commercial agent operators may be replaced with paper licenses to decrease administrative costs.</p> | <p>Partially Agree - full agreement is dependent on the licensing process involved. While we have no object to RTA issuing photo ID licences for c/agents, the total licensing process must be both time and cost effective.</p> <p>Strongly object to paper licences. Debtors now expect photo ID as valid proof the bona fides of all persons seeking to deal with them. This is a sound and reasonable expectation. Paper licences will not provide this confidence and are easily forged.</p> <p>Regulator issued photo ID provide an efficient and credible means for identity and authority to be established and must be maintained.</p> <p>The administrative cost is well justified by consumer and industry confidence in evidencing appropriate identification and authority.</p> |
| <p>44</p> | <p>That the minor drafting amendments which had been proposed for the CAPI Act (as contained in the table at Appendix D) be taken into consideration in the drafting of the <i>Commercial Agents Act</i> and the amendment of the <i>Private Security Act</i>.</p> | <p>Agree – provided all amendments look to harmonisation.</p> |