



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

5 March 2021

Manager
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

Your ref: Mr Matthew Bowd
By email: MCDInsolvency@Treasury.gov.au

Dear Sir,

Submission in response to Consultation: Increasing the Statutory Demand Threshold

The Australian Collectors & Debt Buyers Association is pleased to provide the attached Submission in response to Treasury's consultation on whether to permanently raise the minimum threshold at which creditors can issue a statutory demand on a company.

Please do not hesitate to contact the writer to discuss any aspect of the Submission.

Yours sincerely

AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

A handwritten signature in black ink, appearing to read 'Alan Harries', written over a circular stamp or seal.

Alan Harries
CEO
Email: akh@acdba.com



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

***Submission to Treasury Consultation
Increasing the Statutory Demand Threshold***

March 2021

Introduction

Australian Collectors & Debt Buyers Association (ACDBA) welcomes this opportunity to respond to the Treasury Consultation released 15 February 2021 on whether to permanently raise the minimum threshold at which creditors can issue a statutory demand on a company.

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.

Contingent collectors pursue the recovery of accounts on behalf of a creditor under a “principal and agent” agreement for an agreed fee, with the debt at all times being owned by the creditor. Creditors issuing instructions for contingent collections include governments, statutory authorities, financiers, insurers, telcos, utility providers, other corporations, strata body corporates, small business and individuals.

ACDBA members purchasing debt, each hold an Australian Credit Licence and are members of the Australian Financial Complaints Authority (AFCA). An explanation of how debt purchasing operates in Australia is included at Appendix 2.

Perspectives

The Consultation Paper details the purpose of issuing a Statutory Demand under section 459E of the Corporations Act is to test the solvency of a company and establish proof of a company’s inability to pay its debts.

Importantly, this test allows creditors to quickly establish the true financial status of a company as to whether it is in distress and to initiate appropriate steps in relation to any amounts owing by that company. A company facing the reality of being unable to pay the debt for which a statutory demand is issued may be encouraged to engage in constructive discussions with the creditor.

The submission to Treasury by Prushka Fast Debt Recovery/Mendelsons National Debt Collection Lawyers we submit provides an informative and helpful perspective of that group’s use and experiences of the issue of Statutory Demands to determine the solvency of corporate debtors.

In summary, ACDBA supports retention of a modest statutory demand threshold adjusted to \$4,000 to account for the changing value of money since the threshold was first created and advocates future increases should be annually indexed to the Consumer Price Index.

Responses to consultation questions

Question 1: Should the threshold at which a statutory demand can be issued on a company be increased?

Yes – we submit the threshold should remain consistent with changing money values.

Question 2: If the threshold is increased, to what amount should it be increased and why?

Our members agree it is appropriate to increase the statutory demand threshold so as to adjust for the changing value of money since the threshold was last raised.

ACDBA submits:

- i. The threshold should be set at \$4,000 to adjust for the changing value of money since the threshold was first established in the Corporations Act; and
- ii. The statutory demand threshold thereafter should be indexed on an ongoing annual basis, similar to the thresholds applying for Part IX and Part X debt agreements under the Bankruptcy Act.

Question 3: If the threshold is increased, when should this change come into effect?

There is no reason to unduly delay the introduction of an increase to the threshold - creditors have demonstrated their ability to adjust to recent temporary changes to the threshold as part of the Government's COVID-19 response.

Question 4: What will be the impacts of increasing the threshold?

We expect there would be minimal impact if the statutory demand threshold is increased to \$4,000, however if the threshold was raised to a higher amount there is a risk this would adversely impact the rights of SME creditors already reliant on cashflow, in securing and recovering any debt owing to them.

Further, there is a risk a higher threshold may restrict the flow of credit to small businesses and into the economy if the more risk averse lenders respond by establishing barriers to smaller commercial borrowers obtaining finance on fair terms.

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.