



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

**SUBMISSION IN RESPONSE TO
ASIC ENFORCEMENT REVIEW: POSITION AND CONSULTATION PAPER 4**

Industry Codes in the Financial Sector

July 2017

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Executive Summary

The Australian Collectors & Debt Buyers Association (ACDBA) is pleased to provide this Submission for ASIC's consideration in response to the Position and Consultation Paper 4 (the Paper) relating to industry codes in the financial sector.

ACDBA is supportive of Positions 1 to 5 set out in the Paper as the proposed basis for a co-regulatory model for industry codes in relation to key financial sector services provided to retail and small business customers, whereby industry participants would be required to subscribe to an ASIC approved code, and that in the event of non-compliance with the code, a consumer would be entitled to seek appropriate redress through the participant's internal and external dispute resolution arrangements.

The debt collection and debt purchase sector is however not a key financial sector service which warrants inclusion in the group of industry codes to be subject to the proposed co-regulatory model but rather we respectfully submit such requirements should apply to services where consumers have for some time been vulnerable to significant financial losses through retail banking and finance including finance brokering; financial planning; general insurance, life insurance and insurance brokerage.

The financial services provided by debt collectors and purchasers are centred on the recovery or collection of a debt rather than the provision of advice to or the investing of funds on behalf of consumers.

ACDBA launched its Code of Practice (ACDBA Code) in March 2016 – binding all members as a condition of ongoing membership. In the period from its launch until 30 June 2017, no complaints have been lodged alleging any breach by members of the ACDBA Code.

Included with this Submission is member data over an 8 year period evidencing firstly the low incidence of complaints lodged by consumers against ACDBA members and also revealing a significant proportion of complaints are instigated to assist consumers to avoid financial obligations and once such issue is resolved, the complaints are withdrawn through either a lack of interest to proceed further by the consumers or due to the absence of evidence being provided to support the alleged breach.

The debt collection and purchase sector is already well regulated and subject to existing substantial compliance obligations. Importantly, as demonstrated by the data included in this Submission, complaints against ACDBA members are appropriately managed and resolved by the existing IDR and EDR arrangements of members.

This complaints experience together with the very small size of the debt collection and purchase sector supports the conclusion that if the sector were required to participate by way of a industry code co-regulated by and requiring approval by ASIC, the costs of such an obligation imposed upon the sector would be both significantly prohibitive and not warranted.

About ACDBA

The Australian Collectors & Debt Buyers Association (ACDBA) was established in 2009 for the benefit of companies who collect, buy and/or sell debt. Our members¹ represent the majority of the collection market in Australia. Membership is voluntary and open to all collectors, debt buyers and sellers.

The objectives of ACDBA are to:

- represent the interests of members involved in debt collection and debt buying;
- establish and maintain a Code of Practice for the business activities of members;
- encourage best practice of members in their professional activities;
- provide opportunity for members to discuss and deliberate on matters affecting them professionally; and
- facilitate representation to further the professions of members.

Members are engaged in debt collection and debt purchase activities and use legal action where appropriate as a means of obtaining payment from debtors.

Our members act on behalf of many and varied clients, from large corporations to small businesses, and have a client responsibility to deliver timely and effective debt collection strategies and outcomes.

The size of the Australian collection industry is large and growing. Data collected from ACDBA members indicates the cumulative value of debt they had under collection as at 30 June 2016 exceeded \$19.466 billion represented by 5.9 million files under management. The debt files by value were handled 38.7% on a contingent collection basis whilst 61.3% were handled as debt purchase collections.

Cumulatively, ACDBA members made more than 63.2 million debtor contacts in FY2016 - contacts included telephone calls, SMS, emails, non-statutory and statutory letters. Our members report collecting a total of \$2 billion from accounts under management in FY2016 and writing off over \$11.2 million of debt in response to genuine long term hardship situations.

Member statistics indicate a very low level of confirmed complaints against industry members. Despite the high volume of contacts detailed above for FY2016, incidents against the industry amounted to 1 per 5,101 contacts or 478 accounts under management, or less than 0.02% per total contacts per annum.

ACDBA members involved in debt buying each hold an Australian Credit Licence (ACL) as they assume the role of Financial Service Provider (FSP) upon acquisition of consumer debts from the originating FSP. Pursuant to the obligations of holding an ACL, those members belong to an ASIC approved EDR scheme.

¹ Refer Annexure A: Listing of members of Australian Collectors & Debt Buyers Association

Incidents recorded as part of ACDBA member Internal Dispute Resolution processes are considered as any matter related to alleged unsatisfactory professional conduct and lodged as requiring investigation. These unsubstantiated incidents should not be confused with genuine requests made by consumers for additional information to understand the terms of an account, the balance outstanding or the history of payments made.

Recognising that collections deal exclusively with distressed debt where often the responses received to demands for payment are emotionally charged, an incident rate of 0.02% per total contacts made each year is very low.

ACDBA launched its Code of Practice (ACDBA Code) on 16 March 2016 – all members are bound to abide by the ACDBA Code as a mandatory condition of ongoing membership. In the period 16 March 2016 to 30 June 2017, no complaints have been lodged by consumers alleging any member has breached the ACDBA Code.

ACDBA Responses

In this Submission in response to the Paper, we provide responses and commentary only in relation to those discussion questions relevant to ACDBA members' interests in debt collection and debt purchase.

Position 1: The content of and governance arrangements for relevant codes (those that cover activities specified by ASIC as requiring code coverage) should be subject to approval by ASIC.

Position 2: Entities engaging in activities covered by an approved code should be required to subscribe to that code (by a condition on their AFSL or some similar mechanism).

QUESTIONS

1. Would a requirement to subscribe to an ASIC approved industry code result in improved outcomes for consumers?

We are not convinced the result for the debt purchase sector would amount to any significant improvement in outcomes for consumers. The experience to date of ACDBA members has been that often complaints are raised as a tactical defence to meeting a financial obligation on the part of the consumer and once that financial obligation issue is resolved there is no other matter left to deal with, that is, there is no basis for the complaint.

To understand the situation of such experience, we include demographics gathered by way of an annual data survey of ACDBA members over an 8 year period.

The first set of demographics are included as Table 1 and details the volume of accounts handled by ACDBA members together with the total number of contacts they made with consumers:

Table 1	FY2016	FY2015	FY2014	FY2013	FY2012	FY2011	FY2010	FY2009
Number of Respondents	17	18	17	13	14	13	14	13
Accounts handled and contacts made by number								
No. of Accounts at 30 June	5,929,524	5,397,522	4,118,547	3,575,644	3,189,914	3,594,090	4,063,304	3,020,506
No. of contacts made in year to 30 June*	63,217,722	59,514,030	65,426,503	49,783,554	35,873,078	46,828,319	33,268,977	23,173,039
* includes telephone calls, SMS/text messages, letters and emails								

This situation of complaints often being created solely as a tactic is very evident in the demographics in Table 2 below:

Table 2	FY2016	FY2015	FY2014	FY2013	FY2012	FY2011	FY2010	FY2009
Number of Respondents	16	18	17	13	12	9	9	8
Outcome of Complaints by number								
Account paid	107	388	101	93	966	19	7	0
Arrangement made/settlement accepted	918	753	426	409	518	179	143	2
No basis &/or insufficient detail to investigate	3,428	4,265	3,519	2,093	1,482	1,350	1,119	566
Withdrawn by debtor	1,375	1,325	789	137	169	29	54	3
Matter referred back to client for resolution	305	875	237	290	278	66	44	5
Apology letter issued to debtor	122	205	106	87	111	116	231	123
Credit file listing corrected/removed	3,116	2,666	526	389	367	296	61	4
Finalised by EDR award in favour of debtor	12	6	26	68				
Internal processes reviewed/amended	22	43	39	67	88	113	32	11
Outcome not reported	1,322	1,331	920	1,657	611	1,043	771	303
Unresolved	1,464	1,081	2,149	136	396	445	257	79
Total	12,191	12,938	8,838	5,426	4,986	3,656	2,719	1,096
Outcome of Complaints by percentage								
Account paid	0.9%	3.0%	1.1%	1.7%	19.4%	0.5%	0.3%	0.0%
Arrangement made/settlement accepted	7.5%	5.8%	4.8%	7.5%	10.4%	4.9%	5.3%	0.2%
No basis &/or insufficient detail to investigate	28.1%	33.0%	39.8%	38.6%	29.7%	36.9%	41.2%	51.6%
Withdrawn by debtor	11.3%	10.2%	8.9%	2.5%	3.4%	0.8%	2.0%	0.3%
Matter referred back to client for resolution	2.5%	6.8%	2.7%	5.3%	5.6%	1.8%	1.6%	0.5%
Apology letter issued to debtor	1.0%	1.6%	1.2%	1.6%	2.2%	3.2%	8.5%	11.2%
Credit file listing corrected/removed	25.6%	20.6%	6.0%	7.2%	7.4%	8.1%	2.2%	0.4%
Finalised by EDR award in favour of debtor	0.1%	0.0%	0.3%	1.3%				
Internal processes reviewed/amended	0.2%	0.3%	0.4%	1.2%	1.8%	3.1%	1.2%	1.0%
Outcome not reported	10.8%	10.3%	10.4%	30.5%	12.3%	28.5%	28.4%	27.6%
Unresolved	12.0%	8.4%	24.3%	2.5%	7.9%	12.2%	9.5%	7.2%
Total	100.0%							

Table 2 provides an informative analysis of the outcomes of consumer complaints received over the past 8 years by ACDBA members through their IDR and EDR processes. Specific observations include:

- There has been a marked increase in the lodgement of complaints relating to credit file listing corrections over the past 2 years moving from between 6.0% and 8.1% for FY2011 to FY2014 to a high of 25.6% in FY2016 and 20.6% in FY2015

- A significant proportion of consumer complaints (for example, 47.8% in FY2016) do not proceed to resolution by way of Financial Services Provider (FSP) action to apologise or amend processes, EDR determinations or referral to the originating FSP but instead being resolved by:
 - The consumer paying the account in full or offering a settlement which is accepted for payment either immediately or by instalments (8.4%)
 - The consumer withdrawing the complaint (11.3%)
 - There being no basis to the complaint or insufficient detail to investigate the complaint (28.1%)

2. In respect of which financial sector activities should the requirement apply?

ACDBA respectfully submits the requirements should apply only to those financial services where consumers have been traditionally vulnerable to significant financial losses through retail banking and finance including finance brokering; financial planning; general insurance, life insurance and insurance brokerage.

Financial services provided by debt purchasers are centred upon the recovery or collection of a debt rather than the provision of advice to or the investing of funds on behalf of consumers.

3. Should these requirements apply to providers of services covered by the ePayments Code? Or should that code be mandated by other means? If so by what means?

No response.

4. What costs or other regulatory burden would the requirement imply for industry?

Depending upon the size of the industry sector which is required to participate by way of a code which is co-regulated by and requires approval by ASIC the costs could be quite prohibitive and possibly not warranted.

Specifically, we note that in the case of ACDBA which has only 17 members, if it were to meet a requirement that its Code Monitoring Committee must be a separate incorporated body, this would be an excessive requirement being entirely unwarranted and an unreasonable cost impost.

Currently, ACDBA has a Code Monitoring Committee (CMC) which has been set up with an Operating Charter as an Advisory Committee to the Board of ACDBA – this permits appropriate and transparent governance whilst allowing the majority of actual costs to be absorbed into the existing cost structure of ACDBA, namely the administrative structure, the annual accounting fees, ASIC fees and the insurance cover held by ACDBA.

The existing CMC of the ACDBA Code has an industry representative member, a consumer representative member and an Independent Chair, who is also the Independent Chair of the ACDBA Board. The CMC conducts its own minuted meetings and for all intents and purposes operates at arms-length from the ACDBA Board.

If the ACDBA Code was required to be approved by ASIC under the proposed co-regulatory model, such approval would presumably impose the obligation of an Independent Code Reviewer to undertake a review every 3 years – which is a huge cost burden if imposed upon such a small financial services sector as debt purchasers.

We note the anticipated cost burden of the obligation of an Independent Code Reviewer to undertake a review every 3 years is the major disincentive causing ACDBA not to proceed to date to seek ASIC approval for the ACDBA Code.

5. Should conduct associated with subscription to approved codes be deemed to be authorised under section 51 of the Competition and Consumer Act?

Yes.

Position 3: Approved codes should be binding on and enforceable against subscribers by contractual arrangements with a code monitoring body.

Position 4: An individual customer should be able to seek appropriate redress through the subscriber's internal and external dispute resolution arrangements for non-compliance with an applicable approved code.

Position 5: The code monitoring body, comprising a mix of industry, consumer and expert members, should monitor the adequacy of the code and industry compliance with it over time, and periodically report to ASIC on these matters.

QUESTIONS

6. Will ensuring enforceability provisions of codes meet a minimum standard improve consumer outcomes?

Potentially, yes it should as there will be industry sector participants who previously may not have joined industry associations with binding codes and as a consequence have remained outside such scrutiny. Under the proposed model, if such operators wish to remain in the industry they will be obliged to join the industry association and be subject to the code requirements.

7. Do any problems arise with imposing these requirements in relation to particular financial sector activities?

We respectfully submit the proposed requirements would be excessive for the debt collection and debt purchase sector for a number of reasons including:

- The sector attends to recovery of accounts issued by other financial service providers and is not involved in providing advice to consumers or acting as original credit providers
- The historic experience of the sector has been that a very significant proportion of the complaints made by consumers have been instigated for the principal purpose of a tactic to assist the consumer to avoid his/her financial obligation and once that issue is resolved, any issue of an alleged code breach disappears through lack of interest on the part of the consumer and/or the absence of evidence being provided to supporting the alleged breach

- The number of operators in the sector is quite small making the imposition of the costs associated with co-regulation by ASIC to established an ASIC approved code prohibitive and a burden for the sector

8. Are contractual arrangements with code monitoring bodies the most effective enforcement mechanism?

Yes - industry participants should be required to subscribe to the relevant code through membership of the industry association developing and maintaining that code and the ultimate sanction available for the association to impose on a member for a serious breach of the code's requirements should be expulsion from the industry association, which would have the effect of expelling the specific errant participant from the industry.

9. Is it appropriate that, where feasible, code content be incorporated into contracts with customers?

No, this is not warranted – instead all that is required in the contract to inform the consumer is to detail the service provider is a subscriber to the specific code and where the consumer may access online the full and up to date details of the code.

10. Should the composition of individual code monitoring bodies and arrangements for enforcement be subject to ASIC approval?

In the first instance, we respectfully submit this is a step too far, moving the model more to one of regulation rather than a co-regulatory model. If over time, the composition of individual code monitoring bodies and arrangements for enforcement become a systemic issue of concern then consideration could then be given to amending the model.

11. What characteristics should code-monitoring bodies have? (for example, what level of independence should they have?)

ACDBA supports the structure of the code-monitoring bodies having an equal number of industry and consumer representatives together with an Independent Chair.

Contact

Enquiries in respect to this Submission should be directed in the first instance to:

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ANNEXURE A - Listing of Members of Australian Debt Buyers & Collectors Association

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