



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

11 February 2021

Manager, Credit Reforms
The Treasury
Langton Cres
PARKES ACT 2600

By email: CreditReforms@TREASURY.GOV.AU

Dear Sir/Madam,

Submission in response to Consultation: Licensing debt management firms

The Australian Collectors & Debt Buyers Association is pleased to provide the attached Submission in response to Treasury's consultation on Draft Regulation for the licensing of debt management firms.

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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DEBT BUYERS ASSOCIATION

***Submission to Treasury Consultation
Licensing of debt management firms***

February 2021

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Introduction

Australian Collectors & Debt Buyers Association (ACDBA) welcomes this opportunity to respond to the Consultation on Draft Regulations for the *Licensing of debt management firms* released by Treasury on 15 January 2021.

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.

References to ‘*debt management firms*’ or ‘*debt manager*’ in this Submission mean a firm or individual providing debt management assistance and/or credit reporting assistance to a consumer for charge, fee, profit or other remuneration and includes solicitors whose primary practice is debt negotiation or debt management but otherwise does not mean a solicitor, not-for-profit financial counsellor or consumer advocate.

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 at Appendix 2.

Debt purchasers as credit providers have dealings with debt management firms acting for customers in respect to requests to vary credit listings and other complaints.

Perspectives

Licensing regimes under the National Consumer Credit Protection Act (2009) (Act) require financial firms to meet the 'fit and proper person' test and importantly, to undertake their activities efficiently, honestly and fairly.

ACDBA supports Treasury's proposal to establish a licensing regime for debt management firms in Australia under the Act - this initiative, we submit is essential to provide overdue protection and remedies to consumers and others in respect to their dealings with these firms.

Many services provided on a fee basis by debt management firms to consumers are otherwise freely available to consumers by raising the dispute directly with the financial firm's internal dispute resolution function or with assistance from a not-for-profit financial counsellor.

Acknowledging the key objective of the reforms is to protect consumers from the often predatory practices of debt management firms, we submit others are also adversely impacted by such conduct.

It is anticipated the proposed reforms will assist in dealing with the most egregious conduct of predatory debt management firms, however ACDBA is concerned the reforms will not address the broader challenge and cost impost faced by the banking and finance sector in relation to the strategic use of the AFCA scheme as an integral element of the business model and methodology of some debt management firms.

Included for your reference as Appendix 3 is a 10 year Snapshot of our members' Complaint Data. Debt management firms account for the vast majority of '*credit file listing*' complaints, which have increased in recent years, most significantly in FY2019 and FY2020.

Sustained pressure by debt management firms to remove default listings has a negative impact on the integrity of the Australian credit reporting system and consequently the flow of credit through the economy.

Under AFCA, complainants and their representative debt managers bear no cost or responsibility for complaints lodged. The respondent financial firm bears the entire AFCA fees for every complaint lodged against the firm, regardless of whether there was any basis for the complaint.

Additionally, when responding to non-meritorious complaints lodged by debt management firms, ACDBA members experience such complaints being escalated through the AFCA processes at the request of the debt manager - the direct consequence is the financial firm incurs higher fees.

The deliberate delaying of resolution of an AFCA complaint is also unhelpful for the consumer. Consumers typically cease repaying their account pending a complaint outcome – with unnecessary escalation and delay, once their complaint is finally determined they may still face an outstanding debt, which has increased due to interest accruing and the absence of repayments.

The apparent objective for such escalation by debt managers, being to solely drive up costs and render any continued defence of the complaint as not commercial for the financial firm. We are concerned AFCA fees are routinely weaponised in this way by less scrupulous debt management firms to induce the financial firm to waive the complainant's debt and minimise the financial impost of the AFCA complaint.

This conduct by debt management firms is to the detriment of consumers generally as unnecessary and unreasonable financial imposts upon financial firms including ACDBA members will ultimately be borne by all consumers by way of higher costs when accessing credit.

These concerns have been raised directly with AFCA but to date the scheme has been ineffective in preventing this abuse of its processes by debt management firms.

A review of the proposed licensing regime within 2 years of its commencement is considered appropriate to allow Treasury an opportunity to determine whether the conduct of debt management firms has sufficiently improved or whether further regulatory action is warranted to ensure their activities are being undertaken efficiently, honestly and fairly.

Closing Remarks

The intended licensing of debt management firms and the requirement of those firms to be a member of AFCA is supported as helpful in providing for the protection of consumers in their dealings with debt management firms.

However, the licensing and mandatory AFCA membership will not address the conduct of some debt managers lodging and deliberately escalating non-meritorious complaints through AFCA solely to induce financial firms to waive a complainant's debt.

Such unscrupulous conduct warrants urgent regulatory attention by Treasury to ensure protection of consumers, maintenance of the integrity of AFCA processes, protection of the Australian credit reporting system and prevention of unnecessary and unreasonable financial imposts upon financial firms including ACDBA members.

Contact

For any enquiry in relation to this Submission, please contact:

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Appendix 1 - Members of Australian Collectors & Debt Buyers Association

- Axxess 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 debt¹:

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.

Appendix 3 - Ten Year Snapshot of Complaint Data (FY2011 to FY2020)

De-identified data collected from the membership of Australian Collectors & Debt Buyers Association through its annual Industry Data Surveys.

Consumer Contacts and Complaints Received by Type

Complaints Experience										
Period	FY2020	FY2019	FY2018	FY2017	FY2016	FY2015	FY2014	FY2013	FY2012	FY2011
Respondents	13	14	15	16	16	18	17	13	12	9
Consumer Contacts Made										
Total*	69,219,325	123,918,410	109,139,040	96,462,665	63,217,722	59,514,030	65,426,503	49,783,554	35,873,078	46,828,319
Complaints Received										
Via IDR	15,190	8,364	6,194	7,015	12,055	10,171	6,925	4,045	3,638	2,763
Escalated from IDR to EDR[#]	419	690	Not collected							
Via EDR	2,484	2,473	1,864	1,872	1,820	1,864	1,811	1,364	1,305	872
Complaints as a Percentage of Consumer Contacts Made										
Via IDR	0.0219%	0.0067%	0.0057%	0.0073%	0.0191%	0.0171%	0.0106%	0.0081%	0.0101%	0.0059%
Via EDR	0.0036%	0.0020%	0.0017%	0.0019%	0.0029%	0.0031%	0.0028%	0.0027%	0.0036%	0.0019%
* Contacts include letters, emails, telephone calls, SMS messages and from FY2019 online portal access										
[#] These complaints are included in both the complaints received via IDR and the complaints received via EDR										

Complaint Costs for FY2020				
Resolution by	Costs calculated as	Total Complaints	Total Costs	Costs per complaint
IDR	Total direct labour costs to handle complaints from consumers	15,190	\$2,258,913	\$148.71
EDR*	Total EDR Scheme Membership Fees together with EDR transactional fees paid for complaint lodgements, investigations and determinations	2,484	\$3,106,269	\$1,250.51
Total Costs			\$5,365,182	\$1,399.22

Number of Complaints Resolved with Breakdown of Outcomes

Complaint Outcomes										
Period	FY2020	FY2019	FY2018	FY2017	FY2016	FY2015	FY2014	FY2013	FY2012	FY2011
Number of Respondents	13	14	15	16	16	18	17	13	12	9
Account paid	413	368	179	118	107	388	101	93	966	19
Arrangement made /settlement accepted	1,130	612	376	515	918	753	426	409	518	179
No basis &/or insufficient detail to investigate	3,515	1,663	1,760	1,823	3,428	4,265	3,519	2,093	1,482	1,350
Withdrawn by consumer	310	118	105	95	1,375	1,325	789	137	169	29
Matter referred back to client for resolution	1,516	557	175	218	305	875	237	290	278	66
Apology letter issued to consumer	71	142	134	121	122	205	106	87	111	116
Credit file listing related	4,387	2,689	1,933	982	3,116	2,666	526	389	367	296
Finalised by EDR award in favour of consumer	12	15	9	9	12	6	26	68		
Internal processes reviewed/amended	43	33	23	11	22	43	39	67	88	113
Other outcome	4,181	859	619	1,863	1,322	1,331	920	1,657	611	1,043
Unresolved	887	377	507	852	1,464	1,081	2,149	136	396	445
Total	16,465	7,433	5,820	6,607	12,191	12,938	8,838	5,426	4,986	3,656